

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

BANK OF AMERICA, N.A.,  
SUCCESSOR BY MERGER TO BAC  
HOME LOANS SERVICING, LP FKA  
COUNTRYWIDE HOME LOANS  
SERVICING, LP, a National  
Association.

Appellant,

vs.

SFR INVESTMENTS POOL 1, LLC, a  
Nevada Limited Liability Company,

Respondent.

Case No. 70501

Electronically Filed  
Oct 07 2016 04:19 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**APPEAL**

from the Eighth Judicial District Court, Department XXI  
The Honorable Valerie Adair, District Judge  
District Court Case No. A-13-684501-C

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**APPELLANT'S INDEX TO APPENDIX**

---

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 7<sup>th</sup> day of October, 2016, I caused to be served a true and correct copy of foregoing **APPELLANT'S INDEX TO APPENDIX**, in the following manner:

**(UNITED STATES MAIL)** By depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last-known mailing addresses, on the date above written:

Diana Cline Ebron, Esq.  
KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139

Attorneys for SFR Investments Pool 1, LLC

*/s/ Carla Llarena*  
\_\_\_\_\_  
An employee of AKERMAN LLP

*Devan Thury*  
*336-7080*  
*11/11/13 11:01-01*  
*10/7/13 3:01*  
*in person*

**SUMM**

Ryan Kerbow, Esq.  
Nevada Bar No. 11403  
Bradley D. Bace, Esq.  
Nevada Bar No. 12684  
ALESSI & KOENIG, LLC  
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brad@alessikoenig.com  
Attorneys for Plaintiff

**OCT 16 2013**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada  
limited liability company

Plaintiff,

vs.

ARMANDO A. CARIAS, an individual,  
BANK OF AMERICA, N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, unknown  
entity, DOES INDIVIDUALS I-X, inclusive,  
and ROE CORPORATIONS XI-XX inclusive

Defendants.

Case No. A-13-684501-C  
Dept. No. I

**SUMMONS - CIVIL**

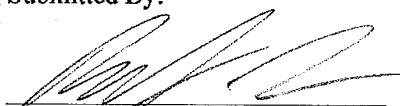
**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.  
READ THE INFORMATION BELOW.**

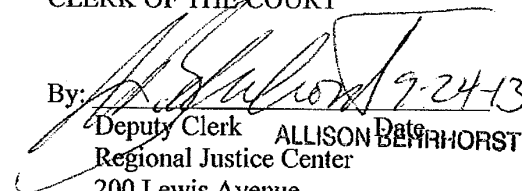
**TO THE DEFENDANT(S):** A civil Complaint has been filed by the Plaintiff(s) against you for  
the relief set forth in the Complaint.

- 1 1. If you intend to defend this lawsuit, within 20 days after this Summons is served on  
2 you, exclusive of the day of service, you must do the following:  
3 (a) File with the Clerk of this Court, whose address is shown below, a formal written  
4 response to the Complaint in accordance with the rules of the Court, with the  
5 appropriate filing fee.  
6 (b) Serve a copy of your response upon the attorney whose name and address is  
7 shown below.  
8 2. Unless you respond, your default will be entered upon application of the Plaintiff(s)  
9 and failure to so respond will result in a judgment of default against you for the relief  
10 demanded in the Complaint, which could result in the taking of money or property or  
11 other relief requested in the Complaint.  
12 3. If you intend to seek the advice of an attorney in this matter, you should do so  
13 promptly so that your response may be filed on time.  
14 4. The State of Nevada, its political subdivisions, agencies, officers, employees, board  
15 members, commission members and legislators each have 45 days after service of this  
16 Summons within which to file an Answer or other responsive pleading to the  
17 Complaint.

STEVEN D. GRIERSON  
CLERK OF THE COURT

18 Submitted By:

19   
20 Ryan Kerbow, Esq.  
21 Bradley D. Bace, Esq.

By:  9-24-13  
Deputy Clerk ALLISON BENRHORST  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

## CIVIL COVER SHEET

A- 13- 684501- C

- Clark County, Nevada

Case No.

(Assigned by Clerk's Office)

**I. Party Information**

Plaintiff(s) (name/address/phone): Alessi &amp; Koenig

Attorney (name/address/phone): Huong Lam, Esq. & Brad Bace,  
Esq., ALESSI & KOENIG, 9500 W. Flamingo Rd., Ste. 205, Las  
Vegas, NV 89147 Phone: (702) 222-4033Defendant(s) (name/address/phone): ARMANDO A. CARIAS,  
BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO  
BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP

Attorney (name/address/phone):

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)☐ Arbitration Requested**Civil Cases**

Real Property	Torts	
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> <b>Negligence</b> <input type="checkbox"/> Negligence - Auto <input type="checkbox"/> Negligence - Medical/Dental <input type="checkbox"/> Negligence - Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence - Other	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition

**Probate****Other Civil Filing Types**

<b>Estimated Estate Value:</b> _____ <input type="checkbox"/> <b>Summary Administration</b> <input type="checkbox"/> <b>General Administration</b> <input type="checkbox"/> <b>Special Administration</b> <input type="checkbox"/> <b>Set Aside Estates</b> <input type="checkbox"/> <b>Trust/Conservatorships</b> <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> <b>Other Probate</b>	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Proceeding <input checked="" type="checkbox"/> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input checked="" type="checkbox"/> <b>Other Civil Matters</b>
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**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)

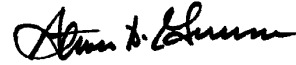
<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademarks (NRS 600A)	<input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

7/11/13

Date

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

1 **COMP**

2 Huong Lam, Esq.  
3 Nevada Bar No. 10916  
4 Bradley Bace, Esq.  
5 Nevada Bar No. 12684  
6 ALESSI & KOENIG, LLC  
7 9500 W. Flamingo, Suite 205  
8 Las Vegas, Nevada 89147  
9 Phone: (702) 222-4033  
10 Fax: (702) 222-4043  
11 huong@alessikoenig.com  
12 brad@alessikoenig.com  
13 Attorney for Plaintiff

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10  
11 ALESSI & KOENIG, LLC, a Nevada  
12 limited liability company,

13 Plaintiff,

14 vs.

15 ARMANDO A. CARIAS, an individual,  
16 BANK OF AMERICA, N.A., SUCCESSOR  
17 BY MERGER TO BAC HOME LOANS  
18 SERVICING, LP FKA COUNTRYWIDE  
19 HOME LOANS SERVICING, LP, unknown  
20 entity, DOES INDIVIDUALS I-X, inclusive,  
21 and ROE CORPORATIONS XI-XXX  
22 inclusive,

23 Defendants.

A- 13- 684501- C

Case No.

Dept. No.

Hearing date: |

Hearing time:

**COMPLAINT IN INTERPLEADER**

**Arbitration Exemption Claimed:**

**1) Declaratory Relief**

22 ///

23 ///

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**COMPLAINT IN INTERPLEADER**

COMES NOW, ALESSI & KOENIG, LLC, by and through their attorneys of record,  
Huong Lam, Esq. and Bradley Bace, Esq. of ALESSI & KOENIG, LLC,, and alleges the  
following Causes of Action against Defendant ARMANDO A. CARIAS, an individual, BANK  
OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP  
FKA COUNTRYWIDE HOME LOANS SERVICING, LP., an unknown entity, as follows:

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**THE PARTIES AND JURISDICTION**

1. At all times relevant herein, Plaintiff ALESSI & KOENIG, LLC (hereinafter "A&K")  
was a domestic limited liability company authorized to conduct business in the State  
of Nevada.
2. At all times relevant herein, ARMANDO A. CARIAS (hereinafter "CARIAS") an  
individual, was a resident of the County of Clark, State of Nevada.
3. At all times relevant herein, BANK OF AMERICA, N.A., SUCCESSOR BY  
MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP (hereinafter "BAC") an entity unknown doing  
business in the State of Nevada.
4. The names given to the Defendants sued herein as Doe Individuals I through X and  
Roe Corporations XI through XX, inclusive, are fictitious names. Other parties  
unknown to Plaintiff may have caused Plaintiff to incur damages as pled herein or  
may have an interest in the Property. Plaintiff prays that if and when the true names  
of any said defendants, or any of them, and the nature of their alleged actions and/or  
interests are ascertained, that they may be inserted herein by proper amendment.

1 Plaintiff has no knowledge of the addresses or places of residence of any fictitious  
2 defendants.

- 3 5. Jurisdiction and venue are proper in this Court because this action concerns real  
4 property located in the County of Clark, State of Nevada, and the facts, acts, events  
5 and circumstances herein mentioned, alleged and described occurred in the County of  
6 Clark, State of Nevada.  
7

8 **THE UNDERLYING FORECLOSURE SALE**

- 9 6. Plaintiff hereby repeats, realleges, and incorporates by reference each and every  
10 preceding paragraph and allegation as if fully stated herein.  
11  
12 7. On or about July 15, 1998, a Declaration of Covenants, Conditions, and Restrictions  
13 ("CC&Rs") for SUTTER CREEK HOMEOWNERS ASSOCIATION ("Sutter Creek  
14 HOA") was recorded in the public records with the Clark County Recorder at Book  
15 No. 980615 and Instrument No. 01172.  
16  
17 8. Section 5.1 of the CC&Rs provides, in pertinent part:

18 Each Owner of any Lot, by acceptance of a deed or other conveyance  
19 therefor, whether or not it shall be so expressed in such deed or such other  
20 instrument; is deemed to covenant and agree to pay to the Association (1)  
21 annual Common Assessments for common expenses and (2) Special  
22 Assessments; such assessments to be established and collected as  
23 hereinafter provided. All assessments, together with interest, costs, and  
24 reasonable attorney's fees for the collection thereof, shall be charge on the  
25 land and shall be a continuing lien upon the Lot against which such  
26 assessment is made. The personal obligation of assessments shall not pass  
27 to the successors-in-title of any Owner, unless expressly assumed by them.  
28

25 See attached Exhibit "1."  
26  
27  
28



- 1 9. On or about November 3, 2010 CARIAS became the title owner of certain real  
2 property commonly known as 3617 Diamond Spur Avenue, No Las Vegas, NV  
3 89032, APN 139-08-410-014, and legally described as:  
4  
5 PARCEL ONE (1)  
6  
7 LOT SIXTY (60) IN BLOCK ONE (1) OF SUTTER CREEK – PHASE 1, AS  
8 SHOWN BY MAP THEREOF ON FILE IN BOOK 85, OF PLATS, PAGE 30, IN  
9 THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.  
10  
11 PARCEL TWO (2)  
12  
13 A NON EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS ON AND  
14 OVER COMMON ELEMENTS, ASSOCIATION PROPERTY AND PRIVATE  
15 STREETS, WHICH EASEMENTS IS APPURTENANT TO PARCEL ONE (1)  
16  
17 (the “Property”). See attached Exhibit “2.”  
18  
19 10. Pursuant to NRS Chapter 116, CARIAS is governed by the requirements and  
20 obligations set forth in the CC&Rs and related governing documents.  
21  
22 11. The CC&Rs require homeowners within the community to pay regular assessments  
23 and comply with the requirements and obligations set forth in the CC&Rs and related  
24 governing documents.  
25  
26 12. Defendant CARIAS failed to pay his regular assessments and further failed to comply  
27 with other requirements set forth in the CC&Rs and other related governing  
28 documents.  
29  
30 13. Nevada Revised Statute (“NRS”) 116.3116 *et. seq.* specifically authorizes a  
31 homeowner’s association to conduct a foreclosure sale of any lot that has become  
32 delinquent on its assessment payments.

- 1 14. As a result of CARIA's failure to comply with NRS 116 and Sutter Creek HOA's  
2 governing documents, Plaintiff A&K was retained to begin the foreclosure process  
3 pursuant to NRS 116.3116 *et. seq.*
- 4 15. Pursuant to the aforementioned statutory and CC&Rs provisions, Plaintiff A&K, on  
5 behalf of Sutter Creek HOA, foreclosed on the Property via auction on February 20,  
6 2013. The final bid price was for \$21,000.00 See attached Exhibit "3"
- 7 16. The total amount due and owing to Sutter Creek HOA at the time of the foreclosure  
8 sale was \$5,260.00 including foreclosure fees and costs.
- 9 17. The total amount due and owing to A&K for its fees and costs to bring this  
10 interpleader action is \$6,000.00.
- 11 18. That the excess proceeds is \$9,740.00.
- 12 19. Upon information and belief, Defendant CARIAS, an individual has a claim to the  
13 excess proceeds.
- 14 20. Upon information and belief, Defendant BAC, an entity unknown, has a claim to the  
15 excess proceeds.
- 16 21. N.R.S. 116.31164 (c) provides a distribution priority for the proceeds (not just the  
17 excess proceeds) from any HOA foreclosure sale. This statute states that the proceeds  
18 of an HOA foreclosure sale shall be distributed pursuant to the following order:  
19  
20 (1) The reasonable expenses of sale;  
21  
22 (2) The reasonable expenses of securing possession before sale, holding,  
23 maintaining, and preparing the unit for sale, including payment of taxes  
24 and other governmental charges, premiums on hazard and liability  
25  
26  
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insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;

(3) Satisfaction of the association's lien;

(4) Satisfaction in the order of priority of any subordinate claim of record; and

(5) Remittance of any excess to the unit's owner.

22. That Plaintiff A&K will deposit excess proceeds with this court in the sum of \$9,740.00 representing total proceeds at sale (\$21,000.00) minus amount due to Sutter Creek HOA (\$5,260.00) and fees and costs of this interpleader action (\$6,000.00).

23. Given the Defendants' competing claims for the proceeds, Plaintiff cannot determine which of the Defendants in Interpleader are entitled to the proceeds.

24. As set forth above, Plaintiff has distributed funds from the HOA foreclosure sale under subsections (1), (2), and (3).

25. In order to distribute any funds pursuant to N.R.S. subsections (4) and (5), it must be determined which parties have a "subordinate claim of record" and what the respective priority of these subordinate claims is as to the subject property.

26. Plaintiff has been unable to make this determination and has thus brought the instant interpleader action.

#### PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendants in Interpleader and each of them as follows:

1. That Defendants in Interpleader and each of them be required to interplead and litigate among themselves their claims to the proceeds described;

- 1           2. That the Court determine and enter an order setting forth the proper recipients of  
2           the proceeds;  
3           3. That Plaintiff be dismissed from this action with prejudice following payment of  
4           the excess proceeds into the registry of the Court; and  
5           4. For such other and further relief as the Court deems just and equitable under the  
6           circumstances.  
7

8           DATED this 1st day of July, 2013.

9  
10                                   ALESSI & KOENIG, LLC

11                                   /s/ Bradley Bace  
12                                   Huong Lam, Esq.  
13                                   Nevada Bar No. 10916  
14                                   Bradley Bace, Esq.  
15                                   Nevada Bar No. 12684  
16                                   ALESSI & KOENIG, LLC  
17                                   9500 W. Flamingo, Suite #205  
18                                   Las Vegas, Nevada 89147  
19                                   Phone: (702) 222-4033  
20                                   Fax: (702) 222-4043  
21                                   Attorney for Plaintiff  
22  
23  
24  
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28

# Exhibit 1

DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
SUTTER CREEK

This Declaration of Covenants, Conditions and Restrictions is made this 10<sup>th</sup> day of July, 1998, by SAXTON INCORPORATED, a Nevada corporation.

WHEREAS Declarant is the owner of certain real property in Clark County, Nevada, more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS Declarant intends that the Property, together with certain adjacent real property, shall be a Planned Community and a Common-Interest Community as defined in Nevada's Uniform Common-Interest Ownership Act, Chapter 116 of Nevada Revised Statutes, upon recordation of this Declaration; and

WHEREAS the name of the Common-Interest Community shall be SUTTER CREEK, and the name of the homeowners association created pursuant to this Declaration shall be SUTTER CREEK HOMEOWNERS ASSOCIATION; and

WHEREAS Declarant desires that the Property be subject to certain covenants, conditions, restrictions and easements, under a general plan of improvement for the benefit of all Lots in the Property and the owners thereof, and that a property owners association be established for the purpose of assessing, managing and administering the Property; and

WHEREAS Declarant further reserves the right to add the "Annexable Area" (as defined herein) to the Property, up to a maximum of one hundred seventy five (175) aggregate Lots;

NOW, THEREFORE, Declarant hereby declares that all of the Property shall at all times be owned, held, used and occupied subject to the provisions of this Declaration and to the covenants, conditions and restrictions and reservation of easements contained herein, all of which are established and declared for the purpose of increasing the economic value, desirability and attractiveness of the Property and for the mutual benefit of the owners of Lots therein. The covenants, conditions, restrictions and easements set forth in this Declaration shall run with such real property and shall be binding upon Declarant, each owner, and all other persons acquiring any right, title or interest in and to said real property or any part thereof, and shall inure to the benefit of the property owners association, Declarant, and each person who becomes an owner of any part of the Property, as well as their respective successors-in-interest.

the Plat is the same as the recording data for the Plat.

## ARTICLE V FUNDS AND ASSESSMENTS

Section 5.01. Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such deed or such other instrument, is deemed to covenant and agree to pay to the Association (1) annual Common Assessments for common expenses and (2) Special Assessments; such assessments to be established and collected as hereinafter provided. All assessments, together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. The personal obligation of assessments shall not pass to the successors-in-title of any Owner, unless expressly assumed by them.

Section 5.02. Maintenance Funds. The Board shall establish and maintain at least the following separate accounts (the "Maintenance Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association: (1) an Operating Fund for current expenses of the Association, (2) a Reserve Fund for maintenance, replacement and improvements not required to be performed annually, and (3) any other funds which the Board of Directors may establish, to the extent necessary under the provisions of this Declaration. To qualify for higher returns on accounts held at banking or savings institutions, the Board may commingle any amounts deposited into any of the Maintenance Funds with amounts deposited into any other Maintenance Funds, provided that the integrity of each individual Maintenance Fund shall be preserved on the books of the Association by accounting for disbursements from, and deposits to, each Maintenance Fund separately. Each of the Maintenance Funds shall be established as separate trust savings or trust checking accounts. The Maintenance Funds may be established as trust accounts at federally insured banking or lending institutions.

Section 5.03. Purpose of Assessments. All amounts deposited into the Operating Funds and the Reserve Fund must be used solely for the common benefit of all of the Owners for purposes authorized by the Articles, Bylaws and this Declaration, as they may be amended from time to time.

Section 5.04. Common Assessments. Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Reserve Fund, the Operating Fund and any other Maintenance Fund established by the Association.

Section 5.05. Date of Commencement of Common Assessments. Common Assessments shall commence as to all Lots in Phase I of the Property on the earlier of (a) the first close of escrow for the sale of any Lot in Phase I, or (b) conveyance of any Common Areas in Phase I to the Association. Common Assessments shall commence as to subsequent Phases upon the first close of escrow for the sale of any Lot in such Phase. Each such Lot shall thereafter be subject to its share of the then

**PARCEL 1:**

ALL OF SUTTER CREEK - PHASE I AS SHOWN BY MAP THEREOF IN BOOK 85 OF  
PLATS, PAGE 30, OFFICIAL RECORDS, CLARK COUNTY, NEVADA;

EXCEPTING THEREFROM LOTS ONE (1) THROUGH FIVE (5), INCLUSIVE, AND LOTS  
SIXTY THREE (63) THROUGH SIXTY EIGHT (68), INCLUSIVE, IN BLOCK ONE (1); AND  
LOTS SIXTY NINE (69) THROUGH SEVENTY FOUR (74), INCLUSIVE, IN BLOCK TWO (2);  
AS SHOWN ON SAID MAP; AND FURTHER EXCEPTING THEREFROM ALL PRIVATE  
DRIVES AND OTHER COMMON ELEMENTS AS SHOWN ON SAID MAP.

**PARCEL 2:**

SITUATED IN THE SOUTHWEST QUARTER (SW 1/4) OF THE SOUTHWEST QUARTER (SW 1/4) OF SECTION  
8, TOWNSHIP 20 SOUTH, RANGE 81 EAST, M.D.M., CITY OF NORTH LAS VEGAS, CLARK COUNTY, NEVADA;

BEING A PORTION OF LOT 1-1-1 AS SHOWN ON PARCEL MAP FILE . PAGE . CLARK COUNTY  
NEVADA OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 8, SAID POINT ALSO BEING THE CENTERLINE  
INTERSECTION OF CHEYENNE AVENUE (100 FEET WIDE) AND ALLEN LANE (80 FEET WIDE); THENCE ALONG  
THE WEST SECTION LINE OF SAID SECTION 8 AND CENTERLINE OF SAID ALLEN LANE, NORTH 00°23'30"  
WEST, 1118.69 FEET; THENCE LEAVING SAID WEST SECTION LINE AND CENTERLINE, NORTH 89°36'30"  
EAST, 40.00 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF ALLEN LANE, SAID POINT ALSO  
BEING THE TRUE POINT OF BEGINNING;

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE, NORTH 00°23'30" WEST, 157.63 FEET TO A POINT  
OF CURVATURE; THENCE ALONG THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF  
20.00 FEET, THROUGH A CENTRAL ANGLE OF 92°10'59", AN ARC DISTANCE OF 32.18 FEET TO A POINT  
ON THE SOUTH RIGHT-OF-WAY LINE OF COLTON AVENUE (60 FEET WIDE); THENCE ALONG SAID SOUTH  
RIGHT-OF-WAY LINE, SOUTH 88°12'31" EAST, 859.85 FEET; THENCE LEAVING SAID RIGHT-OF-WAY LINE,  
SOUTH 00°23'30" EAST, 588.22 FEET; THENCE SOUTH 89°36'30" WEST, 92.19 FEET; THENCE NORTH  
86°16'48" WEST, 40.00 FEET TO A POINT OF CURVATURE; THENCE FROM A TANGENT BEARING SOUTH  
03°43'12" WEST, ALONG THE ARC OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1522.00  
FEET, THROUGH A CENTRAL ANGLE OF 00°32'28", AN ARC DISTANCE OF 14.37 FEET; THENCE SOUTH  
89°36'30" WEST, 176.93 FEET; THENCE NORTH 87°02'28" WEST, 40.00 FEET TO A POINT OF CURVATURE;  
THENCE FROM A TANGENT BEARING SOUTH 02°57'32" WEST, ALONG THE ARC OF A CURVE CONCAVE SOUTH-  
EASTERLY, HAVING A RADIUS OF 1518.00 FEET, THROUGH A CENTRAL ANGLE OF 00°03'33", AN ARC  
DISTANCE OF 1.57 FEET; THENCE SOUTH 89°36'30" WEST, 173.39 FEET TO A POINT OF CURVATURE; THENCE  
FROM A RADIAL WHICH BEARS SOUTH 87°19'35" EAST, ALONG THE ARC OF A CURVE CONCAVE SOUTH-  
EASTERLY, HAVING A RADIUS OF 1478.00 FEET, THROUGH A CENTRAL ANGLE OF 00°23'36", AN ARC  
DISTANCE OF 10.15 FEET; THENCE NORTH 86°55'59" WEST, 40.00 FEET; THENCE SOUTH 89°36'30"  
WEST, 77.57 FEET; NORTH 00°23'30" WEST, 5.10 FEET; THENCE NORTH 02°51'42" EAST, 38.06 FEET;  
THENCE NORTH 00°23'30" WEST, 38.00 FEET; THENCE NORTH 07°53'15" WEST, 38.33 FEET; THENCE NORTH  
00°23'30" WEST, 38.00 FEET; THENCE NORTH 25°26'14" EAST, 36.55 FEET; THENCE NORTH 00°23'30"  
WEST, 8.80 FEET; THENCE NORTH 16°15'27" WEST, 39.50 FEET; THENCE SOUTH 89°36'30" WEST, 84.12  
FEET TO A POINT OF CURVATURE; THENCE FROM A RADIAL WHICH BEARS SOUTH 87°41'46" WEST, ALONG  
THE ARC OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1022.00 FEET, THROUGH A CENTRAL  
ANGLE OF 04°39'39", AN ARC DISTANCE OF 83.14 FEET TO A POINT OF REVERSE CURVATURE; THENCE  
FROM A RADIAL WHICH BEARS SOUTH 83°02'07" WEST, ALONG THE ARC OF A CURVE CONCAVE NORTHEASTERLY,  
HAVING A RADIUS OF 1478.00 FEET, THROUGH A CENTRAL ANGLE OF 04°44'11", AN ARC DISTANCE OF  
122.18 FEET; THENCE SOUTH 89°36'30" WEST, 142.75 FEET TO THE POINT OF BEGINNING.

When recorded, return to:

Saxton, Inc.  
5440 W. Sahara Avenue  
Third Floor  
Las Vegas, Nevada 89146  
Attention: General Counsel

CLARK COUNTY, NEVADA  
JUDITH A. VANDEVER, RECORDER  
RECORDED AT REQUEST OF:

SAXTON INC  
07-15-98 13:18 NEL 40  
OFFICIAL RECORDS  
BOOK: 980715 WST: 01172  
FEE: 46.00 RPT: .00



## Exhibit 2

APN#: 139-08-410-014

RPTT: \$367.20

09-11-029 880  
Recording Requested By:

Escrow No.: 034887-HUD

HUD Case Num: 332-450637

When Recorded Mail To:

Armando A. Carias

3617 Diamond Spur Ave.

North Las Vegas NV

89032

Mail Tax Statements to: (deeds only)

Armando A. Carias

3617 Diamond Spur Ave.

North Las Vegas NV

89032

(space above for Recorder's use only)

I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the social security number of any person or persons.

(Per NRS 239B.030)

Signature

*Karen Carter*   
Karen Carter Escrow Officer

EO.

Title

### Grant, Bargain, and Sale Deed

This page added to provide additional information required by NRS 111.312  
(additional recording fee applies)

Inst #: 201011030002713

Fees: \$18.00 W/C Fee: \$25.00

RPTT: \$367.20 Ex: #

11/03/2010 02:38:27 PM

Receipt #: 565489

Requestor:

NEVADA TITLE LAS VEGAS

Recorded By: MSH Pgs: 6

DEBBIE CONWAY

CLARK COUNTY RECORDER

## **GRANT, BARGAIN AND SALE DEED**

THIS INDENTURE WITNESSETH: That

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The Secretary of Housing and Urban Development of Washington D.C.

do(es) hereby GRANT(s) BARGAIN SELL and CONVEY to

Armando A. Carias, a single man

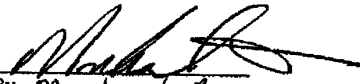
and to the heirs and assigns of such Grantee forever, all the following real property situated in the City of N. Las Vegas, County of Clark State of Nevada bounded and described as follows:

See attached Exhibit A

TOGETHER with all tenements, hereditaments and appurtenances, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Dated: 10/26/2010

The Secretary of Housing and Urban Development of Washington D.C.

  
By Michael Bao  
Authorized Signer

STATE OF ARIZONA  
COUNTY OF

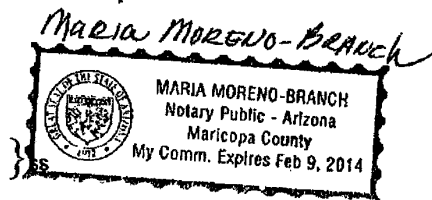
Maricopa

This instrument was acknowledged before me on

10-27-2010

by Michael Bao

  
Notary Public



Grant, Bargain and Sale Deed – Page 2

**CLARIFICATION COPY**

The Secretary of Housing and Urban Development of Washington D.C.

By MICHAEL BAO, AUTHORIZED SIGNOR

STATE OF ARIZONA  
COUNTY OF MARICOPA

} ss

This instrument was acknowledged before me on

\_\_\_\_\_

by \_\_\_\_\_

\_\_\_\_\_

Notary Public

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**PARCEL ONE (1)**

**LOT SIXTY (60) IN BLOCK ONE (1) OF SUTTER CREEK – PHASE 1, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 85, OF PLATS, PAGE 30, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.**

**PARCEL TWO (2)**

**A NON EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS ON AND OVER COMMON ELEMENTS, ASSOCIATION PROPERTY AND PRIVATE STREETS, WHICH EASEMENT IS APPURTENANT TO PARCEL ONE (1).**

**State of Nevada  
Declaration of Value Form**

**1. Assessor Parcel Number(s)**

- a) 139-08-410-014  
b) \_\_\_\_\_  
c) \_\_\_\_\_  
d) \_\_\_\_\_

**2. Type of Property:**

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

**FOR RECORDER'S OPTIONAL USE  
ONLY**

Book: \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

- 3 a. Total Value/Sales Price of Property \$72,000.00  
b. Deed in Lieu of Foreclosure Only (value of property) \_\_\_\_\_  
c. Transfer Tax Value: \$72,000.00  
d. Real Property Transfer Tax Due \$367.20

**4. If Exemption Claimed:**

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

**5. Partial Interest: Percentage being transferred: 100 %**

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

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

Capacity: AGENT

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

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

Print Name: The Secretary of Housing and  
Urban Development of  
Washington D.C.  
Address: 451 7th Street SW  
City: Washington  
State: DC Zip: 20410

Print Name: Armando A. Carias  
Address: 3617 Diamond Spur Ave.  
City: North Las Vegas  
State: NV Zip: 89032

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

Print Name: Nevada Title Company Esc. #: 09-11-0298-SD  
Address: 2500 N. Buffalo Drive, Suite 150  
City: Las Vegas State: NV Zip: 89128

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

## Exhibit 3



Inet #: 201302260003889

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

RPTT: \$107.10 Ex: #

02/26/2013 03:47:58 PM

Receipt #: 1612190

Requestor:

ALESSI & KOENIG LLC

Recorded By: JACKSON Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

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

A.P.N. No. 139-08-410-014

TS No. 30455-3617

### TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: SFR Investments Pool 1, LLC  
The Foreclosing Beneficiary herein was: Sutter Creek Homeowners Association  
The amount of unpaid debt together with costs: \$5,260.00  
The amount paid by the Grantee (Buyer) at the Trustee's Sale: \$21,000.00  
The Documentary Transfer Tax: \$107.10  
Property address: 3617 DIAMOND SPUR AVE, NO LAS VEGAS, NV 89032  
Said property is in [ ] unincorporated area: City of NO LAS VEGAS  
Trustor (Former Owner that was foreclosed on): ARMANDO A. CARIAS

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded February 23, 2012 as instrument number 0001691, in Clark County, does hereby grant, without warranty expressed or implied to SFR Investments Pool 1, LLC (Grantee), all its right, title and interest in the property legally described as: SUTTER CREEK-PHASE 1 LOT 60 BLOCK 1, as per map recorded in Book 85, Pages 30 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 115 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 February 20, 2013 at the place indicated on the Notice of Trustee's Sale.

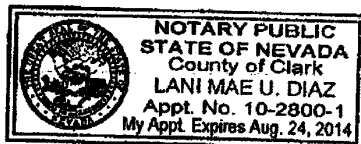
Ryan Kerbow, Esq.

Signature of AUTHORIZED AGENT for Alessi & Koenig, LLC

State of Nevada )  
County of Clark )

SUBSCRIBED and SWORN to before me 2/26/13

WITNESS my hand and official seal.  
(Seal)



(Signature)

STATE OF NEVADA  
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 139-08-410-014

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  
i. ☐ Other

FOR RECORDERS OPTIONAL USE ONLY

Book \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

3.a. Total Value/Sales Price of Property

\$ 21,000.00

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

c. Transfer Tax Value:

\$ 21,000.00

d. Real Property Transfer Tax Due

\$ 107.10

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 & Keonig LLC

Address: 9500 W Flamingo Rd., Suite 205

City: Las Vegas

State: NV

Zip: 89147

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

Print Name: SFR Investments Pool 1, LLC

Address: 5030 Paradise Road, St. B-214

City: Las Vegas

State: NV

Zip: 89119

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

Print Name: Alessi & Keonig LLC

Address: 9500 W Flamingo Rd., Suite 205

City: Las Vegas

Escrow # N/A Foreclosure

State: NV

Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

1 **IAFD**

2 Ryan Kerbow, Esq.  
3 Nevada Bar No. 11403  
4 Bradley D. Bace, Esq.  
5 Nevada Bar No. 12684  
6 ALESSI & KOENIG, LLC  
7 9500 W. Flamingo, Suite 205  
8 Las Vegas, Nevada 89147  
9 Phone: (702) 222-4033  
10 Fax: (702) 222-4043  
11 ryan@alessikoenig.com  
12 brad@alessikoenig.com  
13 Attorneys for Plaintiff

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

10 ALESSI & KOENIG, LLC, a Nevada  
11 limited liability company,

12  
13 Plaintiff,

14 vs.

15 ARMANDO A. CARIAS, an individual,  
16 BANK OF AMERICA, N.A., SUCCESSOR  
17 BY MERGER TO BAC HOME LOANS  
18 SERVICING, LP FKA COUNTRYWIDE  
19 HOME LOANS SERVICING, LP, unknown  
20 entity; DOES INDIVIDUALS I-X, inclusive;  
21 and ROE CORPORATIONS XI-XXX  
22 inclusive,

23 Defendants.

Case No.  
Dept. No.

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

23 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for  
24 parties appearing in the above entitled action as indicated below:  
25

26 ALESSI & KOENIG, LLC, a Nevada  
27 limited liability company,  
28

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\$270.00

**TOTAL REMITTED: (Required)**

**\$270.00**

DATED this 1st day of July, 2013.

ALESSI & KOENIG, LLC

/s/ Bradley D. Bace

Ryan Kerbow, Esq.  
Nevada Bar No. 11403  
Bradley D. Bace, Esq.  
Nevada Bar No. 12684  
ALESSI & KOENIG, LLC  
9500 W. Flamingo, Suite 205  
Las Vegas, Nevada 89147  
Phone: (702) 222-4033  
Fax: (702) 222-4043  
Attorney for Plaintiff

NH. 119.01.01

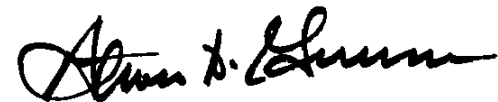
Sumner

CH9. 205.05.19

ORIGINAL

1 AFFT  
2 Huong Lam, Esq.  
3 Nevada Bar No. 10916  
4 Bradley Bace, Esq.  
5 Nevada Bar No. 12684  
6 ALESSI & KOENIG, LLC  
7 9500 W. Flamingo, Suite 205  
8 Las Vegas, Nevada 89147  
9 Phone: (702) 222-4033  
10 Fax: (702) 222-4043  
11 [huong@alessikoenig.com](mailto:huong@alessikoenig.com)  
12 [brad@alessikoenig.com](mailto:brad@alessikoenig.com)  
13 Attorney for Plaintiff

Electronically Filed  
10/09/2013 03:02:39 PM



CLERK OF THE COURT

10 DISTRICT COURT  
11 Clark County, Nevada

12 ALESSI & KOENIG, LLC, a Nevada  
13 limited liability company,

14 Plaintiff,

15 -vs-

16 ARMANDO A. CARIAS, an individual; et  
17 al,

18 Defendants.

Case No.: A-13-684501-C  
Dept No.: I

20 AFFIDAVIT OF SERVICE:

21 BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC

22 HOME LOANS SERVICING, LP, UNKNOWN ENTITY

23  
24  
25  
26 SEE ATTACHED  
27  
28

# AFFIDAVIT OF SERVICE

STATE OF NEVADA     )  
                                  )  
COUNTY OF CLARK    )

MARIE A SCHEIB, being duly sworn deposes and says: that at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the state of Nevada under license #389, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received on Thursday October 03 2013; 1 copy(ies) of the:

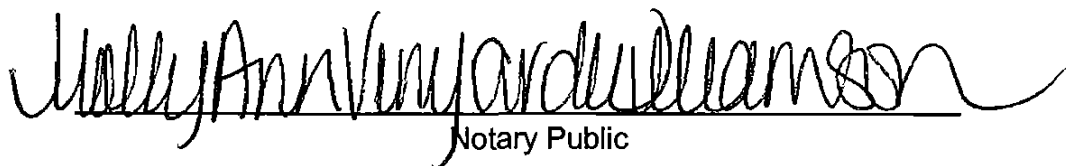
## SUMMONS; COMPLAINT IN INTERPLEADER; CIVIL COVER SHEET

I served the same on Monday October 07 2013 at 03:03PM by:

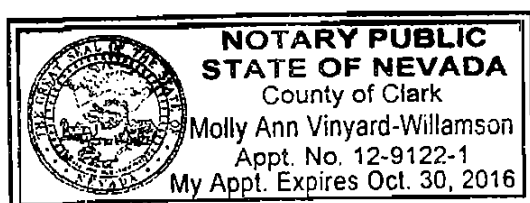
**Serving Defendant BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP, UNKNOWN ENTITY**

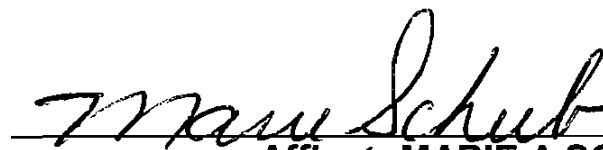
Substituted Service, by leaving the copies with or in the presence of: DEVAN THORNS, ASSISTANT MANAGER Authorized Agent. at the Defendant's Business located at 300 S 4TH ST, 2ND FLOOR, Las Vegas, NV 89101.

SUBSCRIBED AND SWORN to before me on this  
Tuesday October 08 2013 By the Affiant.

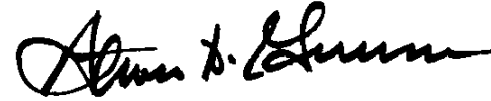
  
Notary Public

1389



  
Affiant: MARIE A SCHEIB #R-002901  
LEGAL WINGS, INC. - NV LIC #389  
1118 FREMONT STREET  
Las Vegas, NV 89101  
(702) 384-0305, FAX (702) 384-8638

ws0013764 .2224033.408994 W



CLERK OF THE COURT

**DFLT**  
Huong Lam, Esq.  
Nevada Bar No. 10916  
Bradley D. Bace, Esq.  
Nevada Bar No. 12684  
ALESSI & KOENIG, LLC  
9500 W. Flamingo, Suite 205  
Las Vegas, Nevada 89147  
Phone: (702) 222-4033  
Fax: (702) 222-4043  
[huong@alessikoenig.com](mailto:huong@alessikoenig.com)  
[brad@alessikoenig.com](mailto:brad@alessikoenig.com)  
Attorneys for Plaintiff  
ALESSI & KOENIG, LLC

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

ALESSI & KOENIG, LLC, a Nevada  
limited liability company

Plaintiff,

vs.

ARMANDO A. CARIAS, an individual,  
BANK OF AMERICA, N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, unknown  
entity, DOES INDIVIDUALS I-X, inclusive,  
and ROE CORPORATIONS XI-XX inclusive

Defendants.

Case No. A-13-684501-C  
Dept. No. I

**DEFAULT (as to Armando A. Carias)**

**DEFAULT (as to Armando A. Carias)**

IT APPEARING from the files and records in the above entitled action that ARMANDO  
A. CARIAS, Defendant herein, being duly served with a copy of the Summons and Complaint  
on October 3, 2013; that more than 20 days, exclusive of the day of service, having expired since  
service upon the Defendant; that no answer or other appearance having been filed and no further



time having been granted, the default of the above-named Defendant for failing to answer or  
otherwise plead to Plaintiff's Complaint is hereby entered.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

CLERK OF COURT

By:   
Deputy Clerk

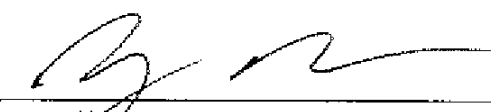
Date: PATRICIA AZUCENA

DEC 30 2013

A684501

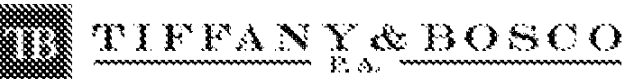
The undersigned hereby requests  
and directs the entry of default.

ALESSI & KOENIG, LLC

  
Bradley Bace, Esq.  
Nevada Bar No. 12684  
9500 W. Flamingo Rd. Suite #205  
Las Vegas, NV 89147  
Phone: (702) 222-4033  
Fax: (702) 254-9044  
Email: brad@alessikoenig.com  
*Attorney for Plaintiff*

  
CLERK OF THE COURT

GREGORY L. WILDE, ESQ.  
Nevada Bar No. 4417  
MATTHEW D. DAYTON, ESQ.  
Nevada Bar No. 11552



212 S. Jones Blvd.  
Las Vegas, NV 89107  
Tel: (702) 258-8200  
Fax: (702) 258-8787  
Attorney for Defendants  
Bank of America, N.A.  
13-72969

DISTRICT COURT  
CLARK COUNTY, NEVADA

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Plaintiff,

vs.

ARMANDO A. CARIAS an individual,  
BANK OF AMERICA, N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, unknown  
entity, DOES INDIVIDUALS I-X, inclusive,  
and ROE CORPORATIONS XI-XXX  
inclusive,

Defendants

Case No.: A-13-684501-C  
Dept No.: XXI

DEFENDANT BANK OF AMERICA'S  
ANSWER TO PLAINTIFF'S  
COMPLAINT, CROSS-CLAIM, AND  
THIRD PARTY COMPLAINT

BANK OF AMERICA, N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, a National  
Association,

Cross-Claimant,

vs.

ARMANDO A. CARIAS, an individual;  
DOES 1 through 10 and ROE BUSINESS

TIFFANY & BOSCO, P.A.  
212 S. Jones Blvd.  
Las Vegas, NV 89107  
Tel 258-8200 Fax 258-8787

**TIFFANY & BOSCO, P.A.**  
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Tel 258-8200 Fax 258-8787

1 ENTITIES 1 through 10,  
2 Cross-Defendants.  
3 BANK OF AMERICA, N.A., SUCCESSOR  
4 BY MERGER TO BAC HOME LOANS  
5 SERVICING, LP FKA COUNTRYWIDE  
6 HOME LOANS SERVICING, LP, a National  
7 Association,  
8 Third Party Plaintiff  
9 vs.  
10 SFR INVESTMENTS POOL 1, LLC, a  
11 domestic Limited Liability Company, and  
12 DOES 1 through 10 and ROE  
13 BUSINESS ENTITIES 1 through 10,  
14 Third Party Defendant.  
15  
16 COMES NOW, Defendant, BANK OF AMERICA, N.A., SUCCESSOR BY MERGER  
17 TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS  
18 SERVICING, LP, (hereinafter "BANK"), by and through its counsel of record, Gregory L.  
19 Wilde, Esq., and in Answer to the Complaint of Plaintiff on file herein, responds as follows;  
20 Answering paragraphs 1, 2, 3, 4, 5, 6, and 13 of the Complaint on file herein, BANK  
21 admits each and every allegation contained therein.  
22 Answering paragraphs 20 of the Complaint on file herein, BANK denies each and every  
23 allegation contained therein.  
24 Answering paragraphs 6 of the Complaint on file herein, BANK repeats, realleges, and  
25 incorporates its responses to each of the allegations of the Complaint as if fully set forth herein.  
26 Answering paragraphs 7, 8, and 21 of the Complaint on file herein, BANK states that  
27 this is a statement only, subject to multiple interpretations, and therefore denies the same in its  
28 entirety.

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Las Vegas, NV 89107  
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Answering paragraphs 10, 11, 12, 14, 16, 17, 18, 19, 22, 23, 24, 25, and 26 of the Complaint on file herein, BANK states that it is without sufficient knowledge or information to form an opinion as to the truth or veracity of the allegations contained therein and therefore denies the same in its entirety.

Answering paragraph 9 and 15 of the Complaint on file herein, BANK admits that a purported foreclosure on a homeowners association lien was held, resulting in the deed attached as exhibit “2” to the Complaint, but denies the remainder of the paragraph for lack of sufficient knowledge or information to form an opinion as to the truth and veracity of the allegations and in as much as the effect of the purported sale is subject to multiple interpretations of the current and existing law.

## **AFFIRMATIVE DEFENSES**

1. That the allegations contained in Plaintiff's Complaint fail to state a claim for relief upon which relief can be granted.

2. That Plaintiff's claims are barred by the equitable doctrines of waiver, release, laches, unclean hands and equitable estoppel.

3. That Plaintiff has failed to comply with the necessary requirements in order to maintain any action against BANK, including, but not limited to, notice.

4. That any claims of damages suffered by Plaintiff, if any, were directly and proximately caused by the actions of the Plaintiff or forces of nature over which BANK had no control.

5. That the damages and injuries, if any, suffered by Plaintiff, as set forth in the Complaint, were caused in whole or in part by the negligence of third parties over whom BANK had no control.

1           6.           That the damages and injuries, if any, incurred by Plaintiff are not  
2           attributable to any act, conduct or omission on the part of BANK.

3           7.           That Plaintiff did not exercise ordinary care, caution or prudence in order to  
4           avoid the events alleged in the Complaint, and the resulting damages and injuries, if any,  
5           complained of were directly and proximately contributed to, and caused by, the fault,  
6           carelessness, and negligence of Plaintiff.

7           8.           That Plaintiff has failed to mitigate their damages, if any, and thus, its  
8           recovery, if any, should be reduced accordingly.

9           9.           That BANK denies each and every allegation of Plaintiff's Complaint which  
10          is not specifically admitted or otherwise pleads to herein.

11          10.          That Plaintiff's claims, if any be valid, are subject to offsets and credits,  
12          which are not reflected in the amount claimed due by Plaintiff.

13          11.          That BANK hereby incorporates by reference those affirmative defenses  
14          enumerated in Rule 8 of the Federal Rules of Civil Procedure as if fully set forth herein. In the  
15          event further investigation or discovery reveals the applicability of any such defenses, BANK  
16          reserves the right to seek leave of the Court to amend its Answer to Plaintiff's Complaint to  
17          specifically assert the same. Such defenses are herein incorporated by reference for the specific  
18          purpose of not waiving the same.

19          12.          That it has been necessary for BANK to employ the services of an attorney to  
20          defend this action and a reasonable sum should be allowed as and for attorney's fees, together  
21          with the costs expended in this action.

22          13.          That BANK hereby reserves the right to add additional affirmative defenses  
23          as discovery progresses.

WHEREFORE, the BANK prays for the following:

1. That Plaintiff take nothing by way of their Complaint;
2. That Plaintiff's Complaint be dismissed in its entirety;
3. That BANK be awarded reasonable attorney's fee and the cost of suit incurred in defending this action; and
4. For such other relief as this Court may deem just and proper in the premises.

**CROSS-CLAIM**

COMES NOW, Defendant, BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, (hereinafter "BANK"), by and through its counsel of record, GREGORY L. WILDE, ESQ. of the law firm, TIFFANY & BOSCO, P.A., and complains and avers against Cross-Defendant ARMANDO A. CARIAS, by way of this Cross-claim, as follows:

**RELEVANT PARTIES AND JURISDICTION**

1. The BANK is an entity properly conducting business in the State of Nevada, which purchased holds a security interest in certain real property located at 3617 Diamond Spur Ave., North Las Vegas, Las Vegas, Nevada. (Hereinafter "Subject Property").
2. That BANK'S security interest is in the form of a Note and Deed of Trust properly recorded on November 3, 2010, as instrument number 201011030002714.
3. Defendant ARMANDO A. CARIAS is the borrower of the aforementioned debt and may be claiming an interest in the subject property. (Hereinafter "BORROWER").
4. The Cross-Defendants DOES 1 through 10 and ROE BUSINESS ENTITIES 1 through 10, are set forth herein pursuant to Rule 10 of the Nevada Rules of Civil Procedure as all unknown persons or business entities currently unknown to BANK who have a claim to any

1 interest in the subject matter of this action, whose true name(s) is (are) unknown to BANK, and  
2 who are believed to be responsible for the events and happenings referred to in this Complaint,  
3 causing injuries and damages to the BANK, or who are otherwise interested in the subject  
4 matter of this Complaint. At such time when the names of said DOES and ROE BUSINESS  
5 ENTITIES have been ascertained, BANK will request leave from the court to insert their true  
6 names and capacities and adjoin them in this action so that the Complaint will be amended to  
7 include the appropriate names of said DOES and ROE BUSINESS ENTITIES.  
8

9 5. Jurisdiction and venue are properly set in the Eighth Judicial District Court for the State  
10 of Nevada.  
11

12 **GENERAL ALLEGATIONS**

13 6. The BORROWERS are in default of the loan obligations owed BANK.

14 7. These same BORROWERS were allegedly behind in their monthly homeowners  
15 association assessments causing the association to record a lien on the subject property and  
16 purportedly conduct a sale of the same on February 20, 2013, with a third party purchasing the  
17 same.  
18

19 **FIRST CAUSE OF ACTION**

20 **(Declaratory Relief)**

21 8. BANK repeats and realleges each and every allegation contained in Paragraphs 1  
22 through 7, and incorporates the same as though fully set forth herein.  
23

24 9. A true and justifiable controversy exists between the BANK and the BORROWERS  
25 concerning their alleged interests in the Subject Property.

26 10. The association's lien sale may have transferred title to the subject property but it did  
27  
28

1 not abrogate or otherwise affect the BANK's security interest in the property in the form of the  
2 Note and Deed of Trust which, if disputed by the BORROWERS, causes the BANK's interests  
3 to be adverse to those of the BORROWERS.

4 11. The BANK's rights, status and claims in relation to those of the BORROWERS in the  
5 Subject Property are affected by multiple statutes and relevant case law regarding real estate and  
6 lien priority.

8 12. This matter is filed in part under the Uniform Declaratory Judgment Act.

9 13. Pursuant to NRS 30.040, the BANK is entitled to declaratory relief as to rights, status,  
10 and legal relations at issue in this matter.

11 14. The BANK has found it necessary to employ the undersigned attorney to bring suit.  
12 Therefore, pursuant to state statutes and prevailing case law, the BANK is entitled to any and all  
13 expenses incurred including, without limitation, all attorney's fees and costs of suit.

14  
15 **SECOND CAUSE OF ACTION**  
16 **(Quiet Title)**

17 15. The BANK repeats and realleges each and every allegation contained in Paragraphs 1  
18 through 17 and incorporates the same as though fully set forth herein.

19 16. A true and justifiable controversy exists between the BANK and the BORROWERS  
20 concerning their alleged interests in the Subject Property.

21 17. The BANK's interests are adverse and exclusive to those alleged by the BORROWERS.

22 18. The BANK's rights, status and ownership of its security interest in the form of a note  
23 and deed of trust must needs be determined by the effect of multiple statutes and relevant case  
24 law regarding real estate and lien priority.

25 19. BANK's security interest in the subject property should be absolute without the  
26 BORROWERS, or anyone else, claiming an adverse interest therein.



**TIFFANY & BOSCO, P.A.**  
212 S. Jones Blvd.  
Las Vegas, NV 89107  
Tel 258-8200 Fax 258-8787

20. The BANK has found it necessary to employ the undersigned attorney to bring suit.

Therefore, pursuant to state statutes and prevailing case law, the BANK is entitled to any and all expenses incurred including, without limitation, all attorney's fees and costs of suit.

WHEREFORE, BANK prays for relief as follows:

1. For a Declaratory Judgment properly adjudicating the parties' interests in the subject property;
2. For an order quieting title to the subject property recognizing BANK's security interest therein;
3. For reasonable attorney's fees;
4. For costs of suit; and,
5. For such other and further relief as this court may deem just and proper.

### THIRD PARTY COMPLAINT

COMES NOW, Defendant BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, (hereinafter “BANK”), by and through its counsel of record, GREGORY L. WILDE, ESQ. of the law firm, TIFFANY & BOSCO, P.A., and complains and avers against Third Party Defendant SFR INVESTMENTS POOL 1, LLC, by way of this Third Party Complaint, as follows:

## **RELEVANT PARTIES AND JURISDICTION**

1. The BANK is an entity properly conducting business in the State of Nevada, which holds a security interest in certain real property located at 3617 Diamond Spur Avenue, North Las Vegas, Nevada. (Hereinafter “Subject Property”).
2. That BANK’S security interest is in the form of a Note and Deed of Trust

properly recorded on November 3, 2010, as instrument number 201011030002714.

3. Third Party Defendant SFR INVESTMENTS POOL 1, LLC, is a Nevada Limited Liability Company conducting business in the State of Nevada. (Hereinafter "SFR").

4. That Third Party Defendants DOES 1 through 10 and Third Party ROE BUSINESS ENTITIES 1 through 10, are set forth herein pursuant to Rule 10 of the Nevada Rules of Civil Procedure as all unknown persons or business entities currently unknown to BANK who have a claim to any interest in the subject matter of this action, whose true name(s) is (are) unknown to BANK, and who are believed to be responsible for the events and happenings referred to in this Complaint, causing injuries and damages to the BANK, or who are otherwise interested in the subject matter of this Complaint. At such time when the names of said DOES and ROE BUSINESS ENTITIES have been ascertained, BANK will request leave from the court to insert their true names and capacities and adjoin them in this action so that the Complaint will be amended to include the appropriate names of said DOES and ROE BUSINESS ENTITIES.

5. Jurisdiction and venue are properly set in the Eighth Judicial District Court for the State of Nevada.

#### **GENERAL ALLEGATIONS**

6. That SFR purportedly purchased the subject property at a homeowners association lien sale on February 20, 2013, which association lien was purportedly recorded on February 28, 2013, as instrument number 201302260003889, approximately twenty-seven (27) months after BANK's security interest was recorded.

7. That SFR is taking the position that the association lien sale abrogated BANK's security interest in the form of a note and deed of trust pursuant to NRS 116.3116.

1           8.       That SFR is taking the position that its alleged ownership interest in the subject  
2 property is free and clear of BANK's security interest in the form of a note and deed of trust.

3           9.       The association's lien sale may have transferred title to the subject property but it  
4 did not abrogate or otherwise effect the BANK's security interest in the property in the form of  
5 the Note and Deed of Trust which, if disputed by the SFR, causes the BANK's interests to be  
6 adverse to those of the SFR.

8                                   **FIRST CAUSE OF ACTION**

9                                   **(Declaratory Relief)**

10          10.       BANK repeats and realleges each and every allegation contained in Paragraphs 1  
11 through 9, and incorporates the same as though fully set forth herein.

12          11.       A true and justifiable controversy exists between the BANK and the SFR  
13 concerning their alleged interests in the Subject Property.

14          12.       The BANK's rights, status and claims in relation to those of the SFR in the  
15 Subject Property are affected by multiple statutes and relevant case law regarding real estate and  
16 lien priority.

17          13.       This matter is filed in part under the Uniform Declaratory Judgment Act.

18          14.       Pursuant to NRS 30.040, the BANK is entitled to declaratory relief as to rights,  
19 status, and legal relations at issue in this matter.

20          15.       The BANK has found it necessary to employ the undersigned attorney to bring  
21 suit. Therefore, pursuant to state statutes and prevailing case law, the BANK is entitled to any  
22 and all expenses incurred including, without limitation, all attorney's fees and costs of suit.

23                                   **SECOND CAUSE OF ACTION**

24                                   **(Quiet Title)**

25          16.       The BANK repeats and realleges each and every allegation contained in  
26

1 Paragraphs 1 through 15 and incorporates the same as though fully set forth herein.

2 17. A true and justifiable controversy exists between the BANK and the SFR  
3 concerning their alleged interests in the Subject Property.

4 18. The BANK's interests are adverse and superior to those alleged by the SFR.

5 19. The BANK's rights, status and ownership of its security interest in the form of a  
6 note and deed of trust must needs be determined by the effect of multiple statutes and relevant  
7 case law regarding real estate and lien priority.

8 20. BANK's security interest in the subject property should be absolute without  
9 SFR, or anyone else, claiming an adverse interest therein.

10 21. The BANK has found it necessary to employ the undersigned attorney to bring  
11 suit. Therefore, pursuant to state statutes and prevailing case law, the BANK is entitled to any  
12 and all expenses incurred including, without limitation, all attorney's fees and costs of suit.

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**TIFFANY & BOSCO, P.A.**  
212 S. Jones Blvd.  
Las Vegas, NV 89107  
Tel 258-8200 Fax 258-8787

WHEREFORE, BANK prays for relief as follows:

1. For a Declaratory Judgment properly adjudicating the parties' interests in the subject property;
2. For an order quieting title to the subject property recognizing BANK's security interest therein;
3. For reasonable attorney's fees;
4. or costs of suit; and,
5. For such other and further relief as this court may deem just and proper.

DATED this 9<sup>th</sup> day of January, 2014.

TIFFANY & BOSCO, P.A.

/s/ Gregory L. Wilde  
GREGORY L. WILDE, ESQ.  
Nevada Bar No. 4417  
KEVIN S. SODERSTROM, ESQ.  
Nevada Bar No. 10235  
212 S. Jones Blvd.  
Las Vegas NV 89107  
Attorney for BANK OF AMERICA, N.A.

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212 S. Jones Blvd.  
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**CERTIFICATE OF SERVICE**

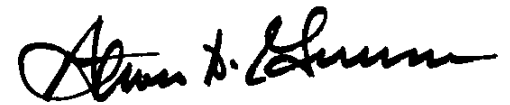
The undersigned hereby certifies that on the 9<sup>th</sup> day of January, 2014, she served a copy of the foregoing document, via United States mail, postage pre-paid, addressed as follows:

Ryan Kerbow, Esq.  
Bradley D. Bace, Esq.  
Alessi & Koenig, LLC  
9500 W. Flamingo, Ste. 205  
Las Vegas, NV 89147  
Counsel for Plaintiff

/s/ Amy McConnell

---

An employee of Tiffany & Bosco, P.A.



CLERK OF THE COURT

1 **AACC**  
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7 Henderson, Nevada 89014  
Telephone: (702) 485-3300  
8 Facsimile: (702) 485-3301  
*Attorneys for Defendant/Counter-claimant*  
9 *SFR Investments Pool 1, LLC*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 ALESSI & KOENIG, LLC, a Nevada limited  
13 liability company,

14 Plaintiff,

15 vs.

16 ARMANDO A. CARIAS, an individual;  
17 BANK OF AMERICA, N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS  
18 SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, an  
19 unknown entity; DOES INDIVIDUALS I-X,  
20 inclusive; and ROE CORPORATIONS XI-  
XXX,

21 Defendants.

22 BANK OF AMERICA, N.A., SUCCESSOR  
23 BY MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
24 HOME LOANS SERVICING, LP, a National  
Association,

25 Cross-Claimant,

26 vs.

27 ARMANDO A. CARIAS, an individual;  
28 DOES 1 10 and ROE BUSINESS ENTITIES

Case No. A-13-684501-C

Dept. No. XXI

**ANSWER, COUNTERCLAIM AND  
CROSS-CLAIM**

**HOWARD KIM & ASSOCIATES**

1055 WHITNEY RANCH DRIVE, SUITE 110

HENDERSON, NEVADA 89014

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

1 through 10 inclusive.

Cross-Defendants.

BANK OF AMERICA, N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, a National  
Association,

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a  
domestic limited liability company, and DOES  
1 through 10 and ROE BUSINESS ENTITIES  
1 through 10,

Third Party Defendant.

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

Counter-Claimant,

vs.

BANK OF AMERICA, N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, a national  
association; ARMANDO A. CARIAS, an  
individual; DOES 1 10 and ROE BUSINESS  
ENTITIES 1 through 10 inclusive,

Counter-Defendant/Cross-Defendants.

Plaintiff SFR INVESTMENTS POOL 1, LLC (“SFR” or “Third-Party Defendant”),  
hereby answers BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME  
LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP’s  
(“BANA”) Third Party Complaint as follows:



1 1. Answering paragraph 1 of the complaint, SFR admits upon information and belief, that  
2 the subject matter of BANA's third party complaint is real property commonly known as 3617  
3 Diamond Spur Avenue, North Las Vegas, NV. The remaining allegations in paragraph 1 of the  
4 third party complaint call for a legal conclusion, therefore, no answer is required. To the extent  
5 an answer is required, SFR denies the factual allegations contained in paragraph 1 of the third  
6 party complaint.

7 2. SFR is without sufficient knowledge or information to form a belief as to the truth of the  
8 factual allegations contained in paragraph 2 of the third party complaint, and therefore denies  
9 said allegations.

10 3. SFR admits the factual allegations contained in paragraph 3 of the third party complaint.

11 4. SFR is without sufficient knowledge or information to form a belief as to the truth of the  
12 factual allegations contained in paragraph 4 of the third party complaint, and therefore denies  
13 said allegations.

14 5. SFR admits the factual allegations contained in paragraph 5 of the third party complaint.

15 **GENERAL ALLEGATIONS**

16 6. Answering paragraph 6 of the complaint, SFR admits upon information and belief, that  
17 SFR purchased the Property on February 20, 2013 at an association foreclosure sale. The  
18 remaining allegations in paragraph 6 of the third party complaint call for a legal conclusion,  
19 therefore, no answer is required. To the extent an answer is required, SFR denies the factual  
20 allegations contained in paragraph 6 of the third party complaint.

21 7. SFR admits the factual allegations contained in paragraphs 7 and 8 of the third party  
22 complaint.

23 8. The allegations in paragraph 9 of the third party complaint call for a legal conclusion,  
24 therefore, no answer is required. To the extent an answer is required, SFR denies the factual  
25 allegations contained in paragraph 9 of the third party complaint.

26 **FIRST CAUSE OF ACTION**

27 **(Declaratory Relief)**

28 9. SFR repeats and realleges its answers to paragraphs 1 through 9 of the third party

1 complaint as though fully set forth herein.

2 10. SFR admits the factual allegations contained in paragraphs 11 and 12 of the third party  
3 complaint.

4 11. The allegations contained in paragraphs 13 and 14 of the third party complaint call for a  
5 legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR  
6 denies the factual allegations contained in paragraphs 13 and 14 of the third party complaint.

7 12. SFR denies the factual allegations contained in paragraph 15 of the third party  
8 complaint.

9 **SECOND CAUSE OF ACTION**

10 **(Quiet Title)**

11 13. SFR repeats and realleges its answers to paragraphs 1 through 15 of the third party  
12 complaint as though fully set forth herein.

13 14. The allegations contained in paragraphs 17, 18, 19 and 20 of the third party complaint  
14 call for a legal conclusion, therefore, no answer is required. To the extent an answer is required,  
15 SFR denies the factual allegations contained in paragraphs 17, 18, 19 and 20 of the third party  
16 complaint.

17 15. SFR denies the factual allegations contained in paragraph 21 of the third party  
18 complaint.

19 **AFFIRMATIVE DEFENSES**

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

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

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

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

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

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

7. BANA's causes of action are barred in whole or in part by the applicable statutes of limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, and ratification.

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

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

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

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

### **COUNTERCLAIM AND CROSS-CLAIM** **FOR QUIET TITLE AND INJUNCTIVE RELIEF**

SFR INVESTMENTS POOL 1, LLC ("SFR"), hereby demands quiet title, requests injunctive relief and claims unjust enrichment against Counter-Defendant, BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP's ("BANA"), Counter Defendant and ARMANDO A. CARIAS, an individual; DOES 1 10 and ROE BUSINESS ENTITIES 1 through 10 inclusive, Cross-Defendants as follows:

#### **I. PARTIES**

1. SFR is a Nevada limited liability company with its principal place of business in Clark County, Nevada and the current title owner of the property commonly known as **3617 Diamond Spur Avenue, North Las Vegas, NV 89032; Parcel No. 139-08-410-014** (the "Property").

2. Upon information and belief, Counter-Defendant BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP ("BANA"), is a national association that

1 may claim an interest in the Property via a 2010 deed of trust originated by W.J. Bradley Capital  
2 Corporation.

3 3. Upon information and belief, Cross-Defendant, ARMANDO A. CARIAS (“Carias”) is  
4 an individual who is the former homeowner that may claim an interest in the Property.

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

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

## 16 **II. GENERAL ALLEGATIONS**

### 17 ***SFR Acquired Title to the Property through Foreclosure of an Association Lien with Super*** 18 ***Priority Amounts***

19 6. SFR acquired the Property on February 20, 2013 by successfully bidding on the Property  
20 at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* (“Association  
21 foreclosure sale”). Since the Association foreclosure sale, SFR has expended additional funds  
22 and resources in relation to the Property.

23 7. On or about February 26, 2013, the resulting foreclosure deed was recorded in the  
24 Official Records of the Clark County Recorder as Instrument Number 201302260003889  
25 (“Association Foreclosure Deed”).

26 8. Sutter Creek Homeowners Association (the “Association”) had a lien pursuant to NRS  
27 116.3116(1) (“Association Lien”) that was perfected when the Association recorded its  
28 declaration of CC&Rs

9. The foreclosure sale was conducted by Alessi & Koenig, LLC (“Alessi”), agent for the Association, pursuant to the powers conferred by the Nevada Revised Statutes 116.3116, 116.31162-116.31168, the Association’s governing documents (CC&R’s) and a Notice of Delinquent Assessment Lien, recorded on February 23, 2012 in the Official Records of the Clark County Recorder as Instrument Number 201202230001691.

10. As recited in the Association Foreclosure Deed, the Association foreclosure sale complied with all requirements of law, including but not limited to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the recording, posting and publication of the Notice of Sale.

11. Pursuant to NRS 116.3116(2), the entire Association Lien

is prior to all other liens and encumbrances of unit except:

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

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

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

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

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

13. NRS 116.41095 requires that anytime a property is sold within a common-interest community, purchasers receive a document explaining that an association can foreclose on its lien non-judicially and the way to be heard if they dispute the obligation or its amount:

4. IF YOU FAIL TO PAY OWNERS’ ASSESSMENTS, YOU COULD LOSE YOUR HOME?

**If you do not pay these assessments when due, the association usually has the power to collect them by selling your property in a nonjudicial foreclosure sale. If fees become delinquent, you may also be required to pay penalties and the**

1 association's costs and attorney's fees to become current. **If you dispute the**  
2 **obligation or its amount, your only remedy to avoid the loss of your home**  
3 **may be to file a lawsuit and ask a court to intervene in the dispute.**

4 NRS 116.41095 (emphasis added)

5 14. Upon information and belief, when Counter-Defendant and Cross-Defendants acquired  
6 their interests in the Property, they received the disclosure required by NRS 116.41095.

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

10 16. Upon information and belief, Counter-Defendant and Cross-Defendants did not pay  
11 Association assessments as required by the CC&Rs.

12 17. Upon information and belief, Counter-Defendant and Cross-Defendants were aware of  
13 their delinquency and that the result of their delinquency could include foreclosure.

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

16 19. Upon information and belief, Counter-Defendant and Cross-Defendants had actual notice  
17 of the Association's foreclosure proceedings.

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

20 21. The Association foreclosure sale was publicly advertised in advance of the sale.

21 22. Multiple bidders attended the auction.

22 23. When it purchased the Property, SFR had no knowledge of any alleged dispute over  
23 amounts owed to the Association, any purported noticing issues, or any alleged proper tender of  
24 the full lien amount by Counter-Defendant and Cross-Defendants.

25 24. SFR is a bona fide purchaser for value.

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

28 26. Upon information and belief, SFR's bid on the Property was in excess of the amount

1 necessary to satisfy the costs of sale and the super-priority portion of the Association Lien.

2 27. Upon information and belief, the Association or its agent Alessi distributed or should  
3 have distributed the excess funds to lien holders in order of priority pursuant to NRS  
4 116.3114(c).

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

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

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

12 31. Upon information and belief, Counter-Defendant BANA had actual or constructive notice  
13 of the super-priority portion of the Association Lien.

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

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

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

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

27 35. Upon information and belief, Carias, first obtained title to the Property in November of  
28 2010 through a Grant, Bargain Sale Deed from The Secretary of Housing and Urban

1 Development of Washington, D.C recorded in the Official Records of the Clark County Recorder  
2 as Instrument No. 201011030002713.

3 36. On or about November 3, 2010, W.J. Bradley Mortgage Capital Corp., ("W.J. Bradley")  
4 recorded a deed of trust against the Property in the Official Records of the Clark County  
5 Recorder as Instrument No. 201011030002714 ("First Deed of Trust").

6 37. Upon information and belief, the Association was formed and its declaration of CC&Rs  
7 was recorded in the Official Records of the Clark County Recorder before the First Deed of Trust  
8 was recorded.

9 38. Upon information and belief, W.J. Bradley had actual or constructive notice of the  
10 Association Lien and NRS 116.3116 before it funded the loan secured by the First Deed of Trust.

11 39. Upon information and belief, on or about January 25, 2012, Talisha T. Wallace, Assistant  
12 Secretary for Mortgage Electronic Systems, Inc. ("MERS"), as Nominee for W.J. Bradley  
13 executed an assignment that transferred the beneficial interest in the First Deed of Trust, together  
14 with the underlying promissory note, to BANA. The assignment was recorded on January 26,  
15 2012 against the Property in Official Records of the Clark County Recorder as Instrument No.  
16 201201260003419.

17 40. Upon information and belief, BANA had actual or constructive notice of the Association  
18 Lien and NRS 116.3116 before it obtained an interest in the First Deed of Trust.

19 41. On or about, January 9, 2014, BANA filed a Third Party Complaint for declaratory relief  
20 and quiet title.

21 42. Counter-Defendant BANA's interest in the Property was extinguished by the foreclosure  
22 of the Association Lien.

23 43. Cross-Defendant Caria's interest in the Property was extinguished by the foreclosure of  
24 the super priority portion of the Association Lien.

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

27 44. SFR repeats and realleges the allegations of paragraphs 1-43 as though fully set forth  
28 herein and incorporates the same by reference.



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

46. SFR acquired the Property on February 20, 2013 by successfully bidding on the Property at a publicly-held foreclosure auction in accordance with NRS 116.3116, *et. seq.* and the resulting Association Foreclosure Deed vesting title in SFR was recorded on February 26, 2013.

47. Upon information and belief, Counter Defendant, BANA may claim an interest in the Property via the First Deed of Trust against the Property even after the Association foreclosure sale.

48. Upon information and belief, Cross-Defendant Carias may claim an ownership interest in the Property.

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

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

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

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

53. SFR seeks an order from the Court quieting title to the Property in favor of SFR.

**IV. THIRD CLAIM FOR RELIEF**  
**(Preliminary and Permanent Injunction)**

54. SFR repeats and realleges the allegations of paragraphs 1- 53 as though fully set forth

herein and incorporates the same by reference.

55. SFR properly acquired title to the Property at the Association foreclosure sale on February 20, 2013.

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

57. Cross-Defendant Carias may claim an ownership interest in the Property.

58. A foreclosure sale based on the First Deed of Trust is invalid as Counter-Defendant BANA lost its interest in the Property, if any, at the Association foreclosure sale.

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

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

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

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

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

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

## **V. PRAYER FOR RELIEF**

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

1. For a declaration and determination that SFR Investments Pool 1, LLC is

**HOWARD KIM & ASSOCIATES**

1055 WHITNEY RANCH DRIVE, SUITE 110

HENDERSON, NEVADA 89014

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

1 the rightful owner of title to the Property, and that Counter Defendant and Cross-  
2 Defendants be declared to have no right, title or interest in the Property.

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

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

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

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

9 DATED February 14th, 2014.

**HOWARD KIM & ASSOCIATES**

/s/Diana S. Cline

HOWARD C. KIM, ESQ.

Nevada Bar No. 10386

DIANA S. CLINE, ESQ.

Nevada Bar No. 10580

JACQUELINE A. GILBERT, ESQ.

Nevada Bar No. 10593

1055 Whitney Ranch Drive, Suite 110

Henderson, Nevada 89014

Phone: (702) 485-3300

Fax: (702) 485-3301

*Attorneys for SFR Investments Pool 1, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 14th day of February, 2014, pursuant to NRCP 5(b), I served via first class U.S. Mail, postage prepaid, the foregoing Answer, Counterclaim and Cross-Claim for Quiet Title and Injunctive Relief to the following parties:

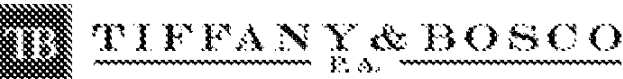
Gregory L. Wilde, Esq.  
Kevin S. Soderstrom, Esq.  
TIFFANY & BOSCO, P.A.  
212 S. Jones Blvd.  
Las Vegas, Nevada 89107  
*Attorneys for Bank of America, N.A.*

Huong Lam, Esq.  
Bradley Bace, Esq.  
ALESSI & KOENIG, LLC  
9500 W. Flamingo, Suite 205  
Las Vegas, Nevada 89147  
*Attorneys for Alessi & Koenig, LLC*

/s/ Tommie Dooley  
An Employee of Howard Kim & Associates

  
CLERK OF THE COURT

GREGORY L. WILDE, ESQ.  
Nevada Bar No. 4417  
MATTHEW D. DAYTON, ESQ.  
Nevada Bar No. 11552



212 S. Jones Blvd.  
Las Vegas, NV 89107  
Tel: (702) 258-8200  
Fax: (702) 258-8787  
Attorney for Defendants  
Bank of America, N.A.  
13-77060

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

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Plaintiff,

vs.

ARMANDO A. CARIAS an individual,  
BANK OF AMERICA, N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, unknown  
entity, DOES INDIVIDUALS I-X, inclusive,  
and ROE CORPORATIONS XI-XXX  
inclusive,

Defendants

AND ALL RELATED MATTERS

Case No.: A-13-684501-C  
Dept No.: XXI

**DEFENDANT BANK OF AMERICA’S  
ANSWER TO  
SFR INVESTMENTS POOL 1, LLC’S  
THIRD-PARTY COUNTERCLAIM**

COMES NOW, Third-Party Counter-Defendant, Bank of America, N.A., Successor by  
Merger to BAC Home Loans Servicing, (hereinafter “BANK”), by and through its counsel of  
record, Gregory L. Wilde, Esq., and in Answer to the Third-Party Counterclaim (hereinafter  
“Counterclaim”) of SFR INVESTMENTS POOL 1, LLC., (hereinafter “SFR”), on file herein,  
denies and alleges as follows:

1           Answering paragraphs 1, 6, 7, 8, 9, 10, 46, and 55 of the Counterclaim on file herein,  
2 Counter-Defendant BANK admits that the documents maintained by the Clark County Recorder  
3 demonstrate the veracity of these allegations on their face but denies any further implications or  
4 allegations therein for SFR may be interpreting said documents in a manner inconsistent with  
5 Counter-Defendant and/or the terms and meanings of the documents.  
6

7           Answering paragraphs 2, 16, 35, 36, 37, 39, 41, 45, 47, and 56 of the Counterclaim on  
8 file herein, Counter-Defendant BANK admits the allegations contained therein.

9           Answering paragraph 3, 4, 5, 14, 15, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30,  
10 31, 33, 38, 40, 48, 51, and 58 of the Counterclaim on file herein, Counter-Defendant BANK  
11 states that it is without sufficient knowledge or information to form an opinion as to the truth or  
12 veracity of the remaining allegations contained therein and therefore denies the same in its  
13 entirety.  
14

15           Answering paragraphs 11, 12, 13, and 50 of the Counterclaim on file herein, Counter-  
16 Defendant BANK asserts that these paragraphs are statements of law, subject to multiple  
17 interpretations, and therefore denies any allegations arising therefrom.  
18

19           Answering paragraphs 24, 32, 34, 42, 43, 49, 52, 53, 59, 60, 61, 62, 63, and 64 of the  
20 Counterclaim on file herein, Counter-Defendant BANK denies the allegations contained therein.

21           Answering paragraph 44 of the Counterclaim on file herein, Counter-Defendant BANK  
22 repeats, realleges, and incorporates their responses to the allegations of paragraphs 1 through  
23 43 of the Counterclaim as if fully set forth herein.  
24

25           Answering paragraph 54 of the Counterclaim on file herein, Counter-Defendant BANK  
26 repeats, realleges, and incorporates their responses to the allegations of paragraphs 1 through  
27 53 of the Counterclaim as if fully set forth herein.  
28

**AFFIRMATIVE DEFENSES**

1. That the allegations contained in SFR's Counterclaim fail to state a claim for relief upon which relief can be granted.
2. That SFR's claims are barred by the statute of limitations.
3. That SFR's claims are barred by the equitable doctrines of waiver, release, laches, unclean hands and equitable estoppel.
4. That SFR has failed to comply with the necessary requirements in order to maintain any action against Counter-Defendant BANK.
5. That any claims of damages suffered by SFR, if any, were directly and proximately caused by the actions of the SFR or forces of nature over which Counter-Defendant BANK had no control.
6. That the damages and injuries, if any, suffered by SFR, as set forth in the Counterclaim, were caused in whole or in part by the negligence of third parties over whom Counter-Defendant BANK had no control.
7. That the damages and injuries, if any, incurred by SFR are not attributable to any act, conduct or omission on the part of Counter-Defendant BANK.
8. That SFR did not exercise ordinary care, caution or prudence in order to avoid the events alleged in the Counterclaim, and the resulting damages and injuries, if any, complained of were directly and proximately contributed to, and caused by, the fault, carelessness, and negligence of SFR.
9. That SFR has failed to mitigate their damages, if any, and thus, its recovery, if any, should be reduced accordingly.
10. That Counter-Defendant BANK denies each and every allegation of SFR's

**TIFFANY & BOSCO, P.A.**  
212 S. Jones Blvd.  
Las Vegas, NV 89107  
Tel 258-8200 Fax 258-8787

1 Counterclaim which is not specifically admitted or otherwise pleads to herein.

2 11. That SFR's claims, if any be valid, are subject to offsets and credits, which  
3 are not reflected in the amount claimed due by SFR.

4 12. That Counter-Defendant BANK hereby incorporates by reference those  
5 affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set  
6 forth herein. In the event further investigation or discovery reveals the applicability of any such  
7 defenses, Counter-Defendant BANK reserves the right to seek leave of the Court to amend its  
8 Answer to SFR' Counterclaim to specifically assert the same. Such defenses are herein  
9 incorporated by reference for the specific purpose of not waiving the same.  
10

11 13. That it has been necessary for Counter-Defendant BANK to employ the  
12 services of an attorney to defend this action and a reasonable sum should be allowed as and for  
13 attorney's fees, together with the costs expended in this action.  
14

15 14. That Counter-Defendant BANK hereby reserves the right to add additional  
16 affirmative defenses as discovery progresses.  
17

18 ///

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212 S. Jones Blvd.  
Las Vegas, NV 89107  
Tel 258-8200 Fax 258-8787

WHEREFORE, the Counter-Defendant BANK prays for the following:

1. That SFR take nothing by way of their Counterclaim;
2. That SFR's Counterclaim be dismissed in its entirety;
3. That Counter-Defendant BANK be awarded reasonable attorney's fee and the cost of suit incurred in defending this action; and
4. For such other relief as this Court may deem just and proper in the premises.

DATED this 11<sup>th</sup> day of March, 2014.

**TIFFANY & BOSCO, P.A.**

/s/ Gregory L. Wilde

---

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Nevada Bar No. 4417

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Attorney for Third-Party Counter-Defendant

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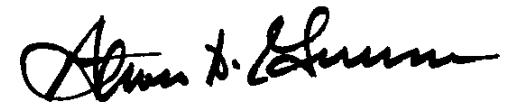
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 11th day of March, 2014, she served a copy of the foregoing document via United States mail, postage pre-paid, addressed as follows:

Ryan Kerbow, Esq.  
Bradley D. Bace, Esq.  
Alessi & Koenig  
9500 W. Flamingo, Ste 205  
Las Vegas, NV 89147  
Counsel for Alessi & Koenig

Diana S. Cline, Esq.  
Jacqueline A. Gilbert, Esq.  
Howard Kim & Associates  
1055 Whitney Ranch Drive, Ste. 110  
Henderson, NV 89014  
Counsel for SFR Investments Pool 1, LLC

/s/ Amy McConnell  
An employee of Tiffany & Bosco, P.A.



CLERK OF THE COURT

**NVD**

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Facsimile: (702) 485-3301  
*Attorneys for SFR Investments Pool 1, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Plaintiff,

vs.

ARMANDO A. CARIAS, an individual;  
BANK OF AMERICA, N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, an  
unknown entity; DOES INDIVIDUALS I-X,  
inclusive; and ROE CORPORATIONS XI-  
XXX,

Defendants.

BANK OF AMERICA, N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, a National  
Association,

Cross-Claimant,

vs.

ARMANDO A. CARIAS, an individual;  
DOES 1 10 and ROE BUSINESS ENTITIES 1  
through 10 inclusive.

Cross-Defendants.

BANK OF AMERICA, N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS

Case No. A-13-684501-C

Dept. No. XXI

**NOTICE OF VOLUNTARY DISMISSAL  
OF CROSS-DEFENDANT ARMANDO A.  
CARIAS WITHOUT PREJUDICE**

SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, a National  
Association,

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a  
domestic limited liability company, and DOES  
1 through 10 and ROE BUSINESS ENTITIES 1  
through 10,

Third Party Defendant.

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

Counter-Claimant,

vs.

BANK OF AMERICA, N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, a national  
association; ARMANDO A. CARIAS, an  
individual; DOES 1 10 and ROE BUSINESS  
ENTITIES 1 through 10 inclusive,

Counter-Defendant/Cross-Defendants.

PLEASE TAKE NOTICE Third-Party Defendant/Counter-Claimant SFR Investments  
Pool 1, LLC hereby voluntarily dismisses Cross-Defendant ARMANDO A. CARIAS ("Carias")  
without prejudice pursuant to NRCP 41(a)(1)(i) which provides:

Subject to the provisions of Rule 23(e), of Rule 66, and of any statute, **an  
action may be dismissed by the plaintiff upon repayment of defendants'  
filing fees, without order of court (i) by filing a notice of dismissal at any  
time before service by the adverse party of an answer or of a motion for  
summary judgment, whichever first occurs, or (ii) by filing a stipulation of  
dismissal signed by all parties who have appeared in the action. Unless  
otherwise stated in the notice of dismissal or stipulation, the dismissal is  
without prejudice, except that a notice of dismissal operates as an adjudication  
upon the merits when filed by a plaintiff who has once dismissed in any court  
of the United States or of any state an action based on or including the same  
claim.**

(emphasis added).

///

1 Upon information and belief, Cross-Defendant Carias has not served an answer or motion  
2 for summary judgment.

3 DATED this \_10\_\_ day of June, 2014.

**HOWARD KIM & ASSOCIATES**

/s/ Diana S. Cline

Howard C. Kim, Esq.

Nevada Bar No. 10386

Diana S. Cline, Esq.

Nevada Bar No. 10580

Jacqueline A. Gilbert, Esq.

Nevada Bar No. 10593

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Fax: (702) 485-330

*Attorneys for SFR Investments Pool 1, LLC*

**CERTIFICATE OF SERVICE**

12 I HEREBY CERTIFY that on this \_10\_\_ day of June, 2014, pursuant to NCRP 5(b), I  
13 served, U.S. mail, postage prepaid, the foregoing Notice of Voluntary Dismissal of Cross-  
14 Defendant Armando A. Carias Without Prejudice, to the following party:

15  
16 Huong Lam, Esq.

Alessi and Koenig

9500 W. Flamingo Rd. #205

Las Vegas, NV 89147

*Attorney for Alessi & Koenig, LLC*

19 Darren T. Brenner, Esq.

Akerman LLP

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

*Attorney for Bank of America, successor*

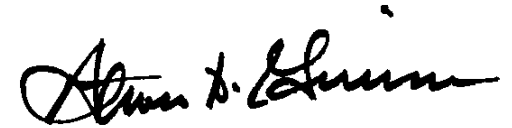
*by merger to BAC Home Loans Servicing, LP*

*fka Countrywide Home Loans Servicing LP*

/s/ Tommie Dooley

An Employee of Howard Kim &

Associates



CLERK OF THE COURT

1 **MLEV**  
2 **DARREN T. BRENNER, ESQ.**  
3 Nevada Bar No. 8386  
4 **TENESA S. SCATURRO, ESQ.**  
5 Nevada Bar No. 12488  
6 **WILLIAM S. HABDAS, ESQ.**  
7 Nevada Bar No. 13138  
8 **AKERMAN LLP**  
9 1160 Town Center Drive, Suite 330  
10 Las Vegas, Nevada 89144  
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16 *Attorneys for Bank of America, N.A.*

17 **EIGHTH JUDICIAL DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 **ALESSI & KOENIG, LLC, a Nevada**  
20 **limited liability company**

21 **Plaintiff,**

22 **vs.**

23 **ARMANDO A. CARIAS, an individual,**  
24 **BANK OF AMERICA, N.A., SUCCESSOR**  
25 **BY MERGER TO BAC HOME LOANS**  
26 **SERVICING, LP FKA COUNTRYWIDE**  
27 **HOME LOANS SERVICING, LP, unknown**  
28 **entity, DOES INDIVIDUALS I-X, inclusive,**  
**and ROE CORPORATIONS XI-XX inclusive,**

**Defendants.**

Case No. A-13-684501-C

Dept. No. XXI

**DEFENDANT BANK OF AMERICA,**  
**N.A., SUCCESSOR BY MERGER TO**  
**BAC HOME LOANS SERVICING LP**  
**FKA COUNTRYWIDE HOME LOANS**  
**SERVICING LP'S MOTION TO**  
**AMEND PLEADINGS AND ADD**  
**PARTIES**

**BANK OF AMERICA, N.A., SUCCESSOR**  
**BY MERGER TO BAC HOME LOANS**  
**SERVICING, LP FKA COUNTRYWIDE**  
**HOME LOANS SERVICING, LP, a National**  
**Association,**

**Cross-Claimant,**

**vs.**

ARMANDO A. CARIAS, an individual; DOES  
1 through 10 and ROE BUSINESS ENTITIES  
1 through 10,

Cross-Defendants.

BANK OF AMERICA, N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, a National  
Association,

Third Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a  
domestic Limited Liability Company, and  
DOES 1 through 10, and ROE BUSINESS  
ENTITIES 1 through 10,

Third Party Defendant.

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

Counter-Claimant,

vs.

BANK OF AMERICA, N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, a national  
association; ARMANDO A. CARIAS, an  
individual; DOES 1 10 and ROE BUSINESS  
ENTITIES 1 through 10 inclusive,

Counter-Defendant/Cross-Defendants.

Pursuant to Nevada Rules of Civil Procedure 15, 19 and 20, Defendant Bank of America,  
N.A., successor in interest to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans  
Servicing, LP (**Bank of America**) moves for leave from the Court for the following relief: (1) leave  
to amend its Answer to Plaintiff Alessi & Koenig's (**A&K**) complaint and to assert a counterclaim  
against A&K; (2) leave to amend its answer to the third-party counterclaim filed by third party  
defendant SFR Investments Pool I, LLC (**SFR**); (3) order the joinder of SFR as a party defendant

1 under Nevada Rules of Civil Procedure 19 and 20, instead of a third-party defendant under Nevada  
2 Rule of Civil Procedure 14; (4) order the joinder of Sutter Creek Homeowner's Association under  
3 Rule 19 and 20 (the **HOA**) as a party ; (5) order that the omnibus Answer, Counterclaim,  
4 Affirmative Defenses and Cross Claims attached hereto as **Exhibit A** is deemed filed as of the date  
5 the Court grants this motion.

6 **NOTICE OF MOTION**

7 PLEASE TAKE NOTICE that Defendant Bank of America, N.A., successor in interest to  
8 BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP will bring the  
9 foregoing **BANK OF AMERICA, N.A.'S MOTION FOR LEAVE TO AMEND PLEADING**  
10 **AND ADD PARTIES** for hearing before the Eighth Judicial District Court, located at the Regional  
11 Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155, on the 23 day of MARCH,  
12 CHAMBERS  
13 2015, at the hour of \_\_\_\_\_:\_\_\_\_\_o'clock \_\_\_\_\_.m.

14  
15 DATE: February 17, 2015.

16 **AKERMAN LLP**

17 /s/ William S. Haldas

18 DARREN T. BRENNER, ESQ.

19 Nevada Bar No. 8386

TENESA S. SCATURRO, ESQ.

20 Nevada Bar No. 12488

WILLIAM S. HABDAS, ESQ.

21 Nevada Bar No. 13138

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

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



## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

The court should grant Bank of America (1) leave to amend its Answer to Plaintiff A&K's complaint and to assert a counterclaim against A&K; (2) leave to amend its answer to the third-party counterclaim filed by third party defendant SFR; (3) order the joinder of SFR as a party defendant under Nevada Rules of Civil Procedure 19 and 20, instead of a third-party defendant under Nevada Rule of Civil Procedure 14; (4) order the joinder of the HOA under Rule 19 and 20 as a party ; (5) order that the omnibus Answer, Counterclaim, Affirmative Defenses and Cross Claims. The motion to amend is timely filed and will not cause prejudice to any party. Further, not granting the motion to amend would cause prejudice to Bank of America. Further, SFR is more appropriately joined as a party defendant. Finally, as explained herein, the HOA is properly joined under Rule 19 and/or 20.

### II. STATEMENT OF RELEVANT FACTS AND PROCEDURAL BACKGROUND

On July 1, 2013, A&K filed the instant Complaint against Amando Carias (**Borrower**), Bank of America, and various Doe and Roe defendants, seeking interpleader against said defendants to determine each defendant's claim to the proceeds of the purported foreclosure sale. On January 9, 2014, Bank of America filed an answer, a cross claim against Borrower, and a third-party complaint against SFR asserting counts for declaratory judgment and quiet title. On February 14, 2014, SFR filed an answer to the third-party complaint and a third-party counterclaim for declaratory judgment and quiet title. Current counsel for Bank of America was substituted for former Bank of America counsel on April 16, 2014. The Nevada Supreme Court decided *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75 (September 18, 2014), which bears on the outcome of the instant action.

### III. ARGUMENT

#### **A. The Court Should Grant Bank of America Leave to: (1) Amend its Answer to the Claims by A&K and Assert a Counterclaim; (2) Amend its Answer to the Claims by SFR**

It is in the interests of justice to allow Bank of America leave to amend its answers to the claims filed by A&K and SFR to add additional affirmative defenses. The scheduling order authorizes the parties to seek leave to amend the pleadings until February 17, 2015. Bank of

1 America timely makes this request in conformance with NRCP Rule 15 and EDCR Rule 2.30 and  
2 respectfully requests that leave to amend be granted.

3 NRCP Rule 15 governs amended and supplemental pleadings and states that “leave [to  
4 amend] shall be freely given when justice so requires.” NRCP 15(a). Here, Bank of America’s  
5 amendment is timely and will not prejudice Plaintiff. The interests of justice and fairness support  
6 the amendment. Bank of America will be prejudiced if it is not permitted to amend its Answer to  
7 reflect new issues of law and fact, particularly in light of the Nevada Supreme Court’s holding in  
8 *SFR Investments Pool 1, LLC*, decided after Bank of America filed its answer.

9 Moreover, the other parties to this case will not be prejudiced by amendment. No discovery  
10 has taken place to date. The discovery cut-off is not until May 18, 2015, and dispositive motions are  
11 not due until June 17, 2015, leaving the parties ample time to conduct any discovery this amendment  
12 would raise. Additionally, the amendments proposed by Bank of America and reflected in its  
13 amended pleading attached hereto as **Exhibit A**, are minor in nature. Specifically, Bank of America  
14 proposes to: (1) add certain affirmative defenses to its answers to the claims by A&K and SFR; (2)  
15 add a counterclaim against A&K similar to the claims already asserted against SFR; and (3) to add a  
16 wrongful foreclosure count to its claims against SFR. These minor changes will not materially  
17 expand the scope of discovery in this case or require additional substantive litigation effort. Bank of  
18 America is merely amending its pleadings to properly account for issues which have already been  
19 raised by the claims and defenses asserted to date (specifically a determination of the validity of the  
20 A&K HOA sale and the respective priorities of the HOA lien and Bank of America deed of trust).

21 As indicated above, A&K and SFR will not be prejudiced by the amendment but Bank of  
22 America would be prejudiced if it were not permitted. Accordingly, Bank of America should be  
23 granted leave to amend its Answer and to amend its claims against SFR in accordance with the  
24 proposed omnibus pleading. Furthermore, pursuant to EDCR 2.20(a), a copy of the proposed  
25 amended pleading is attached hereto as **Exhibit A**.

1           **B. The Court Should Grant Bank of America's Motion to Add SFR as a Party**  
2           **Defendant Under Rule 19 or Rule 20, Instead of a Third-Party Defendant Under**  
3           **Rule 14**

4           SFR is the party that purchased the subject property at the HOA foreclosure sale. SFR Third  
5           Party Counterclaim. ¶ 6. Prior counsel for Bank of America joined SFR into the case under Nevada  
6           Rule of Civil Procedure 14 as a third-party defendant. Bank of America's third party complaint  
7           asserts claims for declaratory relief and to quiet title and essentially alleges that SFR's interest in the  
8           property was subject to Bank of America's first deed of trust. *See generally* Bank of America Third  
9           Party Complaint. SFR filed a third-party counterclaim asserting counterclaims for declaratory relief  
10          and quiet title which allege the SFR's title is not subject to the Bank of America first deed of trust.  
11          *See generally* SFR third-party counterclaim. As a matter of technical pleading, since the claims  
12          asserted by Bank of America are not for indemnity or contribution, SFR should have arguably been  
13          joined as a party under Rule 19 or 20, instead of as a third-party defendant under Rule 14.  
14          Accordingly, to correct any possible error in the original alignment and joinder of the parties, Bank  
15          of America requests that the Court order that SFR be added as a party pursuant to Rule 19 or 20 and  
16          that the cross claims pled in **Exhibit A** hereto be deemed filed against SFR.

17          Joinder of SFR is proper here under Rule 19 of the Nevada Supreme Court Rules. Rule 19  
18          provides in relevant part:

19                 A person who is subject to service of process and whose joinder will not  
20                 deprive the court of jurisdiction over the subject matter of the action shall  
21                 be joined as a party in the action if (1) in the person's absence complete  
22                 relief cannot be accorded among those already parties, or (2) the person  
23                 claims an interest relating to the subject of the action and is so situated that  
24                 the disposition of the action in the person's absence may (i) as a practical  
25                 matter impair or impede the person's ability to protect that interest or (ii)  
26                 leave any of the persons already parties subject to a substantial risk of  
27                 incurring double, multiple, or otherwise inconsistent obligations by reason  
28                 of the claimed interest.

          Nevada Supreme Court Rule 19. Here, joinder of SFR is proper under Rule 19 because the  
interpleader claims asserted by A&K, and the quiet title claims asserted by Bank of America cannot  
be decided unless and until the validity and extent of SFR's title in the property is decided. With  
respect to these claims, SFR's absence from the case as a party joined under Rule 20 would not  
allow complete relief to A&K and Bank of America with respect to the disputes regarding this

1 property. If SFR was not joined as a party to this case under Rule 19, SFR, Bank of America or  
2 A&K could be exposed to inconsistent judgments regarding the nature and extent of SFR's title in  
3 the property.

4 Joinder of SFR is also proper under Rule 20. Rule 20 provides in relevant part; "All persons  
5 may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the  
6 alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or  
7 occurrences and if any question of law or of fact common to all these persons will arise in the  
8 action." Here, both A&K and SFR are in essence seeking to obtain judicial ratification of the HOA  
9 sale conducted by A&K. Common questions of law and fact pertain to the claims and defenses  
10 raised by SFR and A&K in this action, specifically facts regarding the validity of the HOA sale  
11 (such as a rejection of tender by A&K) and the nature and extent of title conveyed from A&K to  
12 SFR. Accordingly, joinder of SFR as a party plaintiff is also proper under Rule 20.

13 **C. The Court Should Grant Bank of America's Motion to Add the HOA as a Party**  
14 **Under Rule 19 or 20**

15 Finally, Bank of America requests that the Court join the HOA under Rule 19 or 20. The  
16 HOA is a necessary party because the claims at issue in this case challenge the validity of the sale  
17 held to satisfy the HOA's lien, the distribution of proceeds from the HOA sale, and the nature and  
18 extent of the title conveyed to SFR as a result the HOA sale. Thus, the HOA is a necessary party  
19 under Rule 19 because "in the [HOA's] absence complete relief cannot be accorded among those  
20 already parties." Specifically, any declaratory judgment as to the validity of the sale, the distribution  
21 of proceeds or title conveyed to SFR would not be binding on the HOA unless the HOA is joined in  
22 this action and any such judgment would not afford complete relief the parties because the rights of  
23 the HOA with respect to the events in dispute in this case would not have been determined in a  
24 binding manner.

25 Additionally, joinder of the HOA is proper under Rule 20 because common questions of law  
26 and fact pertain to the claims and defenses raised by SFR and A&K and the proposed claims by  
27 Bank of America against SFR and A&K. Specifically facts regarding the validity of the HOA sale  
28 (such as a rejection of tender by A&K) and the nature and extent of title conveyed from A&K to

1 SFR under the HOA sale. Accordingly, joinder of SFR as a party plaintiff would be proper under  
2 Rule 20.

3 **IV. CONCLUSION**

4 Based on the foregoing, this Court should grant Bank of America the following relief: (1)  
5 leave to amend its Answer to Plaintiff A&K's complaint and to assert a counterclaim against A&K;  
6 (2) leave to amend its answer to the third-party counterclaim filed by third party defendant SFR; (3)  
7 order the joinder of SFR as a party defendant under Nevada Rules of Civil Procedure 19 and 20,  
8 instead of a third-party defendant under Nevada Rule of Civil Procedure 14; (4) order the joinder of  
9 the HOA under Rule 19 and 20 as a party ; (5) order that the omnibus Answer, Counterclaim,  
10 Affirmative Defenses and Cross Claims attached hereto as **Exhibit A** is deemed filed as of the date  
11 the Court grants this motion.

12 DATE: February 17, 2015.

13  
14 **AKERMAN LLP**

15 /s/ William S. Haldas

16 DARREN T. BRENNER, ESQ.

17 Nevada Bar No. 8386

TENESA S. SCATURRO, ESQ.

18 Nevada Bar No. 12488

WILLIAM S. HABDAS, ESQ.

19 Nevada Bar No. 13138

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

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

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17th day of February 2015, and pursuant to NRCP 5(b), served via the court's electronic filing system ("Wiznet") a true and correct copy of the foregoing **BANK OF AMERICA, N.A.'s MOTION FOR LEAVE TO AMEND ANSWER**, postage prepaid and addressed to:

Huong Lam, Esq.  
Bradley Bace, Esq.  
ALESSI & KOENIG, LLC  
9500 W. Flamingo Rd., Ste. 205  
Las Vegas, NV 89147

*Attorneys for Plaintiff*

Diana S. Cline, Esq.  
HOWARD KIM & ASSOCIATES  
1055 Whitney Ranch Dr., Ste. 110  
Henderson, NV 89014

*Attorneys for Counterclaimant/Cross-Defendant/Third-Party Defendant SFR Investment Pool 1, LLC*

/s/ Lucille Chiusano  
An employee of AKERMAN LLP

# EXHIBIT A

# EXHIBIT A

**AANS**  
DARREN T. BRENNER, ESQ.  
Nevada Bar No. 8386  
TENESA SCATURRO, ESQ.  
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*Attorneys for Bank of America, N.A.*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC,  
Plaintiff,

v.

ARMANDO A. CARIAS, an individual, BANK  
OF AMERICA, N.A., SUCCESSOR BY  
MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, unknown  
entity, DOES INDIVIDUALS 1-X, inclusive,  
and ROE CORPORATIONS XI-XXX, inclusive,

Defendants.

BANK OF AMERICA, N.A., SUCCESSOR BY  
MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, a National  
Association,

Cross-Claimant,

v.

ARMANDO A. CARIAS, an individual, DOES  
INDIVIDUALS 1 through 10, inclusive, and  
ROE BUSINESS ENTITIES 1 through 10,  
inclusive,

Cross-Defendants.

Case No.: A-13-684501-C

Dept No.: XXI

**DEFENDANT BANK OF AMERICA,  
N.A.'S AMENDED ANSWER TO  
PLAINTIFF'S COMPLAINT AND  
CROSS-CLAIMS**



1 BANK OF AMERICA, N.A., SUCCESSOR BY  
2 MERGER TO BAC HOME LOANS  
3 SERVICING, LP FKA COUNTRYWIDE  
4 HOME LOANS SERVICING, LP, a National  
5 Association,

6 Cross-Claimant,

7 v.

8 SFR INVESTMENTS POOL 1, LLC, a domestic  
9 Limited Liability Company, SUTTER CREEK  
10 HOMEOWNERS' ASSOCIATION, an unknown  
11 entity, ALESSI & KOENIG, LLC, a domestic  
12 Limited Liability Company, and DOES 1 through  
13 10, and ROE BUSINESS ENTITIES 1 through  
14 10,

15 Cross-Defendants.

16 **AMENDED ANSWER TO COMPLAINT BY ALESSI & KOENIG, LLC**

17 COMES NOW, Defendant, Bank of America, N.A., Successor by Merger to BAC Home  
18 Loans Servicing, LP fka Countrywide Home Loans Servicing, LP (hereinafter "BANK"), by and  
19 through undersigned counsel, and in Answer to the Complaint of Plaintiff on file herein, responds as  
20 follows:

21 Answering paragraphs 1, 2, 3, 4, 5, 6, and 13 of the Complaint on file herein, BANK admits  
22 each and every allegation contained therein.

23 Answering paragraph 20 of the Complaint on file herein, BANK denies each and every  
24 allegation contained therein.

25 Answering paragraphs 7, 8, and 21 of the Complaint on file herein, BANK states that this is a  
26 statement only, subject to multiple interpretations, and therefore denies the same in its entirety.

27 Answering paragraphs 10, 11, 12, 14, 16, 17, 18, 19, 22, 23, 24, 25, and 26 of the Complaint  
28 on file herein, BANK states that it is without sufficient knowledge or information to form an opinion  
as to the truth or veracity of the allegations contained therein and therefore denies the same in its  
entirety.

1 Answering paragraph 9 and 15 of the Complaint on file herein, BANK admits that a  
2 purported foreclosure on a homeowners association lien was held, resulting in the deed attached as  
3 exhibit “2” to the Complaint, but denies the remainder of the paragraph for lack of sufficient  
4 knowledge or information to form an opinion as to the truth and veracity of the allegations and in as  
5 much as the effect of the purported sale is subject to multiple interpretations of the current and  
6 existing law.

7  
8 To the extent the “Prayer for Relief” section of the answer contains any allegations against  
9 the BANK, the allegations are denied.

10 **AMENDED ANSWER TO THIRD-PARTY COUNTERCLAIM BY SFR INVESTMENTS**

11 **POOL 1, LLC**

12 COMES NOW, Defendant, Bank of America, N.A., Successor by Merger to BAC Home  
13 Loans Servicing, LP fka Countrywide Home Loans Servicing, LP (hereinafter “BANK”), by and  
14 through undersigned counsel, and in Answer to the Third-Party Complaint of SFR Investments Pool  
15 I, LLC (hereinafter “SFR”) on file herein, denies and alleges as follows

16 Answering paragraphs, 1, 6, 7, 8, 9, 10, 46, and 55 of the Counterclaim on file herein,  
17 Counter-Defendant BANK admits that the documents maintained by the Clark County Recorder  
18 demonstrate the veracity of these allegations on their face but denies any further implications or  
19 allegations therein for SFR may be interpreting said documents in a manner inconsistent with  
20 Counter-Defendant and/or the terms and meanings of the documents.

21 Answering paragraphs 2, 16, 35, 36, 37, 39, 41, 45, 47 and 56 of the Counterclaim on file  
22 herein, Conter-Defendant BANK admits the allegations contained therein.

23 Answering paragraph 3, 4, 5, 14, 15, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 33,  
24 38, 40, 48, 51 and 58 of the Counterclaim on file herein, Counter-Defendant BANK states that it is  
25 without sufficient knowledge or information to form an opinion as to the truth or veracity of the  
26 remaining allegations contained therein and therefore denies the same in its entirety.

1 Answering paragraphs 11, 12, 13 and 50 of the Counterclaim on file herein, Counter-  
2 Defendant BANK asserts that these paragraphs are statements of law, subject to multiple  
3 interpretations, and therefore denies any allegations arising therefrom.

4 Answering paragraphs 24, 32, 34, 42, 43, 49, 52, 53, 59, 60, 61, 62, 63 and 64 of the  
5 counterclaim on file herein, Counter-Defendant BANK denies the allegations contained therein.

6 Answering paragraph 44 of the Counterclaim on file herein, Counter-Defendant BANK  
7 repeats, realleges, and incorporates their responses to the allegations of paragraphs 1 through 43 of  
8 the complaint as if fully set forth herein.

9 Answering paragraph 54 of the Counterclaim on file herein, Counter-Defendant BANK  
10 repeats, realleges, and incorporates their responses to the allegations of paragraphs 1 through 53 of  
11 the complaint as if fully set forth herein.

12 To the extent the “Prayer for Relief” section of the answer contains any allegations against  
13 the BANK, the allegations are denied.

14 **AFFIRMATIVE DEFENSES TO CLAIMS BY ALESSI & KOENIG AND SFR**  
15 **INVESTMENTS POOL 1, LLC**

16 1. That the allegations contained in Plaintiff’s Complaint fail to state a claim for relief  
17 upon which relief can be granted.

18 2. That Plaintiff’s claims are barred by the statute of limitations.

19 3. That Plaintiff’s claims are barred by the equitable doctrines of waiver, release, laches,  
20 unclean hands and equitable estoppels.

21 4. That Plaintiff has failed to comply with the necessary requirements in order to  
22 maintain any action against Defendant BANK.

23 5. That any claims of damages suffered by Plaintiff, if any, were directly and  
24 proximately caused by the actions of Plaintiff or forces of nature over which Defendant BANK had  
25 no control.

26 6. That the damages and injuries, if any, suffered by Plaintiff, as set forth in the  
27 Complaint, were caused in whole or in part by the negligence of third parties over whom Defendant  
28 BANK had no control.

1           7.       That the damages and injuries, if any, incurred by Plaintiff are not attributable to any  
2 act, conduct or omission on the part of Defendant BANK.

3           8.       That Plaintiff did not exercise ordinary care, caution or prudence in order to avoid the  
4 events alleged in the Complaint, and the resulting damages and injuries, if any, complained of were  
5 directly and proximately contributed to, and caused by, the fault, carelessness, and negligence of  
6 Plaintiff.

7           9.       That Plaintiff has failed to mitigate its damages, if any, and thus, its recovery, if any,  
8 should be reduced accordingly.

9           10.      That Defendant BANK denies each and every allegation of Plaintiff's Complaint  
10 which is not specifically admitted or otherwise pleads to herein.

11          11.      That Plaintiff's claims, if any be valid, are subject to offsets and credits, which are not  
12 reflected in the amount claimed due by Plaintiff.

13          12.      That Defendant BANK hereby incorporates by reference those affirmative defenses  
14 enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event  
15 further investigation or discovery reveals the applicability of any such defenses, Defendant BANK  
16 reserves the right to seek leave of the Court to amend its Answer to Plaintiff's Complaint to  
17 specifically assert the same. Such defenses are herein incorporated by reference for the specific  
18 purpose of not waiving the same.  
19

20          13.      That it has been necessary for Defendant BANK to employ the services of an attorney  
21 to defend this action and a reasonable sum should be allowed as and for attorney's fees, together  
22 with the costs expended in this action.  
23

24          14.      That Defendant BANK's title to the property is superior to that of Plaintiff.

25          15.      That Nevada Revised Statute 116.3116 does not support Plaintiff's position that it has  
26 title to the property.  
27  
28

1           16. That the senior deed of trust beneficiary cannot be deprived of its interest in the  
2 property in violation of the Procedural Due Process Clause of the 14<sup>th</sup> Amendment of the United  
3 States Constitution and Article 1, Sec. 8 of the Nevada Constitution.

4           17. That Defendant BANK's priority lien interest is protected from the relief sought by  
5 Plaintiff as set forth in the controlling homeowners' association documents of the homeowner's  
6 association.

7           18. That the super-priority lien was satisfied prior to the homeowner's association  
8 foreclosure under the doctrines of tender, estoppel, laches, or waiver.

9           19. That the circumstances of sale of the property violated the homeowner's association's  
10 obligation of good faith and duty to act in a commercially reasonable manner.

11           20. That the damages complained of, if there were any, were proximately contributed to  
12 or caused by the carelessness, negligence, fault or defects resulting from acts/omissions of other  
13 persons unknown to Defendant BANK at this time, and were not caused in any way by Defendant  
14 BANK or by persons for whom Defendant BANK is legally responsible.

15           21. Defendant BANK is entitled to have any award against it reduced or eliminated to the  
16 extent that the negligence, carelessness, or defect resulted from the acts/omissions or comparative  
17 fault of other persons that contributed to Plaintiff's damages, if any.

18           22. That Plaintiff, at all material times, calculated, knew and understood the risks  
19 inherent in the situations, actions, omissions and transactions upon which it now bases its various  
20 claims for relief, and with such knowledge, Plaintiff undertook and thereby assumed such risks and  
21 is consequently barred from all recovery by such assumption of risk.

22           23. To the extent that Plaintiff's interpretation of NRS 116.3116 is accurate, the statute,  
23 and Chapter 116, are void for vagueness as applied to this matter.  
24  
25  
26  
27  
28

1           24. That Plaintiff lacks standing to bring some or all of its claims and causes of action.

2           25. That Defendant BANK was not provided proper notice of the “super-priority”  
3 assessment amounts and the homeowner association foreclosure sale, and any such notice provided  
4 to Defendant BANK failed to comply with the statutory and common law requirements of Nevada  
5 and with state and federal constitutional law.

6           26. Defendant BANK avers the affirmative defense of failure to do equity.

7           27. That the homeowner association foreclosure sale is void for failure to comply with  
8 the provisions of NRS Chapter 116, and other provisions of law.

9           28. That the HOA sale is void or otherwise fails to extinguish the applicable deed of trust  
10 pursuant to the Supremacy Clause of the United States Constitution.

11           29. That the HOA sale is void or otherwise fails to extinguish the applicable deed of trust  
12 pursuant to the Property Clause of the United States Constitution.

13           30. That Defendant BANK hereby reserves the right to add additional affirmative  
14 defenses as discovery progresses.

15           WHEREFORE, Defendant BANK prays for the following:

- 16           1. That Plaintiff take nothing by way of its Complaint;  
17  
18           2. That Plaintiff’s Complaint be dismissed in its entirety;  
19  
20           3. That Defendant BANK be awarded reasonable attorney’s fees and the cost of suit  
21 incurred in defending this action; and  
22  
23           4. For such other and further relief as this Court may deem just and proper.

24           **CROSS-CLAIM AGAINST ARMANDO A. CARIAS**

25           COMES NOW, Defendant BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO  
26 BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP,  
27  
28

1 (hereinafter “BANK”), by and through undersigned counsel, and complains and avers against Cross-  
2 Defendant ARMANDO A. CARIAS, by way of this Cross-claim, as follows:

3 **RELEVANT PARTIES AND JURISDICTION**

4 1. The BANK is an entity properly conducting business in the State of Nevada, which  
5 holds a security interest in certain real property located at 3617 Diamond Spur Ave., North Las  
6 Vegas, Las Vegas, Nevada (hereinafter “Subject Property”).

7 2. That BANK’s security interest is in the form of a Note and Deed of Trust properly  
8 recorded on November 3, 2010, as instrument 201011030002714.

9 3. Defendant ARMANDO A. CARIAS is the borrower of the aforementioned debt and  
10 may be claiming an interest in the subject property (hereinafter “BORROWER”).

11 4. The Cross-Defendant DOES 1 through 10 and ROE BUSINESS ENTITIES 1 through  
12 10, are set forth herein pursuant to Rule 10 of the Nevada Rules of Civil Procedure as all unknown  
13 persons or business entities currently unknown to BANK who have a claim to any interest in the  
14 subject matter of this action, whose true name(s) is (are) unknown to BANK, and who are believed  
15 to be responsible for the events and happenings referred to in this Cross-claim, causing injuries and  
16 damages to the BANK, or who are otherwise interested in the subject matter of this Cross-claim. At  
17 such time when the names of said DOES and ROE BUSINESS ENTITIES have been ascertained,  
18 BANK will request leave from the court to insert their true names and capacities and adjoin them in  
19 this action so that the Cross-claim will be amended to include the appropriate names of said DOES  
20 and ROE BUSINESS ENTITIES.

21 5. Jurisdiction and venue are properly set in the Eighth Judicial District Court for the  
22 State of Nevada.

23 **GENERAL ALLEGATIONS**

24 6. The BORROWER is in default of the loan obligations owed BANK.  
25

1           7.       This same BORROWER was allegedly behind in his monthly homeowners  
2 association assessments causing the association to record a lien on the subject property and  
3 purportedly conduct a sale of the same on February 20, 2013, with a third party purchasing the same.

4                               **FIRST CAUSE OF ACTION**

5                               **(Declaratory Relief)**

6           8.       BANK repeats and realleges each and every allegation contained in Paragraphs 1  
7 through 7, and incorporates the same as though fully set forth herein.

8           9.       A true and justifiable controversy exists between the BANK and the BORROWER  
9 concerning their alleged interests in the Subject Property.

10          10.       The association's lien sale may have transferred title to the subject property but it did  
11 not abrogate or otherwise affect the BANK's security interest in the property in the form of the Note  
12 and Deed of Trust which, if disputed by the BORROWER, causes the BANK's interests to be  
13 adverse to those of the BORROWER.

14          11.       The BANK's rights, status and claims in relation to those of the BORROWER in the  
15 Subject Property are affected by multiple statutes and relevant case law regarding real estate and lien  
16 priority.

17          12.       This matter is filed in part under the Uniform Declaratory Judgment Act.

18          13.       Pursuant to NRS 30.040, the BANK is entitled to declaratory relief as to rights, status,  
19 and legal relations at issue in this matter.

20          14.       The BANK has found it necessary to employ the undersigned attorneys to bring suit.  
21 Therefore, pursuant to state statutes and prevailing case law, the BANK is entitled to any and all  
22 expenses incurred including, without limitation, all attorney's fees and costs of suit.



**SECOND CAUSE OF ACTION****(Quiet Title)**

15. The BANK repeats and realleges each and every allegation contained in Paragraphs 1 through 14 and incorporates the same as though fully set forth herein.

16. A true and justifiable controversy exists between the BANK and the BORROWERS concerning their alleged interests in the Subject Property.

17. The BANK's interests are adverse and exclusive to those alleged by the BORROWERS.

18. The BANK's rights, status and ownership of its security interest in the form of a note and deed of trust needs to be determined by the effect of multiple statutes and relevant case law regarding real estate and lien priority.

19. BANK's security interest in the subject property should be absolute without the BORROWERS, or anyone else, claiming an adverse interest therein.

20. The BANK has found it necessary to employ the undersigned attorneys to bring suit. Therefore pursuant to state statutes and prevailing case law, the BANK is entitled to any and all expenses incurred including, without limitation, all attorney's fees and costs of suit.

WHEREFORE, BANK prays for relief as follows:

1. For a Declaratory Judgment properly adjudicating the parties' interest in the subject property;
2. For an order quieting title to the subject property recognizing BANK's security interest therein;
3. For reasonable attorney's fees;
4. For costs of suit; and,
5. For such other and further relief as this court may deem just and proper.

**COUNTERCLAIM AGAINST ALESSI & KOENIG, LLC AND CROSS-CLAIM AGAINST**  
**SFR INVESTMENTS POOL 1, LLC AND**  
**SUTTER CREEK HOMEOWNERS' ASSOCIATION, ET AL.**

COMES NOW, Defendant BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, (hereinafter "BANK"), by and through undersigned counsel, asserts this counterclaim against Counterclaim Defendant ALESSI & KOENIG and cross-claim against Cross-Defendants SFR INVESTMENTS POOL 1, LLC ("SFR") and SUTTER CREEK HOMEOWNERS' ASSOCIATION ("SUTTER CREEK"), as follows:

**RELEVANT PARTIES AND JURISDICTION**

1. The BANK is an entity properly conducting business in the State of Nevada, which holds a security interest in certain real property located at 3617 Diamond Spur Ave., North Las Vegas, Las Vegas, Nevada (hereinafter "Subject Property")

2. That BANK's security interest is in the form of a Note and Deed of Trust properly recorded on November 3, 2010, as instrument number 201011030002714.

3. Cross-Defendant SFR is a Nevada Limited Liability Company conducting business in the State of Nevada.

4. Cross-Defendant Sutter Creek Homeowners Association is a homeowner's association located in Clark County, Nevada.

5. Counterclaim Defendant A&K is a domestic limited liability company authorized to conduct business in the State of Nevada.

6. That Cross-Defendants DOES 1 through 10 and Cross-Defendants ROE BUSINESS ENTITIES 1 through 10, are set forth herein pursuant to Rule 10 of the Nevada Rules of Civil Procedure as all unknown persons or business entities currently unknown to BANK who have a claim to any interest in the subject matter of this action, whose true name(s) is (are) unknown to

1 BANK, and who are believed to be responsible for the events and happenings referred to in this  
2 Complaint, causing injuries and damages to the BANK, or who are otherwise interested in the  
3 subject matter of this Complaint. At such time when the names of said DOES and ROE BUSINESS  
4 ENTITIES have been ascertained, BANK will request leave from the court to insert their true names  
5 and capacities and adjoin them in this action so that the Complaint will be amended to include the  
6 appropriate names of said DOES and ROE BUSINESS ENTITIES.

7  
8 7. Jurisdiction and venue are properly set in the Eighth Judicial District Court for the  
9 State of Nevada.

#### 10 GENERAL ALLEGATIONS

11 8. Under Nevada law, homeowners' associations have the right to charge property  
12 owners residing within the community assessments to cover the homeowners' association's expenses  
13 for maintaining or improving the community, among other things.

14 9. When these assessments are not paid, the homeowners' association may both impose  
15 and foreclose on a lien.

16 10. A homeowners' association may impose a lien for "any penalties, fees, charges, late  
17 charges, fines and interest charged" under NRS 116.3102(1)(j)-(n). NRS 116.3116(1).

18 11. NRS 116.3116 makes a homeowners' association lien for assessments junior to a first  
19 deed of trust beneficiary's secured interest in the property, with one limited exception: a  
20 homeowners' association lien is senior to a first deed of trust beneficiary's secured interest "to the  
21 extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the  
22 extent of the assessments for common expenses based on the periodic budget adopted by the  
23 association pursuant to NRS 116.3115 which would have become due in the absence of acceleration  
24 during the 9 months immediately preceding institution of an action to enforce the lien[.]" NRS  
25 116.3116(2)(c).

12. According to the Nevada Supreme Court's recent decision in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014), certain HOA liens have super-priority status and proper HOA foreclosures of those liens can extinguish first deeds of trust.

#### The HOA Lien and Foreclosure

13. Upon information and belief, Borrower failed to pay the HOA, SUTTER CREEK, all amounts due to it. Accordingly, SUTTER CREEK, through its trustee, ALESSI & KOENIG, initiated foreclosure of its lien. SFR purportedly purchased the subject property at a homeowners' association lien sale on February 20, 2013, which association lien was purportedly recorded on February 28, 2013, as instrument number 201302260003889, approximately twenty-seven (27) months after BANK's security interest was recorded.

14. Prior to the alleged foreclosure of the subject property, the BANK retained counsel Miles, Bauer, Bergstrom, & Winters, LLP ("MILES BAUER") to determine the last nine months of delinquent assessments, which was the maximum amount SUTTER CREEK could claim had super-priority over the BANK's deed of trust. *See Exhibit 1.*

15. The BANK tendered to ALESSI & KOENIG the amount of the super-priority lien. *See Exhibit 2.*

16. SUTTER CREEK through its trustee ALESSI & KOENIG refused to accept the BANK's tender and proceeded with foreclosure of the subject property and, upon information and belief, sold it for an amount far below the value of the BANK's deed of trust and far below market value.

17. The sale of the subject property was commercially unreasonable and not in good faith as required by NRS 116.1113.

18. ALESSI & KOENIG, SUTTER CREEK, and SFR were all aware prior to the sale of the subject property of a split among Nevada courts concerning the ability to eliminate the BANK's first deed of trust by foreclosing, and proceeded to sell the subject property for an extremely depressed price due to the legal uncertainty.

19. This foreclosure sale was commercially unreasonable because the manner in which ALESSI & KOENIG conducted the sale, including the notices it provided, the legal uncertainty

1 concerning the effect of the sale, and other circumstances surrounding the sale, was not calculated to  
2 attract proper perspective purchasers, and thus could not promote an equitable sales price of the  
3 subject property.

4 20. The foreclosure sale was commercially unreasonable because SUTTER CREEK  
5 through ALESSI & KOENIG refused to accept the BANK's tender and thereby deprived the BANK  
6 of its ability to reasonably protect its interest.

7 21. The foreclosure sale was invalid and did not extinguish the BANK's first deed of trust  
8 because SUTTER CREEK through ALESSI & KOENIG's refusal to accept the BANK's tender  
9 extinguished any super-priority lien held by SUTTER CREEK. To the extent that the sale  
10 extinguished the BANK's first deed of trust due to the wrongful conduct of ALESSI & KOENIG  
11 and SUTTER CREEK, both are liable to the BANK for damages.

12 22. SFR is taking the position that the association lien sale abrogated BANK's security  
13 interest in the form of a note and deed of trust pursuant to NRS 116.3116.

14 23. That SFR is taking the position that its alleged ownership in the subject property is  
15 free and clear of BANK's security interest in the form of a note and deed of trust.

16 24. The association's lien sale may have transferred title to the subject property but it did  
17 not abrogate or otherwise affect the BANK's security interest in the property in the form of the note  
18 and deed of trust which, if disputed by SFR and SUTTER CREEK, causes the BANK's interests to  
19 be adverse to those of SFR and SUTTER CREEK.

## 22 FIRST CAUSE OF ACTION

### 23 (Declaratory Relief)

24 25. BANK repeats and realleges each and every allegation contained in Paragraphs 1  
25 through 9, and incorporates the same as though fully set forth herein.

26 26. A true and justifiable controversy exists between the BANK and SFR, SUTTER  
27 CREEK and A&K concerning their alleged interests in the Subject Property.  
28

30. The BANK has found it necessary to employ the undersigned attorneys to bring suit. Therefore, pursuant to state statutes and prevailing case law, the BANK is entitled to any and all expenses incurred including, without limitation, all attorney's fees and costs of suit.

**(Quiet Title)**

35. The BANK's security interest in the subject property should be absolute without A&K, SFR or SUTTER CREEK, or anyone else, claiming an adverse interest therein.

1           36.     The BANK has found it necessary to employ the undersigned attorney to bring suit.  
2     Therefore, pursuant to state statutes and prevailing case law, the BANK is entitled to any and all  
3     expenses incurred including, without limitation, all attorney's fees and costs of suit.

4                                 **THIRD CAUSE OF ACTION**

5                                 **(Wrongful Foreclosure)**

6           37.     The BANK repeats and realleges each and every allegation contained in Paragraphs 1  
7     through 21 and incorporates the same as though fully set forth herein.

8           38.     Upon information and belief, prior to the foreclosure of the Property, A&K and  
9     SUTTER CREEK failed to provide the BANK with, or accept tender of, the super-priority amount  
10    of the HOA's lien.

11           39.     The BANK's tender attempt extinguished the super-priority portion of the HOA's  
12    lien. Consequently, A&K and SUTTER CREEK's foreclosure of the super-priority portion of  
13    SUTTER CREEK'S lien was wrongful, as the Borrower was not in default for that portion of the  
14    lien.  
15

16           40.     A&K and SUTTER CREEK's wrongful foreclosure has put the first priority position  
17    of the BANK's deed of trust in dispute.  
18

19           41.     The BANK is entitled to an order establishing that its deed of trust is the senior lien  
20    encumbering the Subject Property or, in the alternative, monetary damages equal to the value  
21    secured by its first deed of trust that was purportedly extinguished as a direct result of A&K and  
22    SUTTER CREEK's wrongful foreclosure.  
23

24           42.     The HOA sale also failed to comport with the Due Process Clause of the U.S.  
25    Constitution.

26           43.     Because the HOA sale was wrongful, SFR's title to the property is invalid and subject  
27    to the BANA first deed of trust.  
28

1           44.     The BANK has found it necessary to employ the undersigned attorney to bring suit.  
2     Therefore, pursuant to state statutes and prevailing case law, the BANK is entitled to any and all  
3     expenses incurred including, without limitation, all attorney's fees and costs of suit.

4                                 **PRAYER FOR RELIEF**

5     WHEREFORE, the BANK prays for relief as follows:

- 6                                 1. For a Declaratory Judgment properly adjudicating the parties' interests in  
7                                     the subject property.  
8                                 2. For an order quieting title to the subject property recognizing the BANK's  
9                                     security interest therein;  
10                                3. For an order declaring the foreclosure sale wrongful and invalid;  
11                                4. For reasonable attorney's fees and costs of suit; and,  
12                                5. For such other and further relief as this court may deem just and proper.  
13  
14  
15

16     DATED this 17th day of February, 2015.

17  
18                                 **AKERMAN LLP**

19                                 /s/ Darren T. Brenner, Esq.  
20                                 DARREN T. BRENNER, ESQ.  
21                                 Nevada Bar No. 8386  
22                                 TENESA SCATURRO, ESQ.  
23                                 Nevada Bar No. 12488  
24                                 1160 Town Center Drive, Suite 330  
25                                 Las Vegas, Nevada 89144

26                                 *Attorneys for Bank of America, N.A.*  
27  
28



# EXHIBIT 1

# EXHIBIT 1

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Also Admitted in Arizona  
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S. SHELLY RAISZADEH  
SHANNON C. WILLIAMS  
ABTIN SHAKOURI  
LAWRENCE R. BOIVIN  
RICK J. NEHORAOFF  
BRIAN M. LUNA

Sutter Creek Homeowners Association  
C/o THE ALESSI & KOENIG, LLC  
9500 West Flamingo Rd., Ste 205  
Las Vegas, NV 89147

*SENT VIA FIRST CLASS MAIL*

Re: *Property Address: 3617 Diamond Spur Avenue, North Las Vegas, NV 89032*  
*MBBW File No. 12-H1126*

Dear Sirs:

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

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

The association has a lien on a unit for:

...

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

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

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

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

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

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

Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated April 4, 2012. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

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

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

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*

Rock K. Jung, Esq.

# EXHIBIT 2

# EXHIBIT 2

**DOUGLAS E. MILES**  
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**SHANNON C. WILLIAMS**  
**LAWRENCE R. BOIVIN**  
**RICK J. NEHORAOFF**  
**BRIAN M. LUNA**

June 28, 2012

**ALESSI & KOENIG, LLC**  
9500 W. FLAMINGO ROAD, SUITE 100  
LAS VEGAS, NV 89147

Re: *Property Address:* 3617 Diamond Spur Avenue  
HO #: 30455  
LOAN #: ■■■■■7557  
*MBBW File No.* 12-H1126

Dear Sir/Madame:

As you may recall, this firm represents the interests of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by you in regards to the above-referenced address shows a full payoff amount of \$2,930.00. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

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

The association has a lien on a unit for:

...

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

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

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

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

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

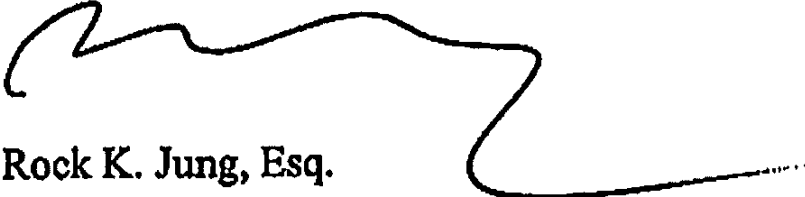
Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n).

Our client has authorized us to make payment to you in the amount of \$720.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$720.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 3617 Diamond Spur Avenue have now been "paid in full".

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

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*

  
Rock K. Jung, Esq.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct  
 Payee: Alessi & Koenig, LLC  
 12-H1126  
 Initials: SRN  
 Date: 6/27/2012 Amount: 720.00  
 Check #: 15746

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
6/26/2012	30455	To Cure HOA Deficiency	720.00			

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

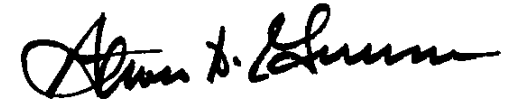
Bank of America  
 1100 N. Green Valley Parkway  
 Henderson, NV 89074  
 16-86/1220  
 1020  
 12-H1126  
 Loan # 224417557

Pay \$\*\*\*\*\*Seven Hundred Twenty & No/100 Dollars  
 to the order of  
 Alessi & Koenig, LLC

Date: 6/27/2012  
 Amount: \$ 720.00

Check Void After 90 Days

15746



CLERK OF THE COURT

AACC  
DARREN T. BRENNER, ESQ.  
Nevada Bar No. 8386  
TENESA S. SCATURRO, ESQ.  
Nevada Bar No. 12488  
AKERMAN LLP  
1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144  
Telephone: (702) 634-5000  
Facsimile: (702) 380-8572  
Email: darren.brenner@akerman.com  
Email: tenesa.scaturro@akerman.com

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

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC,

Plaintiff,

v.

ARMANDO A. CARIAS, an individual, BANK  
OF AMERICA, N.A., SUCCESSOR BY  
MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, unknown  
entity, DOES INDIVIDUALS 1-X, inclusive,  
and ROE CORPORATIONS XI-XXX, inclusive,

Defendants.

BANK OF AMERICA, N.A., SUCCESSOR BY  
MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, a National  
Association,

Cross-Claimant,

v.

ARMANDO A. CARIAS, an individual, DOES  
INDIVIDUALS 1 through 10, inclusive, and  
ROE BUSINESS ENTITIES 1 through 10,  
inclusive,

Cross-Defendants.

Case No.: A-13-684501-C  
Dept. No.: XXI

**BANK OF AMERICA, N.A.'S AMENDED  
ANSWER TO PLAINTIFF'S  
COMPLAINT AND CROSS-CLAIMS  
AGAINST SFR INVESTMENTS POOL 1,  
LLC AND SUTTER CREEK  
HOMEOWNERS' ASSOCIATION**

AKERMAN LLP

1160 TOWN CENTER DRIVE, SUITE 330  
LAS VEGAS, NEVADA 89144  
TEL.: (702) 634-5000 - FAX: (702) 380-8572



1 BANK OF AMERICA, N.A., SUCCESSOR BY  
2 MERGER TO BAC HOME LOANS  
3 SERVICING, LP FKA COUNTRYWIDE  
4 HOME LOANS SERVICING, LP, a National  
5 Association,

6 Cross-Claimant,

7 v.

8 SFR INVESTMENTS POOL 1, LLC, a domestic  
9 Limited Liability Company, SUTTER CREEK  
10 HOMEOWNERS' ASSOCIATION, an unknown  
11 entity, ALESSI & KOENIG, LLC, a domestic  
12 Limited Liability Company, and DOES 1 through  
13 10, and ROE BUSINESS ENTITIES 1 through  
14 10,

15 Cross-Defendants.

16 **AMENDED ANSWER TO COMPLAINT BY ALESSI & KOENIG, LLC**

17 COMES NOW, Defendant, Bank of America, N.A., Successor by Merger to BAC Home  
18 Loans Servicing, LP fka Countrywide Home Loans Servicing, LP (hereinafter "BANK"), by and  
19 through undersigned counsel, and in Answer to the Complaint of Plaintiff on file herein, responds as  
20 follows:

21 Answering paragraphs 1, 2, 3, 4, 5, 6, and 13 of the Complaint on file herein, BANK admits  
22 each and every allegation contained therein.

23 Answering paragraph 20 of the Complaint on file herein, BANK denies each and every  
24 allegation contained therein.

25 Answering paragraphs 7, 8, and 21 of the Complaint on file herein, BANK states that this is a  
26 statement only, subject to multiple interpretations, and therefore denies the same in its entirety.

27 Answering paragraphs 10, 11, 12, 14, 16, 17, 18, 19, 22, 23, 24, 25, and 26 of the Complaint  
28 on file herein, BANK states that it is without sufficient knowledge or information to form an opinion  
as to the truth or veracity of the allegations contained therein and therefore denies the same in its  
entirety.

1 Answering paragraph 9 and 15 of the Complaint on file herein, BANK admits that a  
2 purported foreclosure on a homeowners association lien was held, resulting in the deed attached as  
3 exhibit “2” to the Complaint, but denies the remainder of the paragraph for lack of sufficient  
4 knowledge or information to form an opinion as to the truth and veracity of the allegations and in as  
5 much as the effect of the purported sale is subject to multiple interpretations of the current and  
6 existing law.

7  
8 To the extent the “Prayer for Relief” section of the answer contains any allegations against  
9 the BANK, the allegations are denied.

10 **AMENDED ANSWER TO THIRD-PARTY COUNTERCLAIM BY SFR INVESTMENTS**

11 **POOL 1, LLC**

12 COMES NOW, Defendant, Bank of America, N.A., Successor by Merger to BAC Home  
13 Loans Servicing, LP fka Countrywide Home Loans Servicing, LP (hereinafter “BANK”), by and  
14 through undersigned counsel, and in Answer to the Third-Party Complaint of SFR Investments Pool  
15 I, LLC (hereinafter “SFR”) on file herein, denies and alleges as follows

16 Answering paragraphs, 1, 6, 7, 8, 9, 10, 46, and 55 of the Counterclaim on file herein,  
17 Counter-Defendant BANK admits that the documents maintained by the Clark County Recorder  
18 demonstrate the veracity of these allegations on their face but denies any further implications or  
19 allegations therein for SFR may be interpreting said documents in a manner inconsistent with  
20 Counter-Defendant and/or the terms and meanings of the documents.

21 Answering paragraphs 2, 16, 35, 36, 37, 39, 41, 45, 47 and 56 of the Counterclaim on file  
22 herein, Counter-Defendant BANK admits the allegations contained therein.

23 Answering paragraph 3, 4, 5, 14, 15, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 33,  
24 38, 40, 48, 51 and 58 of the Counterclaim on file herein, Counter-Defendant BANK states that it is  
25 without sufficient knowledge or information to form an opinion as to the truth or veracity of the  
26 remaining allegations contained therein and therefore denies the same in its entirety.

1 Answering paragraphs 11, 12, 13 and 50 of the Counterclaim on file herein, Counter-  
2 Defendant BANK asserts that these paragraphs are statements of law, subject to multiple  
3 interpretations, and therefore denies any allegations arising therefrom.

4 Answering paragraphs 24, 32, 34, 42, 43, 49, 52, 53, 59, 60, 61, 62, 63 and 64 of the  
5 counterclaim on file herein, Counter-Defendant BANK denies the allegations contained therein.

6 Answering paragraph 44 of the Counterclaim on file herein, Counter-Defendant BANK  
7 repeats, realleges, and incorporates their responses to the allegations of paragraphs 1 through 43 of  
8 the complaint as if fully set forth herein.

9 Answering paragraph 54 of the Counterclaim on file herein, Counter-Defendant BANK  
10 repeats, realleges, and incorporates their responses to the allegations of paragraphs 1 through 53 of  
11 the complaint as if fully set forth herein.

12 To the extent the “Prayer for Relief” section of the answer contains any allegations against  
13 the BANK, the allegations are denied.

14 **AFFIRMATIVE DEFENSES TO CLAIMS BY ALESSI & KOENIG AND SFR**  
15 **INVESTMENTS POOL 1, LLC**

16 1. That the allegations contained in Plaintiff’s Complaint fail to state a claim for relief  
17 upon which relief can be granted.

18 2. That Plaintiff’s claims are barred by the statute of limitations.

19 3. That Plaintiff’s claims are barred by the equitable doctrines of waiver, release, laches,  
20 unclean hands and equitable estoppels.

21 4. That Plaintiff has failed to comply with the necessary requirements in order to  
22 maintain any action against Defendant BANK.

23 5. That any claims of damages suffered by Plaintiff, if any, were directly and  
24 proximately caused by the actions of Plaintiff or forces of nature over which Defendant BANK had  
25 no control.

26 6. That the damages and injuries, if any, suffered by Plaintiff, as set forth in the  
27 Complaint, were caused in whole or in part by the negligence of third parties over whom Defendant  
28 BANK had no control.

1           7.       That the damages and injuries, if any, incurred by Plaintiff are not attributable to any  
2 act, conduct or omission on the part of Defendant BANK.

3           8.       That Plaintiff did not exercise ordinary care, caution or prudence in order to avoid the  
4 events alleged in the Complaint, and the resulting damages and injuries, if any, complained of were  
5 directly and proximately contributed to, and caused by, the fault, carelessness, and negligence of  
6 Plaintiff.

7           9.       That Plaintiff has failed to mitigate its damages, if any, and thus, its recovery, if any,  
8 should be reduced accordingly.

9           10.      That Defendant BANK denies each and every allegation of Plaintiff's Complaint  
10 which is not specifically admitted or otherwise pleads to herein.

11          11.      That Plaintiff's claims, if any be valid, are subject to offsets and credits, which are not  
12 reflected in the amount claimed due by Plaintiff.

13          12.      That Defendant BANK hereby incorporates by reference those affirmative defenses  
14 enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event  
15 further investigation or discovery reveals the applicability of any such defenses, Defendant BANK  
16 reserves the right to seek leave of the Court to amend its Answer to Plaintiff's Complaint to  
17 specifically assert the same. Such defenses are herein incorporated by reference for the specific  
18 purpose of not waiving the same.  
19

20          13.      That it has been necessary for Defendant BANK to employ the services of an attorney  
21 to defend this action and a reasonable sum should be allowed as and for attorney's fees, together  
22 with the costs expended in this action.  
23

24          14.      That Defendant BANK's title to the property is superior to that of Plaintiff.

25          15.      That Nevada Revised Statute 116.3116 does not support Plaintiff's position that it has  
26 title to the property.  
27  
28

1           16. That the senior deed of trust beneficiary cannot be deprived of its interest in the  
2 property in violation of the Procedural Due Process Clause of the 14<sup>th</sup> Amendment of the United  
3 States Constitution and Article 1, Sec. 8 of the Nevada Constitution.

4           17. That Defendant BANK's priority lien interest is protected from the relief sought by  
5 Plaintiff as set forth in the controlling homeowners' association documents of the homeowner's  
6 association.

7           18. That the super-priority lien was satisfied prior to the homeowner's association  
8 foreclosure under the doctrines of tender, estoppel, laches, or waiver.

9           19. That the circumstances of sale of the property violated the homeowner's association's  
10 obligation of good faith and duty to act in a commercially reasonable manner.

11           20. That the damages complained of, if there were any, were proximately contributed to  
12 or caused by the carelessness, negligence, fault or defects resulting from acts/omissions of other  
13 persons unknown to Defendant BANK at this time, and were not caused in any way by Defendant  
14 BANK or by persons for whom Defendant BANK is legally responsible.

15           21. Defendant BANK is entitled to have any award against it reduced or eliminated to the  
16 extent that the negligence, carelessness, or defect resulted from the acts/omissions or comparative  
17 fault of other persons that contributed to Plaintiff's damages, if any.

18           22. That Plaintiff, at all material times, calculated, knew and understood the risks  
19 inherent in the situations, actions, omissions and transactions upon which it now bases its various  
20 claims for relief, and with such knowledge, Plaintiff undertook and thereby assumed such risks and  
21 is consequently barred from all recovery by such assumption of risk.

22           23. To the extent that Plaintiff's interpretation of NRS 116.3116 is accurate, the statute,  
23 and Chapter 116, are void for vagueness as applied to this matter.  
24  
25  
26  
27  
28

1           24. That Plaintiff lacks standing to bring some or all of its claims and causes of action.

2           25. That Defendant BANK was not provided proper notice of the “super-priority”  
3 assessment amounts and the homeowner association foreclosure sale, and any such notice provided  
4 to Defendant BANK failed to comply with the statutory and common law requirements of Nevada  
5 and with state and federal constitutional law.

6           26. Defendant BANK avers the affirmative defense of failure to do equity.

7           27. That the homeowner association foreclosure sale is void for failure to comply with  
8 the provisions of NRS Chapter 116, and other provisions of law.

9           28. That the HOA sale is void or otherwise fails to extinguish the applicable deed of trust  
10 pursuant to the Supremacy Clause of the United States Constitution.

11           29. That the HOA sale is void or otherwise fails to extinguish the applicable deed of trust  
12 pursuant to the Property Clause of the United States Constitution.

13           30. That Defendant BANK hereby reserves the right to add additional affirmative  
14 defenses as discovery progresses.

15           WHEREFORE, Defendant BANK prays for the following:  
16

- 17
- 18           1. That Plaintiff take nothing by way of its Complaint;
  - 19           2. That Plaintiff’s Complaint be dismissed in its entirety;
  - 20           3. That Defendant BANK be awarded reasonable attorney’s fees and the cost of suit  
21 incurred in defending this action; and
  - 22           4. For such other and further relief as this Court may deem just and proper.
- 23

24 ...

25 ...

26 ...

27 ...

28 ...  
{30819399;1}

**CROSS-CLAIM AGAINST ARMANDO A. CARIAS**

COMES NOW, Defendant BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, (hereinafter "BANK"), by and through undersigned counsel, and complains and avers against Cross-Defendant ARMANDO A. CARIAS, by way of this Cross-claim, as follows:

**RELEVANT PARTIES AND JURISDICTION**

1. The BANK is an entity properly conducting business in the State of Nevada, which holds a security interest in certain real property located at 3617 Diamond Spur Ave., North Las Vegas, Las Vegas, Nevada (hereinafter "Subject Property").

2. That BANK's security interest is in the form of a Note and Deed of Trust properly recorded on November 3, 2010, as instrument 201011030002714.

3. Defendant ARMANDO A. CARIAS is the borrower of the aforementioned debt and may be claiming an interest in the subject property (hereinafter "BORROWER").

4. The Cross-Defendant DOES 1 through 10 and ROE BUSINESS ENTITIES 1 through 10, are set forth herein pursuant to Rule 10 of the Nevada Rules of Civil Procedure as all unknown persons or business entities currently unknown to BANK who have a claim to any interest in the subject matter of this action, whose true name(s) is (are) unknown to BANK, and who are believed to be responsible for the events and happenings referred to in this Cross-claim, causing injuries and damages to the BANK, or who are otherwise interested in the subject matter of this Cross-claim. At such time when the names of said DOES and ROE BUSINESS ENTITIES have been ascertained, BANK will request leave from the court to insert their true names and capacities and adjoin them in this action so that the Cross-claim will be amended to include the appropriate names of said DOES and ROE BUSINESS ENTITIES.

1           5.       Jurisdiction and venue are properly set in the Eighth Judicial District Court for the  
2 State of Nevada.

3                               **GENERAL ALLEGATIONS**

4           6.       The BORROWER is in default of the loan obligations owed BANK.

5           7.       This same BORROWER was allegedly behind in his monthly homeowners  
6 association assessments causing the association to record a lien on the subject property and  
7 purportedly conduct a sale of the same on February 20, 2013, with a third party purchasing the same.  
8

9                               **FIRST CAUSE OF ACTION**

10                              **(Declaratory Relief)**

11           8.       BANK repeats and realleges each and every allegation contained in Paragraphs 1  
12 through 7, and incorporates the same as though fully set forth herein.

13           9.       A true and justifiable controversy exists between the BANK and the BORROWER  
14 concerning their alleged interests in the Subject Property.

15           10.      The association's lien sale may have transferred title to the subject property but it did  
16 not abrogate or otherwise affect the BANK's security interest in the property in the form of the Note  
17 and Deed of Trust which, if disputed by the BORROWER, causes the BANK's interests to be  
18 adverse to those of the BORROWER.  
19

20           11.      The BANK's rights, status and claims in relation to those of the BORROWER in the  
21 Subject Property are affected by multiple statutes and relevant case law regarding real estate and lien  
22 priority.  
23

24           12.      This matter is filed in part under the Uniform Declaratory Judgment Act.

25           13.      Pursuant to NRS 30.040, the BANK is entitled to declaratory relief as to rights, status,  
26 and legal relations at issue in this matter.  
27  
28



14. The BANK has found it necessary to employ the undersigned attorneys to bring suit. Therefore, pursuant to state statutes and prevailing case law, the BANK is entitled to any and all expenses incurred including, without limitation, all attorney's fees and costs of suit.

## **SECOND CAUSE OF ACTION**

### **(Quiet Title)**

15. The BANK repeats and realleges each and every allegation contained in Paragraphs 1 through 14 and incorporates the same as though fully set forth herein.

16. A true and justifiable controversy exists between the BANK and the BORROWERS concerning their alleged interests in the Subject Property.

17. The BANK's interests are adverse and exclusive to those alleged by the BORROWERS.

18. The BANK's rights, status and ownership of its security interest in the form of a note and deed of trust needs to be determined by the effect of multiple statutes and relevant case law regarding real estate and lien priority.

19. BANK's security interest in the subject property should be absolute without the BORROWERS, or anyone else, claiming an adverse interest therein.

20. The BANK has found it necessary to employ the undersigned attorneys to bring suit. Therefore pursuant to state statutes and prevailing case law, the BANK is entitled to any and all expenses incurred including, without limitation, all attorney's fees and costs of suit.

WHEREFORE, BANK prays for relief as follows:

1. For a Declaratory Judgment properly adjudicating the parties' interest in the subject property;
2. For an order quieting title to the subject property recognizing BANK's security interest therein;

3. For reasonable attorney's fees;

4. For costs of suit; and,

5. For such other and further relief as this court may deem just and proper.

**COUNTERCLAIM AGAINST ALESSI & KOENIG, LLC AND CROSS-CLAIM AGAINST  
SFR INVESTMENTS POOL 1, LLC AND  
SUTTER CREEK HOMEOWNERS' ASSOCIATION, ET AL.**

COMES NOW, Defendant BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, (hereinafter "BANK"), by and through undersigned counsel, asserts this counterclaim against Counterclaim Defendant ALESSI & KOENIG and cross-claim against Cross-Defendants SFR INVESTMENTS POOL 1, LLC ("SFR") and SUTTER CREEK HOMEOWNERS' ASSOCIATION ("SUTTER CREEK"), as follows:

**RELEVANT PARTIES AND JURISDICTION**

1. The BANK is an entity properly conducting business in the State of Nevada, which holds a security interest in certain real property located at 3617 Diamond Spur Ave., North Las Vegas, Las Vegas, Nevada (hereinafter "Subject Property")

2. That BANK's security interest is in the form of a Note and Deed of Trust properly recorded on November 3, 2010, as instrument number 201011030002714.

3. Cross-Defendant SFR is a Nevada Limited Liability Company conducting business in the State of Nevada.

4. Cross-Defendant Sutter Creek Homeowners Association is a homeowner's association located in Clark County, Nevada.

5. Counterclaim Defendant A&K is a domestic limited liability company authorized to conduct business in the State of Nevada.

7. Jurisdiction and venue are properly set in the Eighth Judicial District Court for the State of Nevada.

8. Under Nevada law, homeowners' associations have the right to charge property owners residing within the community assessments to cover the homeowners' association's expenses for maintaining or improving the community, among other things.

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

10. A homeowners' association may impose a lien for "any penalties, fees, charges, late charges, fines and interest charged" under NRS 116.3102(1)(j)-(n). NRS 116.3116(1).

11. NRS 116.3116 makes a homeowners' association lien for assessments junior to a first deed of trust beneficiary's secured interest in the property, with one limited exception: a homeowners' association lien is senior to a first deed of trust beneficiary's secured interest "to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration

1 during the 9 months immediately preceding institution of an action to enforce the lien[.]” NRS  
2 116.3116(2)(c).

3 12. According to the Nevada Supreme Court’s recent decision in *SFR Investments Pool 1,*  
4 *LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014), certain HOA liens have super-priority status and  
5 proper HOA foreclosures of those liens can extinguish first deeds of trust.

### 6 The HOA Lien and Foreclosure

7 13. Upon information and belief, Borrower failed to pay the HOA, SUTTER CREEK, all  
8 amounts due to it. Accordingly, SUTTER CREEK, through its trustee, ALESSI & KOENIG,  
9 initiated foreclosure of its lien. SFR purportedly purchased the subject property at a homeowners’  
10 association lien sale on February 20, 2013, which association lien was purportedly recorded on  
11 February 28, 2013, as instrument number 201302260003889, approximately twenty-seven (27)  
12 months after BANK’s security interest was recorded.

13 14. Prior to the alleged foreclosure of the subject property, the BANK retained counsel  
14 Miles, Bauer, Bergstrom, & Winters, LLP (“MILES BAUER”) to determine the last nine months of  
15 delinquent assessments, which was the maximum amount SUTTER CREEK could claim had super-  
16 priority over the BANK’s deed of trust. *See Exhibit 1.*

17 15. The BANK tendered to ALESSI & KOENIG the amount of the super-priority lien.  
18 *See Exhibit 2.*

19 16. SUTTER CREEK through its trustee ALESSI & KOENIG refused to accept the  
20 BANK’s tender and proceeded with foreclosure of the subject property and, upon information and  
21 belief, sold it for an amount far below the value of the BANK’s deed of trust and far below market  
22 value.

23 17. The sale of the subject property was commercially unreasonable and not in good faith  
24 as required by NRS 116.1113.

25 18. ALESSI & KOENIG, SUTTER CREEK, and SFR were all aware prior to the sale of  
26 the subject property of a split among Nevada courts concerning the ability to eliminate the BANK’s  
27 first deed of trust by foreclosing, and proceeded to sell the subject property for an extremely  
28 depressed price due to the legal uncertainty.

24. The association's lien sale may have transferred title to the subject property but it did not abrogate or otherwise affect the BANK's security interest in the property in the form of the note and deed of trust which, if disputed by SFR and SUTTER CREEK, causes the BANK's interests to be adverse to those of SFR and SUTTER CREEK.

**(Declaratory Relief)**

25. BANK repeats and realleges each and every allegation contained in Paragraphs 1 through 9, and incorporates the same as though fully set forth herein.

1           26.     A true and justifiable controversy exists between the BANK and SFR, SUTTER  
2 CREEK and A&K concerning their alleged interests in the Subject Property.

3           27.     The BANK's rights, status and claims in relation to those of A&K, SFR and SUTTER  
4 CREEK in the Subject Property are affected by multiple statutes and relevant case law regarding real  
5 estate and lien priority.

6           28.     This matter is filed in part under the Uniform Declaratory Judgment Act.

7           29.     Pursuant to NRS 30.040, the BANK is entitled to declaratory relief as to rights, status,  
8 and legal relations at issue in this matter.  
9

10          30.     The BANK has found it necessary to employ the undersigned attorneys to bring suit.  
11 Therefore, pursuant to state statutes and prevailing case law, the BANK is entitled to any and all  
12 expenses incurred including, without limitation, all attorney's fees and costs of suit.

### 13                               SECOND CAUSE OF ACTION

#### 14                               (Quiet Title)

15           31.     The BANK repeats and realleges each and every allegation contained in Paragraphs 1  
16 through 15 and incorporates the same as though fully set forth herein.  
17

18           32.     A true and justifiable controversy exists between the BANK and A&K, SFR and  
19 SUTTER CREEK concerning their alleged interests in the Subject Property.

20           33.     The BANK's interest are adverse and superior to those alleged by A&K, SFR and  
21 SUTTER CREEK.

22           34.     The BANK's rights, status and ownership of its security interest in the form of a note  
23 and deed of trust needs to be determined by the effect of multiple statutes and relevant case law  
24 regarding real estate and lien priority.  
25

26           35.     The BANK's security interest in the subject property should be absolute without  
27 A&K, SFR or SUTTER CREEK, or anyone else, claiming an adverse interest therein.  
28

1           36.     The BANK has found it necessary to employ the undersigned attorney to bring suit.  
2     Therefore, pursuant to state statutes and prevailing case law, the BANK is entitled to any and all  
3     expenses incurred including, without limitation, all attorney's fees and costs of suit.

### 4                               THIRD CAUSE OF ACTION

#### 5                               (Wrongful Foreclosure)

6           37.     The BANK repeats and realleges each and every allegation contained in Paragraphs 1  
7     through 21 and incorporates the same as though fully set forth herein.

8           38.     Upon information and belief, prior to the foreclosure of the Property, A&K and  
9     SUTTER CREEK failed to provide the BANK with, or accept tender of, the super-priority amount  
10    of the HOA's lien.

11           39.     The BANK's tender attempt extinguished the super-priority portion of the HOA's  
12    lien. Consequently, A&K and SUTTER CREEK's foreclosure of the super-priority portion of  
13    SUTTER CREEK'S lien was wrongful, as the Borrower was not in default for that portion of the  
14    lien.  
15

16           40.     A&K and SUTTER CREEK's wrongful foreclosure has put the first priority position  
17    of the BANK's deed of trust in dispute.  
18

19           41.     The BANK is entitled to an order establishing that its deed of trust is the senior lien  
20    encumbering the Subject Property or, in the alternative, monetary damages equal to the value  
21    secured by its first deed of trust that was purportedly extinguished as a direct result of A&K and  
22    SUTTER CREEK's wrongful foreclosure.  
23

24           42.     The HOA sale also failed to comport with the Due Process Clause of the U.S.  
25    Constitution.

26           43.     Because the HOA sale was wrongful, SFR's title to the property is invalid and subject  
27    to the BANA first deed of trust.  
28

1           44.     The BANK has found it necessary to employ the undersigned attorney to bring suit.  
2     Therefore, pursuant to state statutes and prevailing case law, the BANK is entitled to any and all  
3     expenses incurred including, without limitation, all attorney's fees and costs of suit.

4                                 **PRAYER FOR RELIEF**

5     WHEREFORE, the BANK prays for relief as follows:

- 6           1.     For a Declaratory Judgment properly adjudicating the parties' interests in the  
7                     subject property.  
8           2.     For an order quieting title to the subject property recognizing the BANK's  
9                     security interest therein;  
10          3.     For an order declaring the foreclosure sale wrongful and invalid;  
11          4.     For reasonable attorney's fees and costs of suit; and,  
12          5.     For such other and further relief as this court may deem just and proper.  
13  
14

15     DATED this 16th day of April, 2015.

16                                 **AKERMAN LLP**

17                                 /s/ Darren T. Brenner, Esq.

18                                 DARREN T. BRENNER, ESQ.

19                                 Nevada Bar No. 8386

20                                 TENESA S. SCATURRO, ESQ.

21                                 Nevada Bar No. 12488

22                                 1160 Town Center Drive, Suite 330

23                                 Las Vegas, Nevada 89144

24                                 Attorneys for Bank of America, N.A.  
25  
26  
27  
28



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 16th day of April, 2015 and pursuant to NRCP 5(b), I served through this Court's electronic service notification system ("Wiznet") a true and correct copy of the foregoing **BANK OF AMERICA, N.A.'S AMENDED ANSWER TO PLAINTIFF'S COMPLAINT AND CROSS-CLAIMS AGAINST SFR INVESTMENTS POOL 1, LLC AND SUTTER CREEK HOMEOWNERS' ASSOCIATION** addressed to:

Huong X. Lam, Esq.  
Bradley Bace, Esq.  
ALESSI & KOENIG, LLC  
9500 W. Flamingo Rd., Suite # 205  
Las Vegas, NV 89147  
eserve@alessikoenig.com  
brad@alessikoenig.com

*Attorneys for Plaintiff Alessi & Koenig, LLC*

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Henderson, NV 89014  
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sarah@hkimlaw.com  
eservice@hkimlaw.com

*Attorneys for Defendant SFR Investments Pool 1 LLC*

/s/ Lucille Chiusano

An employee of AKERMAN LLP

**EXHIBIT 1**

**EXHIBIT 1**

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



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L. BRYANT JAQUEZ  
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VY T. PHAM  
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BRIAN H. TRAN  
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CORI B. JONES  
CATHERINE K. MASON  
CHRISTINE A. CHUNG  
HANH T. NGUYEN  
S. SHELLY RAISZADEH  
SHANNON C. WILLIAMS  
ABTIN SHAKOURI  
LAWRENCE R. BOIVIN  
RICK J. NEHORAOFF  
BRIAN M. LUNA

Sutter Creek Homeowners Association  
C/o THE ALESSI & KOENIG, LLC  
9500 West Flamingo Rd., Ste 205  
Las Vegas, NV 89147

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 3617 Diamond Spur Avenue, North Las Vegas, NV 89032*  
*MBBW File No. 12-H1126*

Dear Sirs:

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

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

The association has a lien on a unit for:

...

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

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

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

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

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

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

Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated April 4, 2012. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

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

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

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*

Rock K. Jung, Esq.

# EXHIBIT 2

# EXHIBIT 2

**DOUGLAS E. MILES**  
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**JEREMY T. BERGSTROM**  
Also Admitted in Arizona  
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**KRISTA J. NIELSON**  
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**S. SHELLY RAISZADEH**  
**SHANNON C. WILLIAMS**  
**LAWRENCE R. BOIVIN**  
**RICK J. NEHORAOFF**  
**BRIAN M. LUNA**

June 28, 2012

**ALESSI & KOENIG, LLC**  
9500 W. FLAMINGO ROAD, SUITE 100  
LAS VEGAS, NV 89147

Re: *Property Address:* 3617 Diamond Spur Avenue  
HO #: 30455  
LOAN #: 224417557  
*MBBW File No.* 12-H1126

Dear Sir/Madame:

As you may recall, this firm represents the interests of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by you in regards to the above-referenced address shows a full payoff amount of \$2,930.00. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

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

The association has a lien on a unit for:

...

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

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

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

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

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

Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n).

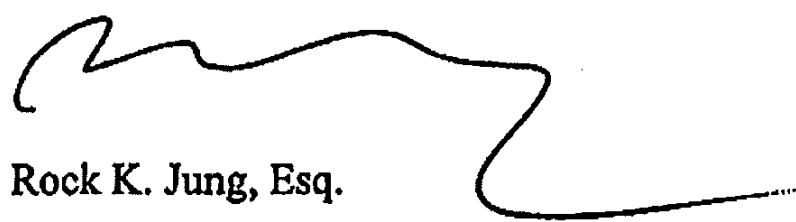
Our client has authorized us to make payment to you in the amount of \$720.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$720.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 3617 Diamond Spur Avenue have now been "paid in full".

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

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*

Rock K. Jung, Esq.



**Initials: SRN**

**Date: 6/27/2012    Amount: 720.00**

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
6/26/2012	30455	To Cure HOA Defiency	720.00			

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

**Bank of America**  
**1100 N. Green Valley Parkway**  
**Henderson, NV 89074**  
**16-66/1220**  
**1020**  
**12-H1126**  
**Loan # 224417557**

**15746**  
**Date: 6/27/2012**  
**Amount \$\*\*\*\* 720.00**

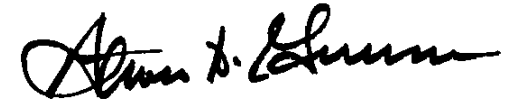
Pay \$\*\*\*\*\*Seven Hundred Twenty & No/100 Dollars  
to the order of

**Alessi & Koenig, LLC**

**Check Void After 90 Days**

015746 0122400724 501006876973





CLERK OF THE COURT

**ORDR**

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

TENESA S. SCATURRO, ESQ.

Nevada Bar No. 12488

AKERMAN LLP

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Facsimile: (702) 380-8572

Email: darren.brenner@akerman.com

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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC,

Plaintiff,

v.

ARMANDO A. CARIAS, an individual, BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, unknown entity, DOES INDIVIDUALS 1-X, inclusive, and ROE CORPORATIONS XI-XXX, inclusive,

Defendants.

BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP, a National Association,

Cross-Claimant,

v.

ARMANDO A. CARIAS, an individual, SFR INVESTMENTS POOL 1, LLC, a domestic Limited Liability Company, SUTTER CREEK HOMEOWNERS' ASSOCIATION, a homeowner's association

Cross-Defendants.

Case No. A-13-684501-C

Dept. No. XXI

**ORDER GRANTING BANK OF AMERICA, N.A.'S MOTION TO AMEND PLEADINGS AND ADD PARTIES**

AKERMAN LLP

1160 TOWN CENTER DRIVE, SUITE 330  
LAS VEGAS, NEVADA 89144  
TEL.: (702) 634-5000 - FAX: (702) 380-8572

BANK OF AMERICA, N.A., SUCCESSOR BY  
MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE HOME  
LOANS SERVICING, LP, a National Association,

Cross-Claimant,

v.

SFR INVESTMENTS POOL 1, LLC, a domestic  
Limited Liability Company, SUTTER CREEK  
HOMEOWNERS' ASSOCIATION, an unknown  
entity, and DOES 1 through 10 and ROE  
BUSINESS ENTITIES 1 through 10,

Cross-Defendants.

On February 17, 2015, Defendant Bank of America, N.A. (**Bank of America**) filed its  
Motion for Leave to Amend its Answer to Add Affirmative Defenses and to Join Parties to Add  
Claims. Having examined the Motion for Leave, noting no opposition filed, and for good cause  
showing, **IT IS HEREBY ORDERED** that Bank of America's motion is granted.

Dated this 21 day of April, 2015.

*Valerie Adair*

Hon. Valerie Adair  
DISTRICT COURT JUDGE

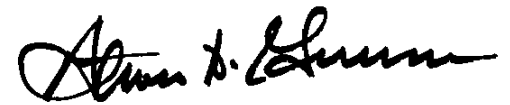
*Submitted by:*

AKERMAN LLP

*[Signature]*

DARREN T. BRENNER, ESQ.  
Nevada Bar No. 8386  
TENESA SCATURRO, ESQ.  
Nevada Bar No. 12488  
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*Attorneys for Bank of America, N.A.*



CLERK OF THE COURT

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7 Henderson, Nevada 89014  
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8 Facsimile: (702) 485-3301  
Attorneys for SFR Investments Pool 1, LLC  
9

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

13  
14 Plaintiff,

15 vs.

16 ARMANDO A. CARIAS, an individual;  
BANK OF AMERICA, N.A., SUCCESSOR  
17 BY MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
18 HOME LOANS SERVICING, LP, an  
unknown entity; DOES INDIVIDUALS I-X,  
19 inclusive; and ROE CORPORATIONS XI-  
XXX,  
20

21 Defendants.

22 BANK OF AMERICA, N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS  
23 SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, a National  
24 Association,

25 Cross-Claimant,

26 vs.

27 ARMANDO A. CARIAS, an individual;  
DOES 1 10 and ROE BUSINESS ENTITIES  
28 1 through 10 inclusive,

Case No. A-13-684501-C

Dept. No. XXI

**SFR INVESTMENTS POOL 1, LLC'S  
ANSWER TO BANK OF AMERICA,  
N.A.'S CROSS-CLAIM AGAINST SFR  
INVESTMENTS POOL 1, LLC**

**HOWARD KIM & ASSOCIATES**

1055 WHITNEY RANCH DRIVE, SUITE 110

HENDERSON, NEVADA 89014

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

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Cross-Defendants.

BANK OF AMERICA, N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, a National  
Association,

Cross-Claimant,

vs.

SFR INVESTMENTS POOL 1, LLC, a  
domestic limited liability company, SUTTER  
CREEK HOMEOWNERS' ASSOCIATION,  
an unknown entity, ALESSI & KOENIG, LLC,  
a domestic Limited Liability Company, and  
DOES 1 through 10 and ROE BUSINESS  
ENTITIES 1 through 10,

Cross-Defendants.

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

Counter-Claimant,

vs.

BANK OF AMERICA, N.A., SUCCESSOR  
BY MERGER TO BAC HOME LOANS  
SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, a national  
association; ARMANDO A. CARIAS, an  
individual; DOES 1 10 and ROE BUSINESS  
ENTITIES 1 through 10 inclusive,

Counter-Defendant/Cross-Defendants.

Counterclaimant/Cross-Defendant SFR INVESTMENTS POOL 1, LLC ("SFR" or  
"Cross-Defendant"), hereby answers BANK OF AMERICA, N.A., SUCCESSOR BY  
MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME  
LOANS SERVICING, LP's ("BANA" or "the Bank") Cross-Claim as follows:

**RELEVANT PARTIES AND JURISDICTION**

1. Answering paragraph 1 of the cross-claim, upon information and belief, SFR admits that the Bank is an entity conducting business in the State of Nevada and that the subject matter of this litigation is the real property located at **3617 Diamond Spur Avenue, North Las Vegas, NV 89032; Parcel No. 139-08-410-014** (the “Property”). To the extent the paragraph 1 alleges that the Bank currently has a valid security interest in the Property, SFR denies such allegation. SFR is without sufficient knowledge or information to form a belief as to the truth of the remaining factual allegations contained in paragraph 1 of the cross-claim, and therefore denies said allegations.

2. The documents referenced in paragraphs 2 of the cross-claim speak for themselves, and SFR denies any allegations inconsistent with said documents. To the extent the paragraph 2 alleges the deed of trust is currently a valid security interest in the Property, SFR denies such allegation.

3. SFR admits the factual allegations contained in paragraph 3 of the cross-claim.

4. Answering paragraph 4 of the cross-claim, upon information and belief, SFR admits that Sutter Creek Homeowners Association (“the Association”) is a homeowner’s association located in Clark County, Nevada.

5. Answering paragraph 5 of the cross-claim, upon information and belief, SFR admits that Alessi & Koenig, LLC (“the Association”) is a Nevada limited liability company authorized to conduct business in the State of Nevada.

6. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 6 of the cross-claim, and therefore denies said allegations.

7. The allegations contained in paragraph 7 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR admits the factual allegations contained in paragraph 7 of the complaint.

**GENERAL ALLEGATIONS**

8. The allegations contained in paragraphs 8 and 9 of the cross-claim call for a legal

1 conclusion, therefore, no answer is required. To the extent an answer is required, SFR admits  
2 the factual allegations contained in paragraphs 8 and 9 of the cross-claim.

3 9. The statutes referenced in paragraphs 10 and 11 of the cross-claim speak for themselves  
4 and SFR denies any allegations inconsistent with said statutes.

5 10. The Nevada Supreme Court opinion referenced in paragraph 12 of the cross-claim  
6 speaks for itself, and SFR denies any allegations inconsistent with said opinion.

7 11. Answering paragraph 6 of the complaint, SFR admits upon information and belief, that  
8 SFR purchased the Property on February 20, 2013 at an association foreclosure sale. The  
9 remaining allegations in paragraph 6 of the third party complaint call for a legal conclusion,  
10 therefore, no answer is required. To the extent an answer is required, SFR denies the factual  
11 allegations contained in paragraph 6 of the third party complaint.

12 **The HOA Lien and Foreclosure**

13 12. Answering paragraph 13 of the cross-claim, SFR admits that it purchased the Property  
14 on February 20, 2013 at the Association foreclosure sale. The document referenced in paragraph  
15 13 of the cross-claim speaks for itself, and SFR denies any allegations inconsistent with said  
16 document. Upon information and belief, Carias failed to pay the Association and Alessi &  
17 Koenig foreclosed on the Association's behalf. SFR is without sufficient knowledge or  
18 information to form a belief as to the truth of the remaining factual allegations contained in  
19 paragraph 13 of the cross-claim, and therefore denies said allegations.

20 13. Answering paragraph 14 of the cross-claim, the allegation regarding the maximum  
21 amount the Association "could claim had super- priority over the BANK's deed of trust," calls  
22 for a legal conclusion, therefore, no answer is required. To the extent an answer is required to  
23 said allegation, SFR answers: deny. The documents referenced in paragraph 14 of the  
24 complaint speak for themselves, and SFR denies any allegations inconsistent with said  
25 documents. SFR is without sufficient knowledge or information to form a belief as to the truth  
26 of the remaining factual allegations in paragraph 14, and therefore denies the same.

27 14. The allegations in paragraph 15 of the cross-claim call for a legal conclusion therefore,  
28 no answer is required. To the extent an answer is required, SFR denies said allegations. The

1 documents referenced in paragraph 15 of the complaint speak for themselves, and SFR denies  
2 any allegations inconsistent with said documents.

3 15. The allegations in paragraph 16 of the cross-claim regarding “tender” and “value” call  
4 for a legal conclusion therefore, no answer is required. To the extent an answer is required, SFR  
5 denies said allegations. SFR admits that Alessi proceeded with the foreclosure of the subject  
6 property. SFR is without sufficient knowledge or information to form a belief as to the truth of  
7 the remaining factual allegations contained in paragraph 16 of the cross-claim, and therefore  
8 denies said allegations.

9 16. The allegations in paragraphs 17, 19, 20, and 21 of the cross-claim calls for a legal  
10 conclusion therefore, no answer is required. To the extent an answer is required, SFR denies the  
11 factual allegations contained in paragraphs 17, 19, 20, and 21 of the cross-claim.

12 17. SFR denies the allegations in paragraph 18 of the cross-claim.

13 18. Answering paragraph 22 of the cross-claim, SFR denies that a note is a security interest.  
14 SFR admits it is taking the position that the Association’s foreclosure sale extinguished the  
15 Bank’s security interest in the Property.

16 19. Answering paragraph 23 of the cross-claim, SFR denies that a note is a security interest  
17 or that its ownership interest is merely “alleged.” SFR admits it is taking the position that SFR  
18 owns title to the Property free and clear of the Bank’s deed of trust.

19 20. Answering paragraph 24 of the cross-claim, SFR denies that a note is a security interest.  
20 SFR admits that the Association’s sale transferred title to SFR and denies the remaining factual  
21 allegations in paragraph 24 of the cross-claim.

22 **FIRST CAUSE OF ACTION**

23 **(Declaratory Relief)**

24 21. SFR repeats and realleges its answers to paragraphs 1 through 24 of the cross-claim as  
25 though fully set forth herein.

26 22. The allegations contained in paragraphs 26, 27, 28 and 29 of the cross-claim call for a  
27 legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR  
28 denies the factual allegations contained in paragraphs 26, 27, 28 and 29 of the cross-claim.

23. SFR denies the factual allegations contained in paragraph 30 of the cross-claim.

**SECOND CAUSE OF ACTION**

**(Quiet Title)**

24. SFR repeats and realleges its answers to paragraphs 1 through 30 of the cross-claim as though fully set forth herein.

25. The allegations contained in paragraphs 32, 33, 34 and 35 of the cross-claim call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraphs 32, 33, 34 and 35 of the third party complaint.

26. SFR denies the factual allegations contained in paragraph 36 of the cross-claim.

**THIRD CAUSE OF ACTION**

**(Wrongful Foreclosure)**

27. SFR repeats and realleges its answers to paragraphs 1 through 36 of the cross-claim as though fully set forth herein.

28. The allegations contained in paragraphs 38, 39, 40, 41, 42 and 43 of the cross-claim call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraphs 38, 39, 40, 41, 42 and 43 of the third party complaint.

29. SFR denies the factual allegations contained in paragraph 44 of the cross-claim.

**AFFIRMATIVE DEFENSES**

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

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

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

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



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

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

4 7. BANA's causes of action are barred in whole or in part by the applicable statutes of  
5 limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, and ratification.

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

7 9. BANA has no standing to enforce the first deed of trust and the underlying promissory  
8 note.

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

11 11. BANA did not satisfy the super-priority portion of the Association's lien by allegedly  
12 sending a check for less than the amount requested from the Association and placing conditions  
13 on acceptance of the check.

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

18 DATED May 8th, 2015.

**HOWARD KIM & ASSOCIATES**

/s/Diana S. Cline

HOWARD C. KIM, ESQ.

Nevada Bar No. 10386

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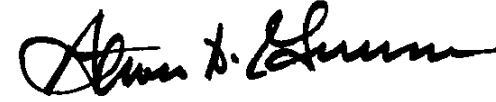
Attorneys for SFR Investments Pool 1, LLC

**CERTIFICATE OF SERVICE**

I I HEREBY CERTIFY that on this 8th day of May, 2015, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing Answer to Bank of America, N.A.'s Cross-Claim to the following parties:

<b>Akerman LLP</b>			
<b>Name</b>	<b>Email</b>	<b>Select</b>	
Akerman Las Vegas Office	<a href="mailto:akermanlas@akerman.com">akermanlas@akerman.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Darren T. Brenner, Esq.	<a href="mailto:darren.brenner@akerman.com">darren.brenner@akerman.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Tenesa Scaturro, Esq.	<a href="mailto:tenesa.scaturro@akerman.com">tenesa.scaturro@akerman.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Alessi &amp; Koenig</b>			
<b>Name</b>	<b>Email</b>	<b>Select</b>	
A&K eserve	<a href="mailto:eserve@alessikoenig.com">eserve@alessikoenig.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Bradley Bace	<a href="mailto:brad@alessikoenig.com">brad@alessikoenig.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Law Office of Ladine Oravetz</b>			
<b>Name</b>	<b>Email</b>	<b>Select</b>	
Ladine Oravetz	<a href="mailto:ladineo@aol.com">ladineo@aol.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

/s/ Jody Foote  
An Employee of Howard Kim & Associates



CLERK OF THE COURT

1 **ANS**

2 Steven T. Loizzi, Jr., Esq.

3 Nevada Bar No. 10920

4 **ALESSI & KOENIG, LLC**

5 9500 W. Flamingo, Suite 205

6 Las Vegas, Nevada 89147

7 Phone: (702) 222-4033

8 Fax: (702) 222-4043

9 steve@alessikoenig.com

10 Attorney for Plaintiff

11 **ALESSI & KOENIG, LLC and**

12 **Counter-Defendant**

13 **SUTTER CREEK HOMEOWNERS**

14 **ASSOCIATION**

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 **ALESSI & KOENIG, LLC, a Nevada**  
18 **limited liability company**

19 **Plaintiff,**

20 **vs.**

21 **ARMANDO A. CARIAS, an individual,**  
22 **BANK OF AMERICA, N.A., SUCCESSOR**  
23 **BY MERGER TO BAC HOME LOANS**  
24 **SERVICING, LP FKA COUNTRYWIDE**  
25 **HOME LOANS SERVICING, LP, unknown**  
26 **entity, DOES INDIVIDUALS I-X, inclusive,**  
27 **and ROE CORPORATIONS XI-XX inclusive,**

28 **Defendants.**

Case No. A-13-684501-C

Dept. No. XXI

**ALESSI & KOENIG, LLC and**  
**SUTTER CREEK HOMEOWNERS**  
**ASSOCIATION'S ANSWER TO BANK**  
**OF AMERICA, N.A.'S**  
**COUNTERCLAIM AND CROSS-**  
**CLAIM**

1 BANK OF AMERICA, N.A., SUCCESSOR  
2 BY MERGER TO BAC HOME LOANS  
3 SERVICING, LP FKA COUNTRYWIDE  
4 HOME LOANS SERVICING, LP, a National  
Association,

5 Cross-Claimant,

6 vs.

7 ARMANDO A. CARIAS, an individual; DOES  
8 1 through 10 and ROE BUSINESS ENTITIES  
1 through 10,

9 Cross-Defendants.

10  
11 BANK OF AMERICA, N.A., SUCCESSOR  
12 BY MERGER TO BAC HOME LOANS  
13 SERVICING, LP FKA COUNTRYWIDE  
HOME LOANS SERVICING, LP, a National  
Association,

14 Cross-Claimant,

15 vs.

16 SFR INVESTMENTS POOL 1, LLC, a  
17 domestic Limited Liability Company, SUTTER  
18 CREEK HOMEOWNERS' ASSOCIATION,  
19 an unknown entity, ALESSI & KOENIG, LLC,  
20 a domestic Limited Liability Company, and  
DOES 1 through 10, and ROE BUSINESS  
ENTITIES 1 through 10,

21 Cross-Defendants.

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

3 Counter-Claimant,

4 vs.

5 BANK OF AMERICA, N.A., SUCCESSOR  
6 BY MERGER TO BAC HOME LOANS  
7 SERVICING, LP FKA COUNTRYWIDE  
8 HOME LOANS SERVICING, LP, a national  
9 association; ARMANDO A. CARIAS, an  
individual; DOES 1 through 10 and ROE  
BUSINESS ENTITIES 1 through 10 inclusive,

10 Counter-Defendant/Cross-Defendants.  
11

12 **ALESSI & KOENIG, LLC and SUTTER CREEK HOMEOWNERS ASSOCIATION'S**  
13 **ANSWER TO BANK OF AMERICA, N.A.'S COUNTERCLAIM AND CROSS-CLAIM**

14 COME NOW, Cross-Defendants SUTTER CREEK HOMEOWNERS' ASSOCIATION  
15 and ALESSI & KOENIG, LLC (hereinafter collectively referred to as "Cross-Defendants"), by  
16 and through their attorney of record, Steven T. Loizzi, Jr., Esq. of ALESSI & KOENIG, LLC,  
17 and files their Answer to Cross-Claimant, BANK OF AMERICA, N.A.'S COUNTERCLAIM  
18 AND CROSS-CLAIM as follows:  
19

- 20 1. No charging allegations are contained in Paragraph 1 of the Cross-Claim which the  
21 answering Cross-Defendants need reply. To the extent said Paragraph contains any  
22 allegations they are denied.  
23  
24 2. No charging allegations are contained in Paragraph 2 of the Cross-Claim which the  
25 answering Cross-Defendants need reply. To the extent said Paragraph contains any  
26 allegations they are denied.  
27  
28

- 1 3. No charging allegations are contained in Paragraph 3 of the Cross-Claim which the  
2 answering Cross-Defendants need reply. To the extent said Paragraph contains any  
3 allegations they are denied.
- 4 4. Cross-Defendants admit the allegations contained in Paragraph 4 of the Cross-Claim.
- 5 5. Cross-Defendants admit the allegations contained in Paragraph 5 of the Cross-Claim.
- 6 6. No charging allegations are contained in Paragraph 6 of the Cross-Claim which the  
7 answering Cross-Defendants need reply. To the extent said Paragraph contains any  
8 allegations they are denied.
- 9 7. No charging allegations are contained in Paragraph 7 of the Cross-Claim which the  
10 answering Cross-Defendants need reply. To the extent said Paragraph contains any  
11 allegations they are denied.
- 12 8. No charging allegations are contained in Paragraph 8 of the Cross-Claim which the  
13 answering Cross-Defendants need reply. To the extent said Paragraph contains any  
14 allegations they are denied.
- 15 9. No charging allegations are contained in Paragraph 9 of the Cross-Claim which the  
16 answering Cross-Defendants need reply. To the extent said Paragraph contains any  
17 allegations they are denied.
- 18 10. No charging allegations are contained in Paragraph 10 of the Cross-Claim which the  
19 answering Cross-Defendants need reply. To the extent said Paragraph contains any  
20 allegations they are denied.
- 21 11. Cross-Defendants aver that the allegations contained in Paragraph 11 of the Cross-Claim  
22 state legal conclusions for which no response is required by the answering Cross-  
23  
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1 Defendants; provided however, that to the extent said Paragraph does require a response,  
2 Cross-Defendants deny said allegations.

3 12. No charging allegations are contained in Paragraph 12 of the Cross-Claim which the  
4 answering Cross-Defendants need reply. To the extent said Paragraph contains any  
5 allegations they are denied.

6 13. Cross-Defendants admit the allegations contained in Paragraph 13 of the Cross-Claim.

7 14. No charging allegations are contained in Paragraph 14 of the Cross-Claim which the  
8 answering Cross-Defendants need reply. To the extent said Paragraph contains any  
9 allegations they are denied.  
10

11 15. Cross-Defendants deny the allegations contained in Paragraph 15 of the Cross-Claim.

12 16. Cross-Defendants deny the allegations contained in Paragraph 16 of the Cross-Claim.

13 17. Cross-Defendants deny the allegations contained in Paragraph 17 of the Cross-Claim.

14 18. Cross-Defendants deny the allegations contained in Paragraph 18 of the Cross-Claim.

15 19. Cross-Defendants deny the allegations contained in Paragraph 19 of the Cross-Claim.

16 20. Cross-Defendants deny the allegations contained in Paragraph 20 of the Cross-Claim.

17 21. Cross-Defendants deny the allegations contained in Paragraph 21 of the Cross-Claim.

18 22. Cross-Defendants lack sufficient knowledge and information to determine the truth or  
19 falsity of the allegations contained in Paragraph 22 of the Cross-Claim and on this basis  
20 deny each and every allegation.  
21

22 23. Cross-Defendants lack sufficient knowledge and information to determine the truth or  
23 falsity of the allegations contained in Paragraph 23 of the Cross-Claim and on this basis  
24 deny each and every allegation.  
25  
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1 24. Cross-Defendants aver that the allegations contained in Paragraph 24 of the Cross-Claim  
2 state legal conclusions for which no response is required by the answering Cross-  
3 Defendants; provided however, that to the extent said Paragraph does require a response,  
4 Cross-Defendants deny said allegations.

5 25. No charging allegations are contained in Paragraph 25 of the Cross-Claim which the  
6 answering Cross-Defendants need reply. To the extent said Paragraph contains any  
7 allegations they are denied.  
8

9 26. No charging allegations are contained in Paragraph 26 of the Cross-Claim which the  
10 answering Cross-Defendants need reply. To the extent said Paragraph contains any  
11 allegations they are denied.  
12

13 27. No charging allegations are contained in Paragraph 27 of the Cross-Claim which the  
14 answering Cross-Defendants need reply. To the extent said Paragraph contains any  
15 allegations they are denied.

16 28. No charging allegations are contained in Paragraph 28 of the Cross-Claim which the  
17 answering Cross-Defendants need reply. To the extent said Paragraph contains any  
18 allegations they are denied.  
19

20 29. No charging allegations are contained in Paragraph 29 of the Cross-Claim which the  
21 answering Cross-Defendants need reply. To the extent said Paragraph contains any  
22 allegations they are denied.  
23

24 30. Cross-Defendants deny the allegations contained in Paragraph 30 of the Cross-Claim.

25 31. No charging allegations are contained in Paragraph 31 of the Cross-Claim which the  
26 answering Cross-Defendants need reply. To the extent said Paragraph contains any  
27 allegations they are denied.  
28



1 32. No charging allegations are contained in Paragraph 32 of the Cross-Claim which the  
2 answering Cross-Defendants need reply. To the extent said Paragraph contains any  
3 allegations they are denied.

4 33. Cross-Defendants deny the allegations contained in Paragraph 33 of the Cross-Claim.

5 34. Cross-Defendants aver that the allegations contained in Paragraph 34 of the Cross-Claim  
6 state legal conclusions for which no response is required by the answering Cross-  
7 Defendants; provided however, that to the extent said Paragraph does require a response,  
8 Cross-Defendants deny said allegations.  
9

10 35. Cross-Defendants deny the allegations contained in Paragraph 35 of the Cross-Claim.

11 36. Cross-Defendants deny the allegations contained in Paragraph 36 of the Cross-Claim.

12 37. No charging allegations are contained in Paragraph 37 of the Cross-Claim which the  
13 answering Cross-Defendants need reply. To the extent said Paragraph contains any  
14 allegations they are denied.  
15

16 38. Cross-Defendants deny the allegations contained in Paragraph 38 of the Cross-Claim.

17 39. Cross-Defendants deny the allegations contained in Paragraph 39 of the Cross-Claim.

18 40. Cross-Defendants deny the allegations contained in Paragraph 40 of the Cross-Claim.

19 41. Cross-Defendants deny the allegations contained in Paragraph 41 of the Cross-Claim.

20 42. Cross-Defendants deny the allegations contained in Paragraph 42 of the Cross-Claim.

21 43. Cross-Defendants deny the allegations contained in Paragraph 43 of the Cross-Claim.

22 44. Cross-Defendants deny the allegations contained in Paragraph 44 of the Cross-Claim.  
23  
24

#### 25 **AFFIRMATIVE DEFENSES**

26 Cross-Defendants affirmatively allege that Cross-Defendants have not yet had a  
27 reasonable opportunity to complete discovery, and facts hereinafter may be discovered which  
28

1 may substantiate other affirmative defenses not listed below. By this Answer to Cross-  
2 Claimant's Cross-Claim, Cross-Defendants waive no affirmative defenses and reserve their  
3 right to amend the Answer to insert any subsequently discovered affirmative defenses.

4 **FIRST AFFIRMATIVE DEFENSE**  
5 **(Failure to State a Claim)**

6 Cross-Defendants allege that Cross-Claimant has failed to state facts sufficient to  
7 constitute any cause of action against Cross-Defendant.

8 **SECOND AFFIRMATIVE DEFENSE**  
9 **(Failure to Mitigate Damages)**

10 Cross-Defendants allege that Cross-Claimant's claims are barred in whole or in part  
11 because of Cross-Claimant's failure to take reasonable steps to mitigate damages, if any.

12 **THIRD AFFIRMATIVE DEFENSE**  
13 **(Equitable Defense, Laches, Unclean Hands, Failure to do Equity)**

14 Cross-Defendants allege that Cross-Claimant's claims are barred by the equitable  
15 doctrine of laches, unclean hands, and failure to do equity.

16 **FOURTH AFFIRMATIVE DEFENSE**  
17 **(Breach of Contract)**

18 Cross-Defendants allege that Cross-Claimant substantially and materially breached the  
19 obligations/contract complained of prior to commencement of this action which conduct  
20 extinguishes the right to maintain this action.

21 **FIFTH AFFIRMATIVE DEFENSE**  
22 **(Bad Faith)**

23 Cross-Defendants allege that Cross-Claimant's Cross-Claim is filed in bad faith and has  
24 no merit.

25 ///

26 ///

1                                   **SIXTH AFFIRMATIVE DEFENSE**  
2                                   **(Cross-Defendant acted in Good Faith)**

3                   Cross-Defendants are excused from any and all liability under the facts alleged in Cross-  
4 Claimant's claims for relief because at all material times, Cross-Defendants acted in good faith  
5 and conducted all material transactions in good faith.

6                                   **SEVENTH AFFIRMATIVE DEFENSE**  
7                                   **(Cross-Claimant Not Entitled to Relief)**

8                   Cross-Defendants deny that Cross-Claimant is entitled to any relief for which they pray.

9                                   **EIGHTH AFFIRMATIVE DEFENSE**  
10                                  **(Privilege)**

11                  Cross-Defendants allege that Cross-Claimant's claims are barred, in whole or in part, on  
12 the ground that Cross-Defendants' conduct as alleged in Cross-Claimant's Cross-Claim was  
13 privileged.

14                                  **NINTH AFFIRMATIVE DEFENSE**  
15                                  **(Cross-Claimant's Own Negligence)**

16                  Cross-Claimant is barred from recovery, or said recovery, if any, must be  
17 proportionately reduced, as any injury or damage allegedly suffered by Cross-Claimant  
18 occurred as a proximate result of the negligence on their own part, in that Cross-Claimant failed  
19 to exercise ordinary care on their own behalf at the time and place alleged.

20                                  **TENTH AFFIRMATIVE DEFENSE**  
21                                  **(Comparative Fault)**

22                  Cross-Defendants allege that Cross-Claimant was careless and negligent with respect to  
23 all matters alleged by them in their Cross-Claim and thus was comparatively at fault and  
24 proximately caused their own damages. Accordingly, any damages otherwise recoverable by  
25 Cross-Claimant, if any, should be reduced in proportion to their own negligence or omission.  
26  
27  
28

**ELEVENTH AFFIRMATIVE DEFENSE**  
**(Assumption of Risk)**

Cross-Claimant, at all material times, calculated, knew and understood the risks inherent in the situations, actions, omissions and transactions upon which they now base their various claims for relief, and with such knowledge, Cross-Claimant undertook and thereby assumed such risk and is consequently barred from all recovery by such assumption of risk.

**TWELFTH AFFIRMATIVE DEFENSE**  
**(No Proximate Cause)**

The acts or omissions of Cross-Defendants alleged in Cross-Claimant's claims for relief were not a proximate cause of the loss or damage for which Cross-Claimant seeks recovery.

**THIRTEENTH AFFIRMATIVE DEFENSE**  
**(Suffered No Damages)**

Cross-Defendants allege that Cross-Claimant's claims are barred because Cross-Claimant suffered no damages as a result of the allegations in the Cross-Claim.

**FOURTEENTH AFFIRMATIVE DEFENSE**  
**(Cross-Claimant's Omissions)**

Cross-Defendants allege that, by reason of their own acts and omissions, Cross-Claimant has waived their right to assert the claims they have asserted against Cross-Defendants.

**FIFTEENTH AFFIRMATIVE DEFENSE**  
**(Additional Affirmative Defenses)**

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

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///


**PRAYER FOR RELIEF**

WHEREFORE, Cross-Defendants pray for judgment as follows:

1. That Cross-Claimant recover nothing on account of the claims made in the Cross-Claim;
2. For reasonable attorney's fees and costs of suit incurred herein;
3. For such other and further relief as the court may deem just and proper.

DATED this 7<sup>th</sup> day of May, 2015.

ALESSI & KOENIG, LLC

  
\_\_\_\_\_  
Steven T. Loizzi, Jr., Esq.  
Nevada Bar No. 10920  
ALESSI & KOENIG, LLC  
9500 W. Flamingo, Suite #205  
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Phone: (702) 222-4033  
Fax: (702) 222-4043  
*Attorney for Cross-Defendants*  
**SUTTER CREEK HOMEOWNERS'**  
**ASSOCIATION AND**  
**ALESSI & KOENIG, LLC**

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

  
An employee of Altissi & Koenig

1 **IAFD**

2 Steven T. Loizzi, Jr., Esq.  
3 Nevada Bar No. 10920  
4 ALESSI & KOENIG, LLC  
5 9500 W. Flamingo, Suite 205  
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7 Phone: (702) 222-4033  
8 Fax: (702) 222-4043  
9 steve@alessikoenig.com  
10 Attorney for Plaintiff  
11 ALESSI & KOENIG, LLC and  
12 Counter-Defendant  
13 SUTTER CREEK HOMEOWNERS  
14 ASSOCIATION

15 **DISTRICT COURT**  
16 **CLARK COUNTY, NEVADA**

17 ALESSI & KOENIG, LLC, a Nevada  
18 limited liability company

19 Plaintiff,

20 vs.

21 ARMANDO A. CARIAS, an individual,  
22 BANK OF AMERICA, N.A., SUCCESSOR  
23 BY MERGER TO BAC HOME LOANS  
24 SERVICING, LP FKA COUNTRYWIDE  
25 HOME LOANS SERVICING, LP, unknown  
26 entity, DOES INDIVIDUALS I-X, inclusive,  
27 and ROE CORPORATIONS XI-XX inclusive,

28 Defendants.

29 AND RELATED CLAIMS.

Case No. A-13-684501-C  
Dept. No. XXI

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

31 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for  
32 parties appearing in the above entitled action as indicated below:  
33  
34

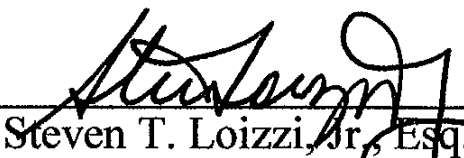
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SUTTER CREEK HOMEOWNERS ASSOCIATION \$223.00

**TOTAL REMITTED: (Required)** \$223.00

DATED this 7<sup>th</sup> day of May, 2015.

ALESSI & KOENIG, LLC

  
\_\_\_\_\_  
Steven T. Loizzi, Jr., Esq.  
Nevada Bar No. 10920  
ALESSI & KOENIG, LLC  
9500 W. Flamingo, Suite 205  
Las Vegas, Nevada 89147  
Attorney for Plaintiff  
ALESSI & KOENIG, LLC and  
Counter-Defendant  
SUTTER CREEK HOMEOWNERS  
ASSOCIATION



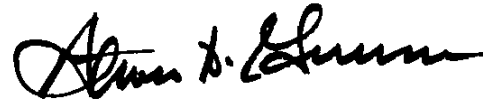
**CERTIFICATE OF SERVICE**

I hereby certify that on the 11 day of May, 2015, I caused service of a true and correct copy of the foregoing **INITIAL APPEARANCE FEE DISCLOSURE** to be made by depositing same in the United States Mail in Las Vegas, Nevada, postage prepaid, addressed as follows, and via the Court's mandatory electronic service system:

Darren T. Brenner, Esq.  
Tenesa S. Scaturro, Esq.  
Akerman, LLP  
1160 Town Center Drive, Suite 330  
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Fax: (702) 380-8572  
*Attorneys for Defendants Bank of America,  
N.A.*

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Jacqueline A. Gilbert, Esq.  
Howard Kim & Associates  
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Tel: (702) 485-3300  
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*Attorneys for Defendant/Counter-claimant  
SFR Investments Pool 1, LLC*

  
An employee of Alessi & Koenig



CLERK OF THE COURT

1 **MSJD**

2 **DARREN T. BRENNER, ESQ.**

3 Nevada Bar No. 8386

4 **AKERMAN LLP**

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6 Las Vegas, NV 89144

7 Telephone: (702) 634-5000

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9 Email: [Darren.brenner@akerman.com](mailto:Darren.brenner@akerman.com)

10 *Attorneys for Defendant Bank of America, N.A., as*  
11 *successor by merger to BAC Home Loans Servicing,*  
12 *LP FKA Countrywide Home Loans Servicing, LP*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 **ALESSI & KOENIG, LLC,**

16 Plaintiff,

17 v.

18 **BANK OF AMERICA, N.A., SUCCESSOR BY**  
19 **MERGER TO BAC HOME LOANS**  
20 **SERVICING, LP FKA COUNTRYWIDE**  
21 **HOME LOANS SERVICING, LP, unknown**  
22 **entity, DOES INDIVIDUALS 1-X, inclusive, and**  
23 **ROE CORPORATIONS XI-XXX, inclusive,**

24 Defendants.

25 **BANK OF AMERICA, N.A., SUCCESSOR BY**  
26 **MERGER TO BAC HOME LOANS**  
27 **SERVICING, LP FKA COUNTRYWIDE**  
28 **HOME LOANS SERVICING, LP, a National**  
Association,

Cross-Claimant,

v.

**ARMANDO A. CARIAS, an individual, DOES**  
**INDIVIDUALS 1 through 10, inclusive, and**  
**ROE BUSINESS ENTITIES 1 through 10,**  
**inclusive,**

Cross-Defendants.

**BANK OF AMERICA, N.A., SUCCESSOR BY**  
**MERGER TO BAC HOME LOANS**  
**SERVICING, LP FKA COUNTRYWIDE**  
**HOME LOANS SERVICING, LP, a National**

Case No.: A-13-684501-C  
Dept.: XXI

**DEFENDANT BANK OF AMERICA, N.A.'S**  
**MOTION FOR SUMMARY JUDGMENT**

{36511022;1}

**AKERMAN LLP**  
1160 TOWN CENTER DRIVE, SUITE 330  
LAS VEGAS, NEVADA 89144  
TEL.: (702) 634-5000 – FAX: (702) 380-8572

Association,

Cross-Claimant,

v.

SFR INVESTMENTS POOL 1, LLC, a domestic  
Limited Liability Company, SUTTER CREEK  
HOMEOWNERS' ASSOCIATION, an unknown  
entity, and DOES 1 through 10 and ROE  
BUSINESS ENTITIES 1 through 10,

Cross-Defendants.

Defendant Bank of America, N.A., as successor by merger to BAC Home Loans Servicing,  
LP f/k/a Countrywide Home Loans Servicing, LP (**BANA** or **Defendant**) moves for summary  
judgment against SFR Investments Pool 1, LLC (**SFR**).

DATE: October 30th 2015.

**AKERMAN LLP**

/s/ Darren T. Brenner

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Countrywide Home Loans Servicing, LP*

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that Defendant Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP will bring the foregoing **DEFENDANT BANK OF AMERICA, N.A.'S MOTION FOR SUMMARY JUDGMENT** for hearing before the Twenty-First Judicial District Court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155, on the 9 day of Dec 2015, at the hour of 9:30a o'clock a.m.

DATE: October 30th 2015.

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

This is an HOA interpleader and quiet title action. Alessi & Koenig, LLC (**Plaintiff**) alleges that it conducted an HOA foreclosure sale of real property and seeks to deposit the proceeds of the sale with the Court for distribution. BANA asserted cross-claims against the purported purchaser of the property at the HOA sale, SFR Investments Pool 1, LLC (**HOA Purchaser**), for quiet title, declaratory relief, and unjust enrichment. BANA is entitled to summary judgment against SFR because it tendered payment of the HOA's super-priority lien prior to the foreclosure sale, thereby extinguishing the super-priority portion of the HOA's lien. A tender redeems the limited priority given to the HOA lien. *See* "The Six-Month Limited Priority Lien for Association Fees Under the Uniform Common Interest Ownership Act", pg. 12 (June 1, 2013); Department of Business and Industry, Real Estate Division, Advisory Opinion 13-01. BANA's attempted tender redeemed its lien priority expressly given to it under NRS 116.3116(2)(b). The HOA, however, *improperly rejected BANA's tender and sold the property for a commercially unreasonable value*. Consequently, to the extent the HOA Purchaser received any interest in the subject property at the HOA's foreclosure sale, that interest is subordinate to BANA's senior deed of trust.

BANA is also entitled to summary judgment on its cross-claims and Plaintiff's complaint because NRS 116, *et seq.* (the **HOA Lien Statute**) is facially unconstitutional for reasons recognized by a broad consensus of federal and state court decisions. In particular, the HOA Lien Statute is unconstitutional for failing to require that mortgagees receive actual notice of HOA foreclosure sales. The Due Process Clause requires, under *all* circumstances, that a statute authorizing extinguishment of a lien in a foreclosure sale also *mandate* actual notice to those lienholders. No provision of NRS 116 mandates actual notice to mortgagees prior to an HOA's foreclosure sale; indeed by substituting a request-notice or "opt-in" notice provision for an actual-notice provision, the statute effectively waives actual notice.

Finally, BANA is also entitled to summary judgment because the HOA foreclosure sale is void based on the doctrine of commercial reasonableness. The property sold for \$21,000.00, which

1 is 21.8% of the value of the property as determined by BANA's expert. This wide discrepancy in  
2 payment should be closely scrutinized by the Court, and demonstrates that the foreclosure sale was  
3 unreasonable as a matter of law. For these reasons, the Court should grant summary judgment in  
4 favor of BANA against SFR.

## 5 II.

### 6 STATEMENT OF FACTS

7 1. On or about October 27, 2010, Armando Carias (**Borrower**) purchased real property  
8 located at 3617 Diamond Spur Avenue, North Las Vegas, Nevada 89032 (the **Property**) via a loan  
9 in the amount of \$74,642, which was secured by a Deed of Trust (the **Deed of Trust**). On October  
10 27, 2010, Borrower executed this Deed of Trust in favor of W.J. Bradley Mortgage Corp. (**Bradley**  
11 **Mortgage**), with Mortgage Electronic Registration System, Inc. (**MERS**) as the beneficiary.  
12 Bradley Mortgage recorded the Deed of Trust on November 3, 2010. A true and correct copy of the  
13 Deed of Trust is attached as **Exhibit A**.

14 2. On March 2, 2012, MERS assigned the Deed of Trust to Bank of America, N.A.,  
15 successor by merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing,  
16 LP. BANA recorded the Assignment of Deed of Trust on January 26, 2012. A true and correct copy  
17 of the Assignment to BAC Home Loans is attached as **Exhibit B**.

18 3. On February 23, 2012, Sutter Creek Homeowners Association (**HOA**), through its  
19 agent Plaintiff, recorded a Notice of Claim of Delinquent Assessment Lien (**Lien**). The Lien stated  
20 that the amount due to the HOA was \$965.00, which included assessments, late fees, interest, and  
21 fees. A true and correct copy of the Lien is attached as **Exhibit C**. The Lien neither identified the  
22 super-priority amount claimed by the HOA, nor described the "deficiency in payment" required by  
23 NRS 116.31162(1)(b)(1).

24 4. On May 8, 2012, the HOA, through Plaintiff, recorded a Notice of Default and  
25 Election to Sell Under Homeowners Association Lien. The Notice stated the amount due to the HOA  
26 was \$2,290, which included assessments, dues, interest, and fees. A true and correct copy of the  
27 Notice of Default is attached as **Exhibit D**. The Notice neither identified the super-priority amount  
28

1 claimed by the HOA, nor described the “deficiency in payment” required by NRS  
2 116.31162(1)(b)(1).

3 5. By letter dated June 5, 2010<sup>2</sup>, after the Notice of Default was recorded, BANA,  
4 through its counsel at Miles Bauer Bergstrom & Winters (**Miles Bauer**) contacted Plaintiff, as agent  
5 for the HOA, and requested a payoff ledger detailing the amounts owed to the HOA in an attempt to  
6 determine the super-priority amount. BANA sought this information so that it could tender the full  
7 super-priority amount to the Plaintiff. A true and correct copy of this letter is attached as **Exhibit 1**  
8 to **Exhibit E**.

9 6. The HOA responded on June 15, 2012, attaching a ledger showing the monthly  
10 assessment amount was \$75.00 per month through January 1, 2012 and \$80.00 per month after  
11 January 1, 2012. A true and correct copy of this letter is attached as **Exhibit 2** to **Exhibit E**.

12 7. On June 28, 2012, BANA, through Miles Bauer, tendered payment of \$720.00  
13 (representing 9 months assessments at \$80.00 per month) to Plaintiff on or about June 28, 2012. A  
14 true and correct copy of this letter is attached as **Exhibit 3** to **Exhibit E**.

15 8. The HOA, through Plaintiff, received and then ultimately rejected BANA’s full  
16 super-priority tender. See **Exhibit 4** and **Exhibit 5** to **Exhibit E**.

17 9. Instead, the HOA, through Plaintiff, recorded a Notice of Trustee’s Sale on January  
18 22, 2013, setting the sale for February 20, 2013. The Notice stated the amount due to the HOA was  
19 \$4,285.00. A true and correct copy of the Notice of Sale is attached as **Exhibit F**. The Notice of  
20 Sale neither identified the super-priority amount claimed by the HOA, nor described the “deficiency  
21 in payment” required by NRS 116.31162(1)(b)(1).

22 10. On February 20, 2013, the HOA, through Plaintiff, non-judicially foreclosed on the  
23 Property, selling the Property to the HOA Purchaser for \$21,000.00. The HOA Purchaser recorded  
24 the Trustee’s Deed Upon Sale on February 26, 2013. A true and correct copy of the Trustee’s Deed  
25 is attached as **Exhibit G**.

## III.

STANDARD OF REVIEW

Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Nev. R. Civ. P. 56(c); *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1030 (Nev. 2005). The moving party may discharge the burden of demonstrating the absence of a genuine issue of material fact by pointing out the absence of evidence to support the nonmoving party's case. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 332 (1986); *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 172 P.3d 131, 134 (Nev. 2007). Although the court must view the facts and inferences therefrom in a light most favorable to the nonmoving party, in order to withstand a motion for summary judgment, the nonmoving party must establish specific facts showing that there is a genuine issue of material fact for trial. As such, a party opposing a motion for summary judgment may not rest on the mere allegations or denials of the pleadings, but must set forth or point to specific evidence showing that there is a genuine issue of material fact. Further, the existence of a "mere scintilla of evidence" in support of the nonmoving party's position is insufficient to overcome a motion for summary judgment. *See Gunning v. Cooley*, 281 U.S. 90, 94 (1930); *British Airways Bd. v. Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978); *Ray v. Continental W. Ins. Co.*, 920 F. Supp. 1094, 1100 (D. Nev. 1996).

As discussed below, the Court should grant BANA's motion for summary judgment for at least three reasons: (1) BANA's super-priority tender extinguished that portion of the HOA's lien prior to the foreclosure sale; (2) the HOA Lien Statute is facially unconstitutional under the Due Process Clause; and (3) the HOA's sale of the property was commercially unreasonable.

## IV.

ARGUMENTA. BANA's Tender Extinguished the Super Priority Portion of the HOA's Lien.

BANA is entitled to summary judgment because its tender to the HOA of the super-priority amount extinguished that portion of the HOA's lien prior to the foreclosure sale. In *SFR Investments*, the Nevada Supreme Court explained that a junior lienholder has the option of paying off a super-priority lien to avert loss of its security. *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d



1 408, 414 (Nev. 2014). Here, BANA paid the super-priority amount prior to the sale, and thus  
2 preserved the first-priority position of its Deed of Trust.

3 Both the drafters of the HOA Lien Statute and the Nevada agency charged with its  
4 enforcement agree with BANA's position—tender of the super-priority amount preserves a first deed  
5 of trust holder's interest in the foreclosed property. The drafters of the Uniform Common Interest  
6 Ownership Act (UCIOA), adopted by Nevada as the HOA Lien Statute, contemplated this result  
7 when drafting the super-priority provision, stating that "[a]s a practical matter, secured lenders will  
8 most likely pay the [nine] months assessments demanded by the association rather than having the  
9 association foreclose on the unit." 1982 UCIOA § 3116 cmt. 1 (cited with approval in *SFR*  
10 *Investments*, 334 P.3d at 414).<sup>1</sup> Further, the Nevada Real Estate Division of the Department of  
11 Business and Industry (NRED), the agency charged with administering the HOA Lien Statute, has  
12 explained "The super priority lien based on assessments may not exceed 9 months of assessments as  
13 reflected in the association's budget, and it may not include penalties, fees, late charges, fines or  
14 interest." 13-01 Op. Dep't of Bus. & Indus., Real Estate Div. 18 (2012) (hereinafter **NRED Letter**);  
15 *see also Folio v. Briggs*, 656 P.2d 842, 844 (Nev. 1983) (explaining that courts "are obligated to  
16 attach substantial weight to [an] agency's interpretation" of a statute it is charged with  
17 administering). This super-priority amount is equal to the amount of assessments that "would have  
18 become due in the absence of acceleration during the nine months immediately preceding institution  
19 of an action to enforce the lien. . . ." *See* NRS 116.3116(2); *accord* NRED Letter (explaining that  
20 "the total amount of the super priority lien attributable to assessments is no more than 9 months of  
21 the monthly assessments reflected in the association's budget.").

22 In this case, BANA tendered the super-priority amount to Plaintiff prior to the foreclosure  
23 sale. *See* Exhibit E. Shortly after Plaintiff recorded the Notice of Default and Election to Sell,  
24 BANA, through its counsel at Miles Bauer, contacted Plaintiff and requested a payoff ledger  
25 detailing the super-priority amount of the HOA's lien. In accordance with the payoff ledger, BANA

26 <sup>1</sup> The Nevada Supreme Court cited to the official comments to UCIOA extensively when evaluating  
27 the HOA Lien Statute in *SFR Investments*, 334 P.3d at 412 ("An official comment written by the  
28 drafters of a statute and available to the legislature before the statute is enacted has considerable  
weight as an aid to statutory construction.").

1 calculated the super-priority portion and tendered a check to Plaintiff on or about June 28, 2012 in  
2 the amount of \$720.00. *See id.* By tendering the full super-priority amount prior to the foreclosure,  
3 BANA extinguished the super-priority portion of the HOA's lien, thus redeeming the first-priority  
4 position of BANA's Deed of Trust prior to the foreclosure sale.

5 Given that the super-priority portion of the HOA's lien was extinguished prior to the  
6 foreclosure sale, the HOA Purchaser's interest in the Property, if any, is subordinate to BANA's  
7 senior Deed of Trust pursuant to NRS 116.31164(3)(a). This provision provides that the purchaser  
8 at an HOA foreclosure receives "a deed without warranty which conveys to the grantee *all title of*  
9 *the unit's owner to the unit.*" NRS 116.31164(3)(a) (emphasis added). Put differently, under  
10 Nevada law, the HOA lost the ability to pass clear title when BANA's tender extinguished the super-  
11 priority lien. According to *SFR Investments*, the drafters of the UCIOA, and the NRED, tender of  
12 the super-priority amount prior to an HOA foreclosure extinguishes the super-priority portion of an  
13 HOA's lien, thus preserving the first-priority position of the respective deed of trust. Because  
14 BANA tendered the full super-priority amount prior to the HOA's foreclosure sale in this case, the  
15 super-priority portion of the HOA's lien was extinguished, preserving the first-priority position of  
16 BANA's Deed of Trust. Consequently, to the extent the HOA Purchaser received any interest in the  
17 Property by way of the HOA foreclosure sale, such interest is junior to BANA's senior Deed of  
18 Trust. Accordingly, this Court should grant BANA's motion for summary judgment.

19 **B. NRS 116 is Facially Unconstitutional under the Due Process Clause.**

20 This Court should grant summary judgment in favor of BANA because NRS Chapter 116 is  
21 facially unconstitutional under the Due Process Clause of the United States Constitution. The HOA  
22 Lien Statute does not mandate actual notice to a deed of trust holder prior to an HOA's foreclosure  
23 of its super-priority lien. Rather, the HOA Lien Statute impermissibly requires those with a security  
24 interest in a Nevada property subject to an HOA lien to "opt-in" to their constitutional protections by  
25 requesting notice prior to the HOA's foreclosure—a requirement that fails to provide the actual  
26 notice guaranteed by the Due Process Clause. As such, the HOA Lien Statute is invalid on its face.

1           1.       **The HOA Lien Statute does not ensure notice and an opportunity to be heard**  
2                   **prior to the elimination of property rights.**

3           The HOA Lien Statute is unconstitutional because it does not ensure that mortgagees with a  
4 potential loss of their property interests will receive notice and an opportunity to be heard.<sup>2</sup> An  
5 “elementary and fundamental requirement of due process . . . is notice reasonably calculated, *under*  
6 *all circumstances*, to apprise interested parties of the pendency of an action and afford them an  
7 opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S.  
8 306, 314 (1950) (emphasis added). The United States Supreme Court has applied this standard in  
9 the same context as this case—where a mortgagee’s property interest was purportedly extinguished  
10 by a non-judicial foreclosure. *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983). The  
11 *Mennonite* Court held that the Due Process Clause required that “[n]otice by mail or other means *as*  
12 *certain to ensure actual notice* [to the mortgagee] is a minimum constitutional precondition” to a  
13 non-judicial foreclosure sale that can extinguish the mortgagee’s interest. *Id.* Put simply, the U.S.  
14 Constitution requires that non-judicial foreclosure statutes mandate actual notice of a pending  
15 foreclosure sale to any mortgagee whose security interest may be extinguished by that foreclosure  
16 sale.

17           Nevada’s HOA Lien Statute does not require that mortgagees be provided with actual notice  
18 of the HOA foreclosure sales that can extinguish their property interests. Instead, mortgagees  
19 receive notice only if they have previously requested notice from the HOA. In NRS 116.31163, the  
20 statute provides that a notice of default and election to sell need be provided only to a mortgagee  
21 who “has requested notice” or “has notified the association” more than thirty days before the  
22 recordation of the notice of default of the existence of a security interest. NRS 116.31163(1)-(2).  
23 Section 116.31165 similarly requires that notice of an HOA foreclosure sale be sent only to those  
24 mortgagees who have requested notice under NRS 116.31163, or those who have “notified the  
25

26  
27 <sup>2</sup> A foreclosure under the HOA Lien Statute alleged to have extinguished a first deed of trust is state  
28 action subject to a due-process challenge. See *Culbertson v. Leland*, 528 F.2d 426 (9th Cir. 1975)  
(holding that a private innkeeper’s seizure of property without notice pursuant to the state  
innkeeper’s lien statute constituted state action and violated due process).

1 association.” NRS 116.31165(1)(b)(1)-(2). A third provision concerning notice of delinquent  
2 assessments does not require notice to mortgagees at all. NRS 116.31162.

3 The bottom line is that the HOA Lien Statute allows for the total extinguishment of the first  
4 deed of trust without any notice to the mortgagee holding that deed. If a mortgagee does not request  
5 notice—or, put differently, fails to opt in to its rights to due process—Nevada law permits the  
6 extinguishment of a first deed of trust without notice. Such a result is in direct contravention of  
7 *Mennonite*, which held that *actual* notice is required in all circumstances where a significant  
8 property interest was subject to extinguishment. “[A] party’s ability to take steps to safeguard its  
9 interests does not relieve the State of its constitutional obligation.” 462 U.S. at 799.

10 While *Mennonite* did not specifically address an opt-in or request-notice provision such as  
11 the one created by Nevada law, a broad consensus has emerged in state and federal courts that such  
12 provisions are unconstitutional under *Mennonite*. The Fifth Circuit, for instance, considered a  
13 Louisiana statute that required notice of a foreclosure sale only to those persons who had filed a  
14 request for such notice in the mortgage records. *Small Engine Shop, Inc. v. Cascio*, 878 F.2d 883,  
15 885-86 (5th Cir. 1989). The Fifth Circuit applied *Mullane* and *Mennonite*, and held that the statute  
16 “as interpreted by the district court, cannot be squared with *Mennonite*’s allocation of notice  
17 burdens.” *Id.* at 890. Moreover, a slew of state-court decisions have reached the same conclusion  
18 regarding the validity of opt-in notice statutes.<sup>3</sup>

19  
20 <sup>3</sup> See, e.g., *Jefferson Tp. v. Block 447A*, 548 A.2d 521, 524 (N.J. 1988) (“We conclude that a  
21 person’s entitlement to the notice required by due process cannot be conditioned on the requirement  
22 that he request it.”); *Wylie v. Patton*, 720 P.2d 649, 655 (Idaho 1986) (holding opt-in scheme  
23 unconstitutional because the Constitution requires notice “both to mortgagees of record who have  
24 requested such a notice and to mortgagees of record who have not requested such a notice”); *Reeder  
25 & Assocs. v. Locker*, 542 N.E.2d 1371, 1373 (Ind. Ct. App. 1989) (“[A]fter *Mennonite* a mortgagee  
26 is required to receive actual notice of a tax sale unless the mortgagee’s address is not reasonably  
27 identifiable.”); *City of Boston v. James*, 530 N.E.2d 1254 (Mass. App. Ct. 1988) (holding that a  
28 “shifting of responsibility” from the foreclosing party to the mortgagee is unconstitutional “even  
when the persons deprived of notice are sophisticated and knowledgeable”); *Seattle First National  
Bank v. Umatilla County*, 713 P.2d 33 (Or. App. 1986) (holding that statute permitting notice only to  
mortgagee who makes request unconstitutional as violating affirmative duty to provide notice); *In re  
Foreclosure of Tax Liens*, 103 A.D.2d 636, 640 (N.Y. App. Div. 1984) (“The Erie County statutes  
create a real danger that a mortgagee will be forever divested of his property without ever learning of  
the impending foreclosure.”); *United States v. Malinka*, 685 P.2d 405, 409 (Okla. Civ. App. 1984)

1 In the context of Nevada’s HOA Lien Statute specifically, the Clark County district courts  
2 have already issued holdings in agreement with *Mennonite* that the HOA Lien Statute is facially  
3 unconstitutional. On May 7, 2015, for instance, Judge Delaney concluded as a matter of law that  
4 NRS Chapter 116 facially violated the Due Process Clause of the Fifth and Fourteenth Amendments  
5 because the “opt-in” notice provisions do not mandate actual notice to lenders before depriving them  
6 of their property rights. *See Octavio Cano-Martinez v. HSBC Bank USA, N.A.*, Dist. Ct. Case No. A-  
7 692027-C (EJDC) (May 7, 2015). According to the court, “[b]ecause the Statute does not require  
8 the foreclosing party to take reasonable steps to ensure that actual notice is provided to interested  
9 parties who are reasonably ascertainable . . . it does not comport with long standing principles of  
10 constitutional due process.” *Id.* at 3. In making this determination, Judge Delaney expressly  
11 rejected the plaintiff’s argument that NRS 107.090 salvaged the constitutionality of Chapter 116.  
12 Specifically, the court noted that “Plaintiff’s construction of NRS 107.090 as mandating notice to  
13 lenders before foreclosure would render superfluous the express ‘opt-in’ notice provisions contained  
14 in NRS 116.3116, in violation of rules of statutory construction.” *Id.* at 4. Judge Walsh and Judge  
15 Israel also recently recognized the validity of this argument in *Zaisan Enterprises LLC v. Green Tree*  
16 *Servicing, LLC*, Dist. Ct. Case No. A-13-690281-C (June 9, 2015), and *Saticoy Bay LLC Series 350*  
17 *Durango 104 v. Wells Fargo Home Mortgage, et al.*, Dist. Ct. Case No. A-13-688410 (June 9,  
18 2015), respectively. Judge Cory joined these holdings as well in mid-June 2015. Thus, as Judges  
19 Delaney, Walsh, Cory, and Israel note, the HOA Lien Statute does not meet minimum due process  
20 requirements. Because the HOA Lien Statute does not require that a mortgagee receive actual notice  
21 prior to a foreclosure sale that purportedly extinguishes its property interest, the statute is invalid on  
22 its face, in turn, invalidating the foreclosure on which Plaintiff’s interpleader action depends.  
23 Accordingly, this Court should grant summary judgment in favor of BANA.

24  
25  
26  
27  
28 (“*Mennonite* clearly places the onus on the State to provide notice notwithstanding that a mortgagee  
might take steps to protect its own interest.”).

2. **The HOA Lien Statute Cannot be Saved by a Broad Reading of the Notice provisions of NRS 116.31168.**

The HOA Lien Statute cannot be saved by a broad interpretation of the language of NRS 116.31168, which implements the notice provisions of NRS 107.090 only to the extent they apply to parties who have requested notice in advance. Section 116.31168 states:

**Foreclosure of liens: *Requests* by interested persons for notice of default and election to sell; right of association to waive default and withdraw notice or proceeding to foreclosure.**

The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed. The *request* must identify the lien by stating the names of the unit's owner and the common-interest community.

NRS 116.31168 (emphasis added). Although the term "request" is not defined, it is a vital component of both the title and the relevant subsection of NRS 116.31168. It refers back to the more specific sections of NRS Chapter 116 that govern notice—for instance, NRS 116.31165, which requires notice of sale be provided to a holder of a first deed of trust or any other lienholder only "if either of them has notified the association, before the mailing of the notice of sale, of the existence of the security interest, lease or contract of sale, as applicable." Similar provisions govern the notice of default and election to sell. *See* NRS 116.31163.

As a matter of statutory construction, a specific statute will control over a general statute. *State Tax Comm'n ex rel. Nev. Dep't of Taxation v. Am. Home Shield of Nev., Inc.*, 254 P.3d 601, 605 (Nev. 2011). Moreover, "[s]tatutes must be construed as a whole, and phrases may not be read in isolation to defeat the purpose behind the statute." *Id.* at 604. Multiple other provisions in Chapter 116 require a request prior to a requirement of notice being effective, and NRS 116.31168 should be read in conjunction with those. The title of the section, describing it as governing requests for notice, is further evidence. *Nev. Power Co. v. Haggerty*, 989 P.2d 870, 878 (Nev. 1999) (noting that a statute's title can reflect legislative intent).

Reading NRS 116.31168 as incorporating broader notice requirements would impermissibly render several sections of Chapter 116 superfluous. "When interpreting a statute, [courts] must give its terms their plain meaning, considering its provisions as a whole so as to read them in a way that

1 would not render words or phrases superfluous or make a provision nugatory.” *S. Nev.*  
 2 *Homebuilders Ass’n v. Clark Cnty.*, 117 P.3d 171, 173 (Nev. 2005). If NRS 116.31168 incorporates  
 3 all of the notice requirements of NRS 107.090, the following subsections of the HOA Lien Statute  
 4 are completely superfluous: NRS 116.31163(1), NRS 116.31163(2), NRS 116.311635(b)(1), NRS  
 5 116.311635(b)(2). In fact, it would even render the second sentence of NRS 116.31168(1)—fully  
 6 half of the subsection—completely meaningless.

7 Notably, other sections of the HOA Lien Statute also refer to NRS 107.090 and NRS  
 8 116.31168(1) as request-notice provisions, rather than actual notice provisions. *See* NRS  
 9 116.31163(1) (requiring that the Notice of Default be sent to those who have “requested notice  
 10 pursuant to NRS 107.090 or NRS 116.31168[.]”). The incorporation of a request-notice statutory  
 11 provision into another request-notice statutory provision cannot cure the HOA Lien Statute’s  
 12 constitutional defect—the fact that it requires mortgagees to request notice of a foreclosure sale that  
 13 purportedly extinguishes their constitutionally protected property interests.

14 **C. The HOA Foreclosure Sale was Commercially Unreasonable.**

15 This Court should also grant BANA’s motion for summary judgment because the HOA  
 16 foreclosure sale was commercially unreasonable as a matter of law. While the HOA Lien Statute  
 17 provides homeowners associations with strong enforcement mechanisms to assure their dues are  
 18 paid, the statute also provides a check to insure those with first deeds of trust are treated fairly—  
 19 specifically, that every foreclosure sale conducted pursuant to the statute must be commercially  
 20 reasonable. Any assertion by Plaintiff or by the HOA Purchaser to the contrary ignores the plain  
 21 language of the statute. Specifically, the HOA Lien Statute requires that HOA foreclosure sales be  
 22 commercially reasonable, stating that “every contract or duty governed by this chapter imposes an  
 23 obligation of good faith in its performance or enforcement.” NRS 116.1113. The drafters of this  
 24 section defined good faith as follows: “[g]ood faith . . . means observance of two standards: ‘honesty  
 25 in fact,’ and observance of reasonable standards of fair dealing. While the term is not defined, [it is]  
 26 derived from and used *in the same manner as* . . . Sections 2-103(i)(b) and 7-404 of the *Uniform*  
 27 *Commercial Code*.” UCIOA § 1-113 cmt. (1982) (emphasis added). Nevada’s version of the UCC  
 28



1 defines “good faith” as “honesty in fact and the observance of *reasonable commercial standards* of  
2 fair dealing.” NRS 104.1201(2)(t) (emphasis added).<sup>4</sup>

3 Nevada courts have confirmed that this commercial reasonableness standard applies to the  
4 disposition of collateral. *See, e.g., Jones v. Bank of New.*, 535 P.2d 1279, 1282 (Nev. 1975).  
5 Similarly, courts in other states interpreting the same UCIOA provision at issue here, UCIOA § 1-  
6 113, have held that the disposition of the collateral in these cases, real property, must be  
7 commercially reasonable. *Will v. Mill Condo. Owner’s Ass’n*, 848 A.2d 336, 340 (Vt. 2004)  
8 (“Although the rules generally applicable to real estate mortgages do not impose a commercial  
9 reasonableness standard on foreclosure sales, the UCIOA does provide for this additional layer of  
10 protection.”).

11 Granting super-priority to nominal HOA liens over first deeds of trust “represents a  
12 ‘significant departure from existing practice.’” *SFR Investments*, 334 P.3d at 412 (quoting the  
13 official comments to UCIOA § 1-116). However, NRS 116.113’s requirement that the foreclosure  
14 of these super-priority liens be commercially reasonable provides first deed of trust holders with  
15 assurance that, in the event of an HOA foreclosure, they will receive some of the value they  
16 bargained for when they provided a mortgage loan. The commercial reasonableness requirement is  
17 provided in the statutory text, was clearly intended by the statute’s drafters, and has been recognized  
18 by other courts interpreting the same statutory provision at issue here. Therefore, the HOA’s sale of  
19 the Property at issue must have been commercially reasonable.

20 Here, the HOA foreclosure sale was not commercially reasonable and not made in good faith.  
21 **First**, the sale lacked good faith because the HOA foreclosed on the property after BANA attempted  
22 to tender payment of the super-priority amount. **Second**, the HOA made no effort to obtain the best  
23 price and made no effort to protect either the borrowers or BANA. The sale price of only  
24 \$21,000.00 for Property worth \$96,000 (see **Exhibit H**) demonstrates that it was not made in good  
25 faith as a matter of law. These indisputable facts evidence of a lack of good faith and commercial  
26

27 <sup>4</sup> As noted by the *SFR Investments* Court, “[a]n official comment written by the drafters of a statute  
28 and available to the legislature before the statute is enacted has considerable weight as an aid to  
statutory construction.” 334 P.3d at 413.



1 unreasonable. **Third**, BANA did not receive proper notice of the sale as required by the HOA  
2 Lien Statute.

3 Given the undisputed facts of what the HOA Purchaser paid for the Property, the amount of  
4 the senior deed of trust, the lack of notice to BANA, and the improper rejection of BANA's tender,  
5 the sale was commercially unreasonable as a matter of law. Summary judgment should be entered in  
6 BANA's favor.

7 **V.**

8 **CONCLUSION**

9 BANA is entitled to summary judgment because the HOA Lien Statute is facially  
10 unconstitutional, and is preempted by federal law. Additionally, summary judgment is warranted  
11 because BANA tendered the super-priority amount of the HOA lien. Finally, summary judgment is  
12 appropriate based on the commercially unreasonable sale price of the property.

13 Dated: October 30, 2015

14 **AKERMAN LLP**

15 /s/ Darren Brenner, Esq.

16 **DARREN BRENNER, ESQ.**

17 Nevada Bar No. 8386

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

18 *Attorneys for Defendants Bank of America, N.A., as*  
19 *successor by merger to BAC Home Loans Servicing,*  
20 *LP f/k/a Countrywide Home Loans Servicing, LP*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 30th day of October, 2015 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **DEFENDANT BANK OF AMERICA, N.A.'S MOTION FOR SUMMARY JUDGMENT** in the following manner:

**(ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

<b>Alessi &amp; Koenig</b>		
<b>Contact</b>	<b>Email</b>	
A&K eserve	<u><a href="mailto:eserve@alessikoenig.com">eserve@alessikoenig.com</a></u>	
<hr/>		
<b>Howard Kim &amp; Associates</b>		
<b>Contact</b>	<b>Email</b>	
Diana S. Cline	<u><a href="mailto:diana@hkimlaw.com">diana@hkimlaw.com</a></u>	
Sarah Felts	<u><a href="mailto:sarah@hkimlaw.com">sarah@hkimlaw.com</a></u>	
Tomas Valerio	<u><a href="mailto:tomas@hkimlaw.com">tomas@hkimlaw.com</a></u>	
<hr/>		
<b>Howard Kim &amp; Associates</b>		
<b>Contact</b>	<b>Email</b>	
E-Service for Howard Kim	<u><a href="mailto:eservice@hkimlaw.com">eservice@hkimlaw.com</a></u>	
<hr/>		
<b>Law Office of Ladine Oravetz</b>		
<b>Contact</b>	<b>Email</b>	
Ladine Oravetz	<u><a href="mailto:ladineo@aol.com">ladineo@aol.com</a></u>	

/s/ Lucille Chiusano  
An employee of AKERMAN LLP

# EXHIBIT A

# EXHIBIT A

{32795192;1}

Inst #: 201011030002714

Fees: \$27.00

N/C Fee: \$25.00

11/03/2010 02:38:27 PM

Receipt #: 565489

Requester:

NEVADA TITLE LAS VEGAS

Recorded By: MSH Pgs: 14

DEBBIE CONWAY

CLARK COUNTY RECORDER

Loan Number: 3000054072

APN#: 139-08-410-014

09-11-029880

Recording Requested by:

Name: W.J. BAILEY MORTGAGE CAPITAL CORP.

Address: 10975 S. STERLING VIEW DRIVE #100

City/State/Zip: SOUTH JORDAN, UTAH 84095

Mail Tax Statements to:

Name: W.J. BAILEY MORTGAGE CAPITAL CORP.

Address: 10975 S. STERLING VIEW DRIVE #100


City/State/Zip: SOUTH JORDAN, UTAH 84095

Please complete Affirmation Statement below:

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

-OR-

☐ I the undersigned hereby affirm that this document submitted for recording contains the social security number of a person or persons as required by law: \_\_\_\_\_  
(State specific law)

 E.O.  
Signature (Print name under signature) Paula L. DiFulvio Title

Deed of Trust  
(Insert Title of Document Above)

NEVADA COVER PAGE  
NEV. REV. STAT. §239B.030  
NVCP.MSC 11/14/07

DocMagic eForms 800-649-1362  
www.docmagic.com

BANA00039

Assessor's Parcel Number: 139-08-410-014

Recording Requested By:  
W.J. BRADLEY MORTGAGE CAPITAL  
CORP.

And When Recorded Return To:  
W.J. BRADLEY MORTGAGE CAPITAL CORP.  
10975 S. STERLING VIEW DRIVE #100  
SOUTH JORDAN, UTAH 84095  
Loan Number: 3000054072

Mail Tax Statements To:  
W.J. BRADLEY MORTGAGE CAPITAL CORP.,  
10975 S. STERLING VIEW DRIVE #100, SOUTH  
JORDAN, UTAH 84095

Mortgage Broker's Name:

NV License #:

\_\_\_\_\_[Space Above This Line For Recording Data]\_\_\_\_\_

## DEED OF TRUST

FHA CASE NO.

332-5283706-703

MIN: 100252230000540720

THIS DEED OF TRUST ("Security Instrument") is made on OCTOBER 15, 2010  
The grantor is ARMANDO A. CARIAS, A SINGLE MAN

("Borrower").

The trustee is WESTERN TITLE COMPANY  
241 RIDGE STREET SUITE 100, RENO, CALIFORNIA 89501 ("Trustee").  
The beneficiary is Mortgage Electronic Registration Systems, Inc. ("MERS") (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns). MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

FHA NEVADA DEED OF TRUST - MERS  
NVDOTZ.FHA 10/20/09

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BANA00040

W.J. BRADLEY MORTGAGE CAPITAL CORP., AN OREGON CORPORATION ("Lender")  
is organized and existing under the laws of OREGON  
and has an address of 10975 S. STERLING VIEW DRIVE #100, SOUTH JORDAN,  
UTAH 84095

Borrower owes Lender the principal sum of SEVENTY-FOUR THOUSAND SIX HUNDRED  
FORTY-TWO AND 00/100 Dollars (U.S. \$ 74,642.00 ).  
This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for  
monthly payments, with the full debt, if not paid earlier, due and payable on NOVEMBER 1, 2040 .  
This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest,  
and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest,  
advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of  
Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower  
irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located  
in CLARK County, Nevada:  
SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".  
A.P.N.: 139-08-410-014.

which has the address of 3617 DIAMOND SPUR AVENUE  
[Street]  
NORTH LAS VEGAS, Nevada 89032 ("Property Address");  
[City] [Zip Code]

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

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

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

FHA NEVADA DEED OF TRUST - MERS  
NVDOTZ.FHA 10/20/09

Page 2 of 10

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BANA00041

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

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. **Monthly Payment of Taxes, Insurance, and Other Charges.** Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 *et seq.*, and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. **Application of Payments.** All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

FIRST, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

SECOND, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

THIRD, to interest due under the Note;

FOURTH, to amortization of the principal of the Note; and

FIFTH, to late charges due under the Note.

4. **Fire, Flood and Other Hazard Insurance.** Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under

the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

**5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.

**6. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

**7. Charges to Borrower and Protection of Lender's Rights in the Property.** Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement at the Note rate, and at the option of Lender shall be immediately due and payable.



Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

8. Fees. Lender may collect fees and charges authorized by the Secretary.

9. Grounds for Acceleration of Debt.

(a) Default. Lender may, except as limited by regulations issued by the Secretary in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
- (ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.

(b) Sale Without Credit Approval. Lender shall, if permitted by applicable law (including section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j - 3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

- (i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and
- (ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property, but his or her credit has not been approved in accordance with the requirements of the Secretary.

(c) No Waiver. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

(d) Regulations of HUD Secretary. In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.

(e) Mortgage Not Insured. Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 DAYS from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. A written statement of any authorized agent of the Secretary dated subsequent to 60 DAYS from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

10. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement

of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.

11. **Borrower Not Released; Forbearance by Lender Not a Waiver.** Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

14. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

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

16. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

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

17. **Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

18. **Foreclosure Procedure.** If Lender requires immediate payment in full under paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

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

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

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 *et seq.*) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this paragraph 18 or applicable law.

19. **Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such

person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under applicable law.

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

21. **Assumption Fee.** If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$ 500, as a maximum amount, depending on whether the assumption includes a release of liability.

22. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Check applicable box(es)].

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Condominium Rider                         | <input type="checkbox"/> Graduated Payment Rider | <input type="checkbox"/> Growing Equity Rider      |
| <input checked="" type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Adjustable Rate Rider   | <input type="checkbox"/> Rehabilitation Loan Rider |
| <input type="checkbox"/> Non-Owner Occupancy Rider                 | <input type="checkbox"/> Other [Specify]         |  |

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

BY SIGNING BELOW, Borrower accepts and agrees to the terms contained in pages 1 through 10 of this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

 (Seal)  
ARMANDO A. CARIAS -Borrower

Armando A. Carias

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

Witness;

Witness:

FHA NEVADA DEED OF TRUST - MERS  
NVDOTZ.FHA 10/20/09

Page 9 of 10

DocMagic eForms 800-649-1362  
www.docmagic.com

BANA00048

\_\_\_\_\_[Space Below This Line For Acknowledgment]\_\_\_\_\_

State of NEVADA

County of CLARK

This instrument was acknowledged before me on 10-27-10

by ARMANDO A. CARIAS



Paula L. Difulvio

(Seal) 94-0676-1  
3-29-14

Paula L. Difulvio  
Signature of notarial officer

NOTARY Public  
Title

My commission expires: 3-29-14

FHA NEVADA DEED OF TRUST - MERS  
NVDOTZ.FHA 10/20/09

Page 10 of 10

DocMagic eForms 800-649-1362  
www.docmagic.com

BANA00049

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**PARCEL ONE (1)**

LOT SIXTY (60) IN BLOCK ONE (1) OF SUTTER CREEK - PHASE 1, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 85, OF PLATS, PAGE 30, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

**PARCEL TWO (2)**

A NON EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS ON AND OVER COMMON ELEMENTS, ASSOCIATION PROPERTY AND PRIVATE STREETS, WHICH EASEMENT IS APPURTENANT TO PARCEL ONE (1).

**BANA00050**

FHA Case Number: 332-5283706-703  
Loan Number: 3000054072

## FHA PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 15th day of OCTOBER, 2010, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to W.J. BRADLEY MORTGAGE CAPITAL CORP., AN OREGON CORPORATION ("Lender") of the same date and covering the Property described in the Security Instrument and located at: 3617 DIAMOND SPUR AVENUE, NORTH LAS VEGAS, NEVADA 89032

[Property Address]

The Property is part of a planned unit development ("PUD") known as:  
SUTTER CREEK-PHASE 1

[Name of Planned Unit Development]

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

- A. So long as the Owners Association (or equivalent entity holding title to common areas and facilities), acting as trustee for the homeowners, maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the property located in the PUD, including all improvements now existing or hereafter erected on the mortgaged premises, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards Lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in Paragraph 2 of this Security Instrument for the monthly payment to Lender of one-twelfth of the yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under Paragraph 4 of the Security Instrument to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners' Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.
- B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the PUD.

FHA PUD RIDER - NEVADA  
NVFHAP.RDR 08/22/08

Page 1 of 2

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www.docmagic.com

BANA00051



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

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

  
ARMANDO A. CARIAS (Seal)  
Borrower

\_\_\_\_\_  
(Seal)  
Borrower

\_\_\_\_\_  
(Seal)  
Borrower

\_\_\_\_\_  
(Seal)  
Borrower

\_\_\_\_\_  
(Seal)  
Borrower

\_\_\_\_\_  
(Seal)  
Borrower

FHA PUD RIDER - NEVADA  
NVFHAP.RDR 08/22/08

Page 2 of 2

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www.docmagic.com

BANA00052

**EXHIBIT B**

**EXHIBIT B**

Recording Requested By:  
**Bank of America**  
Prepared By: **Diana DeAyala**  
888-603-9011  
When recorded mail to:  
**CoreLogic**  
450 E. Boundary St.  
Attn: Release Dept.  
Chapin, SC 29036



DocID# 10822441755717237  
Tax ID: 139-08-410-014  
Property Address:  
3617 Diamond Spur Ave  
North Las Vegas, NV 89032-3415  
NV0-ADT 16916991 1/24/2012

Inst #: 201201260003419

Fees: \$18.00

N/C Fee: \$0.00

01/26/2012 02:53:17 PM

Receipt #: 1047874

Requestor:

CORELOGIC

Recorded By: MSH Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

This space for Recorder's use

MIN #: 100252230000540720

MERS Phone #: 888-679-6377

### ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 1901 E Voorhees Street, Suite C, Danville, IL 61834 does hereby grant, sell, assign, transfer and convey unto **BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP** whose address is 451 7TH ST.SW #B-133, WASHINGTON DC 20410 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: **W. J. BRADLEY MORTGAGE CAPITAL CORP., AN OREGON CORPORATION**

Made By: **ARMANDO A. CARIAS, A SINGLE MAN**

Trustee: **WESTERN TITLE COMPANY**

Date of Deed of Trust: 10/15/2010 Original Loan Amount: \$74,642.00

Recorded in Clark County, NV on: 11/3/2010, book N/A, page N/A and instrument number 201011030002714

I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons.

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on

1/25/12

**MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC.**

By: 

Talisha T. Wallace Assistant Secretary

**BANA00053**

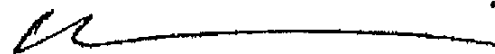
State of California  
County of Ventura

On **JAN 25 2012** before me, **Markus Hicks**, Notary Public, personally appeared  
**Talisha T. Wallace**

, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

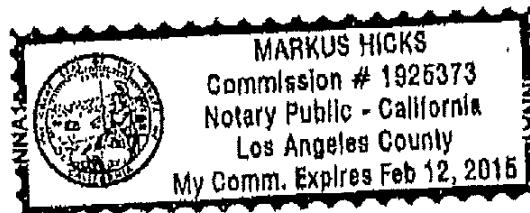
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public: **Markus Hicks**  
My Commission Expires: **February 12, 2015**

(Seal)



DocID# 10822441755717237

BANA00054

**EXHIBIT C**

**EXHIBIT C**

Inst #: 201202230001691  
Fees: \$17.00  
N/C Fee: \$0.00  
02/23/2012 09:18:02 AM  
Receipt #: 1074720  
Requestor:  
ALESSI & KOENIG LLC (JUNES  
Recorded By: MAT 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. 139-08-410-014

Trustee Sale # 30455-3617

**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, **Sutter Creek Homeowners Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **3617 DIAMOND SPUR AVE, NO LAS VEGAS, NV 89032** and more particularly legally described as: **LOT 60 BLOCK 1 Book 85 Page 30** in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are): **ARMANDO A CARIAS**

The mailing address(es) is: **3617 DIAMOND SPUR AVE, NO LAS VEGAS, NV 89032**

The total amount due through today's date is: **\$965.00**. Of this total amount **\$890.00** 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.

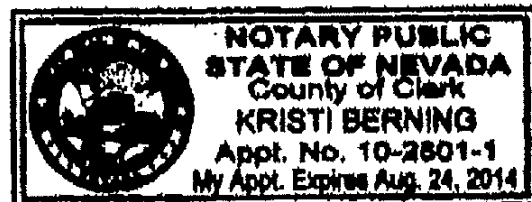
Date: **January 24, 2012**

By: 


Ryan Kerbow, Esq. of Alessi & Koenig, LLC on behalf of **Sutter Creek Homeowners Association**

State of Nevada  
County of Clark  
SUBSCRIBED and SWORN before me January 24, 2012

(Seal)



(Signature)

  
NOTARY PUBLIC

**BANA00055**

# EXHIBIT D

# EXHIBIT D

{32795192;1}

Inet #: 201205080002884

Fees: \$17.00

N/C Fee: \$0.00

06/08/2012 04:06:02 PM

Receipt #: 1167051

Requestor:

ALESSI & KOENIG LLC

Recorded By: SCA 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

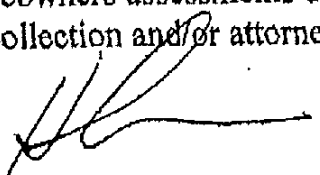
A.P.N. 139-08-410-014

Trustee Sale No. 30455-3617

**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 **\$2,290.00** as of **April 4, 2012** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Sutter Creek Homeowners Association, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147, (702)222-4033.**

THIS NOTICE pursuant to that certain Notice of Delinquent Assessment Lien, recorded on **February 23, 2012** as document number **0001691**, of Official Records in the County of **Clark**, State of Nevada, Owner(s): **ARMANDO A CARIAS**, of **LOT 60 BLOCK 1**, as per map recorded in Book **85**, Pages **30**, as shown on the Plan and Subdivision map recorded in the Maps of the County of **Clark**, State of Nevada. PROPERTY ADDRESS: **3617 DIAMOND SPUR AVE, NO LAS VEGAS, NV 89032**. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure, REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT Alessi & Koenig, LLC is appointed trustee agent under the above referenced lien, dated **February 23, 2012**, on behalf of **Sutter Creek 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 **March 1, 2011** and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.  
Dated: **April 4, 2012**

  
\_\_\_\_\_  
Huong Lam, Esq. of Alessi & Koenig, LLC on behalf of Sutter Creek Homeowners Association

**BANA00056**



# EXHIBIT E

# EXHIBIT E

---

**MILES BAUER AFFIDAVIT**

---

State of California    }  
                              } ss.  
Orange County         }

Affiant being first duly sworn, deposes and says:

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

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

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

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

Loan Number: 224417557

Borrower(s): Armando Carias

Property Address: 3617 Diamond Spur Avenue, North Las Vegas, Nevada 89032

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

6. Based on Miles Bauer's business records, attached as **Exhibit 1** is a copy of a June 5, 2012 letter from Rock K. Jung, Esq., an attorney with Miles Bauer, mailed by first class mail to Sutter Creek Homeowners Association, care of Alessi & Koenig, LLC.

7. Based on Miles Bauer's business records, attached as **Exhibit 2** is a copy of Statement of Account from Alessi & Koenig, LLC dated June 15, 2012 received by Miles Bauer in response to the June 5, 2012 letter identified above.

8. Based on Miles Bauer's business records, attached as **Exhibit 3** is a copy of a June 28, 2012 letter from Mr. Jung to Alessi & Koenig, LLC enclosing a check for \$720.00.

9. Based on Miles Bauer's business records, on June 29, 2012, Alessi & Koenig, LLC confirmed receipt of the June 28, 2012 letter and receipt of the \$720.00 check. A copy of the confirmation of receipt from Miles Bauer's business records (which correctly identifies the check amount, reference number and Miles Bauer matter number, but inadvertently misidentifies the subject property) is attached as **Exhibit 4**.

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///

9. Based on Miles Bauer's business records, the \$720.00 check was returned to Miles Bauer. A copy of a screenshot containing the relevant case management note confirming the check was returned is attached as Exhibit 5.

FURTHER DECLARANT SAYETH NOT.

Date: 1/14/15

AK  
Declarant Adam Kendis

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

State of California

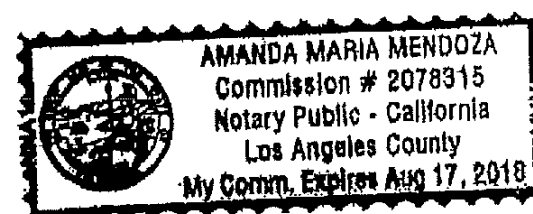
County of Orange

Subscribed and sworn to (or affirmed) before me on this 14<sup>th</sup> day of January, 2015,

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

the person who appeared before me.

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



# EXHIBIT 1

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



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

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

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

RICHARD J. BAUER, JR.  
FRED TIMOTHY WINTERS  
KEENAN E. McCLENAHAN  
MARK T. DOMEYER  
Also Admitted in the District of  
Columbia & Virginia  
TAMI S. CROSBY  
L. BRYANT JAQUEZ  
WAYNE A. RASH  
VY T. PHAM  
HADI R. SEYED-ALI  
BRIAN H. TRAN  
ANNA A. GHAJAR  
CORI B. JONES  
CATHERINE K. MASON  
CHRISTINE A. CHUNG  
HANH T. NGUYEN  
S. SHELLY RAIEZADEH  
SHANNON C. WILLIAMS  
ABTIN SHAKOURI  
LAWRENCE R. BOIVIN  
RICK J. NEHORAOPF  
BRIAN M. LUNA

June 5, 2012

SENT VIA FIRST CLASS MAIL

Sutter Creek Homeowners Association  
C/o THE ALESSI & KOENIG, LLC  
9500 West Flamingo Rd., Ste 205  
Las Vegas, NV 89147

Re: Property Address: 3617 Diamond Spur Avenue, North Las Vegas, NV 89032  
MBBW File No. 12-H1126

Dear Sirs:

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

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

The association has a lien on a unit for:

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

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

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

3617 Diamond Spur Avenue, North Las Vegas, NV 89032

Page two of two

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

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

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

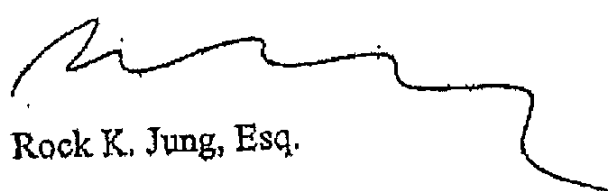
Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated April 4, 2012. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

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

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

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP

  
Rock K. Jung, Esq.

# EXHIBIT 2



Jun. 15. 2012 1:29PM

No. 0252 P. 1/6

*Carias*

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 and California Bar  
\*\*\*\* Admitted to the Nevada 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](http://www.alessikoenig.com)

ADDITIONAL OFFICES

AGOURA HILLS, CA  
PHONE: 818-733-9800

RENO NV  
PHONE: 775-626-2323

DIAMOND BAR CA  
PHONE: 909-843-6590

6/15/2012

Via Fax

MILES, BAUER, BERGSTROM & WINTERS, LLP  
ATTN: Rock K. Jung  
2200 Paseo Verde Parkway, Suite 250  
Henderson, NV 89052  
Fax: (702) 369-4955

Re: 3617 DIAMOND SPUR AVE/ Sutter Creek Homeowners Association

Mr. Jung,

The Commission for Common Interest Communities and Condominium Hotels (the "Commission") released Advisory Opinion No. 2010-01 which specifically addresses the issue of whether or not collection costs are included in the super-priority amount. In the opinion, the Commission concluded that associations may collect, as part of the super priority lien, the costs of collecting as authorized by NRS 116.310313. The Commission also amended NAC 116 establishing provisions concerning fees charged by an association or a person acting on behalf of an association to cover the costs of collecting a past due obligation of a unit's owner.

Furthermore, the nine-month super-priority is not triggered until the beneficiary under the first deed of trust forecloses. As such, please be advised that Alessi & Koenig, LLC, on behalf of the HOA, will continue the foreclosure process unless \$2,930.00 is paid pursuant to the attached demand letter. This amount includes all past due obligations, plus collection costs and fees.

Regards,

Ryan Kerbow, Esq.

Licensed in Nevada.

Jun. 15. 2012 1:29PM

No. 0252 P. 2/6

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: 909-461-4300

**FACSIMILE COVER LETTER**

To:	Miles, Bauer, Bergstrom & Winters	Re:	3617 DIAMOND SPUR AVE/HO #30455
From:		Date:	Friday, June 15, 2012
Fax No.:		Pages:	1, including cover
		HO #:	30455

Dear Miles, Bauer, Bergstrom & Winters:

This cover will serve as an amended demand on behalf of Suner Creek Homeowners Association for the above referenced escrow; property located at 3617 DIAMOND SPUR AVE, NO LAS VEGAS, NV. The total amount due through July 15, 2012 is \$2,930.00. The breakdown of fees, interest and costs is as follows:

Pre NOD	\$90.00
Demand Fee	\$150.00
Notice of Delinquent Assessment Lien - Nevada	\$325.00
Notice of Default	\$395.00
Release of Lien (Upon payment in full)	\$30.00
<b>Total</b>	<b>\$990.00</b>
1. Attorney and/or Trustees fees:	\$990.00
2. Notary, Recording, Copies, Mailings, and PACER	\$250.00
3. Ledger Through July 15, 2012	\$930.00
4. RPIR-GI Report	\$85.00
5. Title Research (10-Day Mailings per NRS 116.31163)	\$275.00
6. Management Company Advanced Audit Fee	\$175.00
7. Management Account Setup Fee	\$225.00
8. Publishing and Posting of Trustee Sale	\$0.00
10. Conduct Foreclosure Sale	\$0.00
11. Capital Contribution	\$0.00
12. Progress Payments:	\$0.00
<b>Sub-Total:</b>	<b>\$2,930.00</b>
<b>Less Payments Received:</b>	<b>\$0.00</b>
<b>Total Amount Due:</b>	<b>\$2,930.00</b>

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.

Jun. 15. 2012 1:29PM

No. 0252 P. 3/6

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](http://www.alessikoenig.com)

**ADDITIONAL OFFICES IN**

AGOURA HILLS, CA  
PHONE: 818-735-9600

RENO NV  
PHONE: 775-626-2323

DIAMOND BAR CA  
PHONE: 909-461-4300

**FACSIMILE COVER LETTER**

Please have a check in the amount of \$2,930.00 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.

Jun. 15. 2012 1:30PM

No. 0252... P. 4/6

AR2381

Sutter Creek HOA  
FINANCIAL TRANSACTIONS - 06/12/12

3617 Diamond Spur Ave  
Armando A. Carlos

Unit ID: 3617D5  
STATUS: 51 - Alessi&Keonig  
PREPAID BAL: 0.00

TXN		PAYMENTS/TRXN DESCR			CHARGES/PAYMENT DISTR			
BALANCE								DUE
DATE	PAYMT	AMT	CHECK #	DEP DT	CODE	N/A	DESCRIPTION	AMOUNT
110510	160.00		ck11692	111610	PP		Credit-Prepaid	(160.00)
(160.00)								
110810			EXPENSE ADJ		PP		Credit-Prepaid	(10.00)
(170.00)								
120110			APPLY CHARGES		A1		ASSESSMENT	75.00
(95.00)								
120110			APPLY PREPAYMNT		A1		ASSESSMENT	(75.00)
(95.00)								
121310	75.00		mo171319	121410	PP		Credit-Prepaid	(75.00)
(170.00)								
010111			APPLY CHARGES		A1		ASSESSMENT	75.00
(95.00)								
010111			APPLY PREPAYMNT		A1		ASSESSMENT	(75.00)
(95.00)								
020111			APPLY CHARGES		A1		ASSESSMENT	75.00
(20.00)								
020111			APPLY PREPAYMNT		A1		ASSESSMENT	(75.00)
(20.00)								
030111			APPLY CHARGES		A1		ASSESSMENT	75.00
55.00								
030111			APPLY PREPAYMNT		A1		ASSESSMENT	(20.00)
55.00								
031511			APPLY LATE FEE		01		Late Fees	10.00
65.00								
031711	100.00		mo77423	031811	A1		ASSESSMENT	(55.00)
(35.00)								
031711					01		Late Fees	(10.00)
031711					PP		Credit-Prepaid	(35.00)
031711								
040111			APPLY CHARGES		A1		ASSESSMENT	75.00
40.00								
040111			APPLY PREPAYMNT		A1		ASSESSMENT	(35.00)
40.00								
041511			APPLY LATE FEE		01		Late Fees	10.00
50.00								
050111			APPLY CHARGES		A1		ASSESSMENT	75.00
125.00								
050411	100.00		mo4184	050611	A1		ASSESSMENT	(100.00)
25.00								
050411	100.00		mo40295	050611	A1		ASSESSMENT	(15.00)
(75.00)								
050411					01		Late Fees	(10.00)
050411					PP		Credit-Prepaid	(75.00)
050411								

Jun. 15. 2012 1:30PM

No. 0252 P. 5/6

060111	APPLY CHARGES	A1	AR2381 ASSESSMENT	75.00
0.00				
060111	APPLY PREPAYMNT	A1	ASSESSMENT	(75.00)
0.00				
070111	APPLY CHARGES	A1	ASSESSMENT	75.00
75.00				
071511	APPLY LATE FEE	01	Late Fees	10.00
85.00				
080111	APPLY CHARGES	A1	ASSESSMENT	75.00
160.00				
081511	APPLY LATE FEE	01	Late Fees	10.00
170.00				
082511	Action taken: 10 - First Warning			
082511	APPLY ADMIN FEE	03	Admin. Fee	25.00
195.00				
090111	APPLY CHARGES	A1	ASSESSMENT	75.00
270.00				
091511	APPLY LATE FEE	01	Late Fees	10.00
280.00				
091911	300.00 mo288117 092111	A1	ASSESSMENT	(225.00)
(20.00)				
091911		01	Late Fees	(30.00)
091911		03	Admin. Fee	(25.00)
091911		PP	Credit-Prepaid	(20.00)
091911				
100111	APPLY CHARGES	A1	ASSESSMENT	75.00
55.00				
100111	APPLY PREPAYMNT	A1	ASSESSMENT	(20.00)
55.00				
101511	APPLY LATE FEE	01	Late Fees	10.00
65.00				
110111	APPLY CHARGES	A1	ASSESSMENT	75.00
140.00				
111011	Action taken: 10 - First Warning			
111011	APPLY ADMIN FEE	03	Admin. Fee	25.00
165.00				
111511	APPLY LATE FEE	01	Late Fees	10.00
175.00				
120111	APPLY CHARGES	A1	ASSESSMENT	75.00
250.00				
121211	Action taken: 50 - Intent to Lien			
121211	APPLY ADMIN FEE	03	Admin. Fee	50.00
300.00				
121511	APPLY LATE FEE	01	Late Fees	10.00
310.00				
010112	APPLY CHARGES	A1	ASSESSMENT	80.00
390.00				
011712	APPLY LATE FEE	01	Late Fees	10.00
400.00				
020112	APPLY CHARGES	A1	ASSESSMENT	80.00
480.00				
021512	APPLY LATE FEE	01	Late Fees	10.00
490.00				
030112	APPLY CHARGES	A1	ASSESSMENT	80.00
570.00				

Jun. 15. 2012 1:30PM

No. 0252 P. 6/6

031512	APPLY LATE FEE	01	AR2381	Late Fees	10.00
580.00					
040112	APPLY CHARGES	A1		ASSESSMENT	80.00
660.00					
041612	APPLY LATE FEE	01		Late Fees	10.00
670.00					
050112	APPLY CHARGES	A1		ASSESSMENT	80.00
750.00					
051512	APPLY LATE FEE	01		Late Fees	10.00
760.00					
060112	APPLY CHARGES	A1		ASSESSMENT	80.00
840.00					

BALANCE SUMMARY

CHARGE CODE	DESCRIPTION	AMOUNT
A1	ASSESSMENT	685.00
01	Late Fees	80.00
03	Admin. Fee	75.00
	TOTAL:	840.00

# EXHIBIT 3

DOUGLAS E. MILES  
Also Admitted in California &  
Illinois

JEREMY T. BERGSTROM  
Also Admitted in Arizona

GINA M. CORENA

ROCK K. JUNG

KRISTA J. NIELSON

JORY C. GARABEDIAN

THOMAS M. MORLAN

Admitted in California

STEVEN E. STERN

Admitted in Arizona & Illinois

ANDREW H. PASTWICK

Also Admitted in Arizona &  
California

FATERO C. JURANI



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

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

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

RICHARD J. BAUER, JR.  
FRED TIMOTHY WINTERS  
KEENAN E. McCLENAHAN  
MARK T. DOMEYER

Also Admitted in the District of  
Columbia & Virginia

TAMI S. CROSBY  
L. BRYANT JAQUEZ  
WAYNE A. RASH  
VY T. PHAM  
HADI R. SEYED-ALI  
BRIAN H. TRAN  
CORI B. JONES  
CATHERINE K. MASON  
CHRISTINE A. CHUNG  
HANH T. NGUYEN  
S. SHELLY RAISZADEH  
SHANNON C. WILLIAMS  
LAWRENCE R. BOIVIN  
RICK J. NEHORAOFF  
BRIAN M. LUNA

June 28, 2012

ALESSI & KOENIG, LLC  
9500 W. FLAMINGO ROAD, SUITE 100  
LAS VEGAS, NV 89147

Re: *Property Address:* 3617 Diamond Spur Avenue  
HO #: 30455  
LOAN #: 224417557  
MBBW File No. 12-H1126

Dear Sir/Madame:

As you may recall, this firm represents the interests of Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by you in regards to the above-referenced address shows a full payoff amount of \$2,930.00. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

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

The association has a lien on a unit for:

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

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

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



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

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

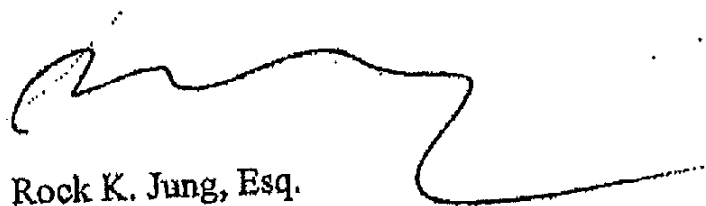
Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n).

Our client has authorized us to make payment to you in the amount of \$720.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$720.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 3617 Diamond Spur Avenue have now been "paid in full".

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

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*

  
Rock K. Jung, Esq.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct  
 Payee: Alessi & Koenig, LLC

Check #: 15746

12-H1128

Initials: SRN

Date: 6/27/2012 Amount: 720.00

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
6/28/2012	30455	To Cure HOA Delinquency	720.00			

Miles, Bauer, Bergstrom & Winters, LLP  
 Trust Account  
 1231 E. Dyer Road, #100  
 Santa Ana, CA 92705  
 Phone: (714) 481-8100

Bank of America  
 1100 N. Green Valley Parkway  
 Henderson, NV 89074  
 1-800-735-1000  
 12-H1128  
 Loan # 224417557

Date: 6/27/2012  
 Amount: \$ 720.00

Check Valid After 90 Days

Pay \$\*\*\*\*Seven Hundred Twenty & No/100 Dollars  
 to the order of  
 Alessi & Koenig, LLC

\*15746\* 01224007240 5010068769731\*

# EXHIBIT 4

On this day, June 29, 2012, Alessi & Koenig, LLC received: (1) letters accompanying each of the checks listed below that address the purpose of the tender and the effect of accepting said checks and (2) the following checks for the following addresses:

<u>Amount</u>	<u>Address</u>	<u>Ref#</u>	<u>MBBW#</u>
\$1,800.00	4833 Bougainvillea Circle	27731	12-H1105
\$148.50	5286 Marauder Court	27857	12-H1005
\$720.00	211 Crown Imperial Street	30455	12-H1126
\$264.00	1557 Big Valley Way	27482	12-H1121
\$1,845.00	544 Echo Ridge Court	24686	12-H1119
\$474.75	8680 Florisse Court	21311	12-H0971
\$1,305.00	2305 W. Horizon Ridge Pkwy #3311	23911	12-H1104

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

Signature: CP Kettles  
An Employee of Alessi & Koenig, LLC

Date 6-29-12

Print: CP Kettles  
An Employee of Alessi & Koenig, LLC

Date 6-29-12

# EXHIBIT 5

File Edit View Help

Client ID: 12-H1126 Debit: Carlos, Armando  
BANA v. Carlos HOA

Client (SGL): BANK OF AMERICA, N.A. (CWF)

Reports | Notes | Billing | Contacts | Matters | Events | Inquiries | CIVIL | Contract Info | Custom | Open Info | New Invoice

Date: (all)

1/1/2004 8/23/2004

- 6/6/2013: EMT MRT re: Invoices on attached spreadsheet are still outstanding; pl
- 6/9/2013: REFUND CHECKS- 05/09/13.pdf
- 4/1/2013: EMT MRT w/excel spreadsheet & zipped Invoices for 03/29/13
- 3/24/2013: EMF RKJ re: closing file (prop sold at HOA sale)
- 3/21/2013: TDU6 recorded 2/26/13
- 3/1/2013: PROPERTY SOLD TO 3RD PARTY, NEW DEED RECORDED.
- 2/22/2013: PROPERTY SOLD TO 3RD PARTY AT HOA SALE; F/U 3/1
- 1/25/2013: REJECTED FILE; FU 2/21 MONITOR 2/20 SALE DATE
- 12/12/2012: REJECTED FILE; FU 1/23 MONITOR
- 9/12/2012: 12-H1126, scanned items from physical file, PDF
- 8/29/2012: EMF CLNT re: invoice submitted for payment processing
- 7/18/2012: EMT CLNT re: sent invoice
- 7/17/2012: EMF RKJ re: Status of Payoff Funds (Rejected), 12-H1126, 3617 Diamond
- 7/16/2012: 7/16 CHECK RETURNED; FU 8/21 MONITOR EX PARTE
- 6/29/2012: 6/29 CHECK SENT TO HOA; FU 7/13 SEE IF CHECK WAS
- 6/26/2012: EMF RKJ re: Payoff Funds re: 12-H1126 / 3617 Diamond Spur Ave / Elisab
- 6/18/2012: 6/18 EMT CLIENT HOA UPDATE WITH PD ATTACHED; FU
- 6/18/2012: EMF RKJ re: status update w/po & figures
- 6/5/2012: 6/5 EMT CLIENT WITH INITIAL LETTERS ATTACHED; FU
- 6/5/2012: EMF RKJ re: initial letters to borrower and HOA
- 6/1/2012: EMF AWB re: New Referral
- 6/1/2012: EMF RKJ re: Confirmation of Referral (Carlos)
- 6/1/2012: RCVO REFERRAL; OPENED 6/1/12

Print

**EXHIBIT F**

**EXHIBIT F**

Inet #: 201301220003107

Fees: \$17.00

N/C Fee: \$0.00

01/22/2013 03:32:12 PM

Receipt #: 1467809

Requestor:

ALESSI & KOENIG LLC

Recorded By: GILKS 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: 139-08-410-014

TSN 30455-3617

### 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.**

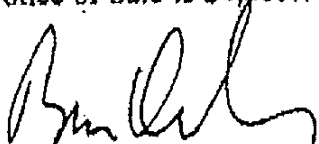
**NOTICE IS HEREBY GIVEN THAT:**

On February 20, 2013, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on February 23, 2012, as instrument number 0001691, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2<sup>nd</sup> Floor)

The street address and other common designation, if any, of the real property described above is purported to be: 3617 DIAMOND SPUR AVE, NO LAS VEGAS, NV 89032. The owner of the real property is purported to be: ARMANDO A CARIAS

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 \$4,285.00. Payment must be in made in the form of certified funds,

Date: January 15, 2013



By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Sutter Creek Homeowners Association

BANA00057



**EXHIBIT G**

**EXHIBIT G**

Inet #: 201302260003889  
Fees: \$17.00 N/C Fee: \$0.00  
RPTT: \$107.10 Ex: #  
02/25/2013 03:47:58 PM  
Receipt #: 1512190  
Requestor:  
ALESSI & KOENIG LLC  
Recorded By: JACKSM Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

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

A.P.N. No.139-08-410-014

TS No. 30455-3617

### TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: SFR Investments Pool 1, LLC  
The Foreclosing Beneficiary herein was: Sutter Creek Homeowners Association  
The amount of unpaid debt together with costs: \$5,260.00  
The amount paid by the Grantee (Buyer) at the Trustee's Sale: \$21,000.00  
The Documentary Transfer Tax: \$107.10  
Property address: 3617 DIAMOND SPUR AVE, NO LAS VEGAS, NV 89032  
Said property is in [ ] unincorporated area: City of NO LAS VEGAS  
Trutor (Former Owner that was foreclosed on): ARMANDO A. CARIAS

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded February 23, 2012 as instrument number 0001691, in Clark County, does hereby grant, without warranty expressed or implied to: SFR Investments Pool 1, LLC (Grantee), all its right, title and interest in the property legally described as: SUTTER CREEK-PHASE 1 LOT 60 BLOCK 1, as per map recorded in Book 85, Pages 30 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 February 20, 2013 at the place indicated on the Notice of Trustee's Sale.

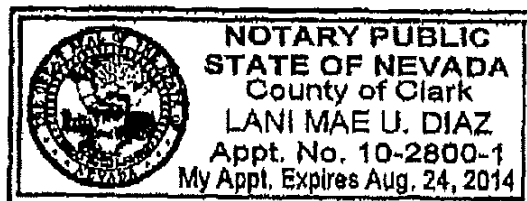
Ryan Kerbow, Esq.  
Signature of AUTHORIZED AGENT for Alessi & Koenig, LLC

State of Nevada )  
County of Clark )

SUBSCRIBED and SWORN to before me 2/20/13

WITNESS my hand and official seal.  
(Seal)

(Signature)



BANA00058