

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

7510 PERLA DEL MAR AVE TRUST

Appellant

vs.

BANK OF AMERICA, N.A.;

Respondent

No. 75603

DOCKETING

CIVIL APPEALS

Electronically Filed
Jun 05 2018 04:39 p.m.

Elizabeth N. Brown
Clerk of Supreme Court

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 30
County Clark Judge Jerry A. Wiese
District Ct. Case No. A-14-703140-C

2. Attorney filing this docketing statement:

Attorney Michael F. Bohn, Esq. Telephone 702-642-3113
Firm Law Offices of Michael F. Bohn, Esq., Ltd.
Address 376 E. Warm Springs Road, Suite 140
Las Vegas, Nevada 89119

Client(s) 7510 PERLA DEL MAR AVE TRUST

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Darren T. Brenner, Esq. Telephone 702-634-5000
Firm AKERMAN LLP
Address 1635 Village Center Circle, Suite 200
Las Vegas, NV 89134
Client(s) BANK OF AMERICA, N.A.

Attorney _____ Telephone _____
Firm _____
Address _____
Client(s) _____

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

This case was previously subject to appeal in docket number 65069. The parties moved to dismiss the appeal, and the order granting the motion was entered January 7, 2015.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. Nature of the action. Briefly describe the nature of the action and the result below:

Plaintiff filed an action for quiet title and declaratory relief after it purchased a real property at a foreclosure sale conducted pursuant to NRS Chapter 116. It is the plaintiff's position that the foreclosure sale extinguished all outstanding liens on the property. The district court found for the defendant at trial.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. If a offering to pay the super priority lien without sending a check is a valid tender
2. If the purchaser was a bona fide purchaser
3. If the court properly balanced the equities in this case

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Daisey Trust v. Green Tree Servicing, Docket No. 74110

Saticoy Bay v. Bank of America Docket no. 74015

Bank of America v. Saticoy Bay Docket no. 73623

Bank of New York Mellon v. Saticoy Bay Docket no. 72746

Nationstar Mortgage v. Saticoy Bay Docket no. 72912

Saticoy Bay v. Bank of America Docket no. 69687

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: There are no published decisions regarding what constitutes a valid tender or a valid defense to a tender

13. Trial. If this action proceeded to trial, how many days did the trial last? 2

Was it a bench or jury trial? Bench

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
N/A

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from Mar 21, 2018

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served Mar 22, 2018

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed Apr 12, 2018

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4 (a)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input checked="" type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
Appeal from an order granting judgment after trial

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Bank of America, N.A.; North American Title Company; Mountains Edge Master Association; and Dominic J. Nolan; defendants. Mandolin Homeowners Association and Nevada Association Services, Inc; cross-defendants

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

North American Title and Mountains Edge was dismissed from the case. A default Judgment was issued against Dominic Nolan. Claims against Mandolin Homeowners Association and Nevada Association Services, Inc were dismissed by the findings of Fact.

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

1. Injunctive relief;
2. Quiet title; and
3. Declaratory relief

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

7510 PERLA DEL MAR AVE TRUST
Name of appellant

Michael F. Bohn, Esq.
Name of counsel of record

Jun 5, 2018
Date


Signature of counsel of record

Clark County, Nevada
State and county where signed


CERTIFICATE OF SERVICE

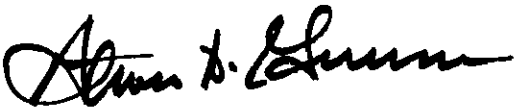
I certify that on the 5th day of June, 2018, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Darren T. Brenner, Esq.
Rebekkah B. Bodoff, Esq.
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134

Dated this 5th day of June, 2018


Signature


CLERK OF THE COURT

1 **ACOM**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 LAW OFFICES OF
6 MICHAEL F. BOHN, ESQ., LTD.
7 376 East Warm Springs Road, Ste. 125
8 Las Vegas, Nevada 89119
9 (702) 642-3113/ (702) 642-9766 FAX
10 Attorney for plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

10 7510 PERLA DEL MAR AVE TRUST,
11 Plaintiff,

12 vs.

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

CASE NO.: A686277
DEPT NO.:

EXEMPTION FROM ARBITRATION:
Title to real property

AMENDED COMPLAINT

19 Plaintiff, 7510 Perla Del Mar Ave Trust, by and through it's attorney, Michael F. Bohn, Esq.
20 alleges as follows:

FIRST CLAIM FOR RELIEF

- 22 1. Plaintiff is the owner of the real property commonly known as 7510 Perla Del Mar
23 Avenue, Las Vegas, Nevada 89179.
24 2. Plaintiff obtained title by way of a Foreclosure Deed recorded on February 7, 2013.
25 3. Plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments
26 due from the former owner to Mandolin pursuant to NRS Chapter 116.

1 4. Defendant Bank of America, N.A. is the assignee of a deed of trust which was recorded as
2 an encumbrance to the subject property on December 10, 2010.

3 || 5. Defendant North American Title Company is the trustee on the deed of trust.

4 || 6. Defendant Dominic J. Nolan is the former owner of the subject real property.

5 7. The interest of each of the defendants has been extinguished by reason of the foreclosure
6 sale resulting from a delinquency in assessments due from the former owner, Dominic J. Nolan, to
7 Mandolin, pursuant to NRS Chapter 116.

8 8. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010, that the
9 plaintiff is the rightful owner of the property and that the defendants have no right, title, interest or
10 claim to the subject property.

11 || 9. Plaintiff is entitled to an award of attorneys fees and costs.

12 SECOND CLAIM FOR RELIEF

13 || 10. Plaintiff repeats the allegations contained in paragraphs 1 through 9.

11. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the property is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein have no estate, right, title or interest in the property, and that defendants are forever enjoined from asserting any estate, title, right, interest, or claim to the subject property adverse to the plaintiff.

18 12. Plaintiff is entitled to an award of attorneys fees and costs.

19 WHEREFORE, plaintiff prays for Judgment as follows:

20 1. For injunctive relief;

21 2. For a determination and declaration that plaintiff is the rightful holder of title to the
22 property, free and clear of all liens, encumbrances, and claims of the defendants.

23 3. For a determination and declaration that the defendants have no estate, right, title, interest
24 or claim in the property.

25 |||

26 |||

27 |||

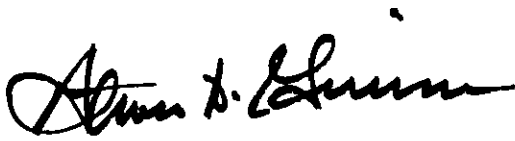
4. For a judgment forever enjoining the defendants from asserting any estate, right, title, interest or claim in the property; and

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

DATED this 1st day of September 2013.

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

By: / s / Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
376 East Warm Springs Road, Ste. 125
Las Vegas, Nevada 89119
Attorney for plaintiff


CLERK OF THE COURT

AANS
DARREN T. BRENNER, ESQ.
Nevada Bar No. 8386
REBEKKAH B. BODOFF, ESQ.
Nevada Bar No. 12703
AKERMAN LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: darren.brenner@akerman.com
Email: rebekkah.bodoff@akerman.com

Attorneys for Bank of America, N.A.,

DISTRICT COURT
CLARK COUNTY, NEVADA

7510 PERLA DEL MAR AVE TRUST,

Plaintiff,

v.

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

Defendants.

Case No.: A-13-686277-C

Dept.: XXX

**DEFENDANT BANK OF AMERICA,
N.A.'S AMENDED ANSWER TO
COMPLAINT, COUNTERCLAIMS
AGAINST PLAINTIFF, AND
CROSSCLAIMS AGAINST MANDOLIN
HOMEOWNERS ASSOCIATION AND
NEVADA ASSOCIATION SERVICES,
INC.**

**(To Correct Improperly Named Cross-
Defendants)**

BANK OF AMERICA, N.A.,

Cross-Claimant,

v.

MANDOLIN HOMEOWNERS ASSOCIATION
AND NEVADA ASSOCIATION SERVICES,
INC.

Cross-Defendants.

1 Defendant Bank of America, N.A. (**Bank of America**) amends its answer to 7510 Perla Del
2 Mar Ave Trust (**Plaintiff**) Complaint as follows:

3 **COMPLAINT**

4 1. Denied.

5 2. Denied.

6 3. Denied.

7 4. Admit.

8 5. Admit.

9 6. BANA is without knowledge or information sufficient to form a belief as to the truth
10 of the allegations contained in Paragraph 6 and, therefore, denies the allegations of Paragraph 6.

11 7. Denied.

12 8. Denied.

13 9. Denied.

14 10. Bank of America reasserts and re-alleges its responses and defenses as set forth above
15 in Paragraphs 1 through 9.

16 11. Denied.

17 12. Denied.

18 13. With respect to the WHEREFORE clause following Paragraph 12, Bank of America
19 denies that Plaintiff is entitled to any of the relief requested.

20 **AFFIRMATIVE DEFENSES**

21 Bank of America asserts the following additional defenses. Discovery and investigation of
22 this case is not yet complete, and Bank of America reserves the right to amend this Answer by
23 adding, deleting, or amending defenses as may be appropriate. In further answer to the Complaint,
24 and by way of additional defenses, Bank of America avers as follows:

25 **FIRST AFFIRMATIVE DEFENSE**
26 **(Failure to State a Claim)**

27 Plaintiff has failed to state facts sufficient to constitute any cause of action against
28 Defendants.

SECOND AFFIRMATIVE DEFENSE**(Void for Vagueness)**

To the extent that Plaintiffs' interpretation of NRS 116.3116 is accurate, the statute, and Chapter 116, are void for vagueness as applied to this matter.

THIRD AFFIRMATIVE DEFENSE**(Due Process Violations)**

A senior deed of trust beneficiary cannot be deprived of its property interest in violation of the Procedural Due Process Clause of the 14 Amendment of the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.

FOURTH AFFIRMATIVE DEFENSE**(Tender, Estoppel, Laches and Waiver)**

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

FIFTH AFFIRMATIVE DEFENSE**(Commercial Reasonableness and Violation of Good Faith)**

The homeowner's association foreclosure sale was not commercially reasonable, and the circumstances of sale of the property violated the homeowner's association's obligation of good faith and duty to act in a commercially reasonable manner.

SIXTH AFFIRMATIVE DEFENSE**(Failure to Mitigate Damages)**

Plaintiffs' claims are barred in whole or in part because of its failure to take reasonable steps to mitigate its damages, if any.

SEVENTH AFFIRMATIVE DEFENSE**(No Standing)**

The Plaintiffs lacks standing to bring some or all of their claims and causes of action.

EIGHTH AFFIRMATIVE DEFENSE**(Unclean Hands)**

Defendant avers the affirmative defense of unclean hands.

1 **NINTH AFFIRMATIVE DEFENSE**
2 **(Plaintiff is Not Entitled to Relief)**

3 Defendant denies that the Plaintiff is entitled to any relief for which it prays.

4 **TENTH AFFIRMATIVE DEFENSE**
5 **(Failure to Do Equity)**

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

7 **ELEVENTH AFFIRMATIVE DEFENSE**
8 **(Failure to Provide Notice)**

9 Defendants were not provided proper notice of the “superpriority” assessment amounts and
10 the homeowner’s association foreclosure sale, and any such notice provided to Defendants failed to
11 comply with the statutory and common law requirements of Nevada and with state and federal
12 constitutional law.
13

14 **TWELFTH AFFIRMATIVE DEFENSE**
15 **(Void Foreclosure Sale)**

16 The HOA foreclosure sale is void for failure to comply with the provisions of NRS Chapter
17 116, and other provisions of law.
18

19 **THIRTEENTH AFFIRMATIVE DEFENSE**
20 **(Federal Law)**

21 The homeowners’ association sale is void or otherwise fails to extinguish the
22 applicable deed of trust because it violates provisions of the United States’ Constitution and/or
23 applicable federal law.
24

25 **FOURTEENTH AFFIRMATIVE DEFENSE**
26 **(Supremacy Clause)**

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

1 **FIFTEENTH AFFIRMATIVE DEFENSE**
2 **(Additional Affirmative Defenses)**

3 Pursuant to NRCP 11, Defendants reserve the right to assert additional affirmative defenses
4 in the event discovery and/or investigation disclose the existence of other affirmative defenses.
5

6 **SIXTEENTH AFFIRMATIVE DEFENSE**
7 **(Due Process — Facially Unconstitutional Provisions)**

8 Chapter 116 of the Nevada Revised Statutes is facially unconstitutional because its “opt-in”
9 notice provisions do not mandate that reasonable and affirmative steps be taken to give actual notice
10 to a record lien holder before depriving that lien holder of its property rights, in violation of the Due
11 Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution and of
12 the Nevada Constitution.

13 **SEVENTEENTH AFFIRMATIVE DEFENSE**
14 **(Plaintiff is not a Bona Fide Purchaser for Value)**

15 Plaintiff purchased the property with record notice of the interest of the senior deed of trust
16 recorded against the property.
17

18 **EIGHTEENTH AFFIRMATIVE DEFENSE**
19 **(Assumption of the Risk)**

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

24 **NINETEENTH AFFIRMATIVE DEFENSE**
25 **(Barred by 12 U.S.C. § 4617(j)(3))**

26 Plaintiff's claim of free and clear title to the Property is barred by 12 U.S.C. § 4617(j)(3),
27 which precludes an HOA sale from extinguishing the Deed of Trust on the Property and preempts
28 any state law to the contrary.

COUNTERCLAIMS AND CROSS-CLAIMS
GENERAL ALLEGATIONS

1 1. Under Nevada law, homeowners' associations have the right to charge property
2
3 owners residing within the community assessments to cover the homeowners' association's expenses
4 for maintaining or improving the community, among other things.
5

6 2. When these assessments are not paid, the homeowners' association may both impose
7 and foreclose on a lien.
8

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

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

20 5. According to the Nevada Supreme Court's decision in *SFR Investments Pool 1, LLC*
21 *v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014), if a homeowner's association properly forecloses on
22 its super priority lien, it can extinguish a first deed of trust. However, Mandolin Phase 3 at
23 Mountains Edge's (**HOA's**) foreclosure in this case did not extinguish Bank of America's first deed
24 of trust because the foreclosure did not comply with Nevada law and was commercially
25 unreasonable as a matter of law. To deprive Bank of America of its deed of trust under the
26 circumstances of this case would deprive Bank of America of its due process rights.
27
28

The Deed of Trust and Assignment

6. On or about December 9, 2010, Dominic J. Nolan (**Borrower**) purchased real property located at 7510 Perla Del Mar Ave, Las Vegas, Nevada (the **Property**) via a loan secured by a deed of trust executed in favor of KBA Mortgage, LLC. A true and correct copy of the Deed of Trust is attached as **Exhibit A**.

7. KBA Mortgage, LLC's Deed of Trust was assigned to Bank of America via an Assignment of Deed of Trust recorded on January 6, 2012. A true and correct copy of the Assignment is attached as **Exhibit B**.

The HOA Liens and Foreclosure

8. Upon information and belief, Borrower failed to pay the HOA all amounts due to it. Accordingly, on January 4, 2012, Nevada Association Services (NAS), as agent for the Mandolin (**Mandolin**), recorded a Notice of Delinquent Assessment Lien. **Exhibit C**. The Lien recorded by NAS stated the amount due to the HOA was \$987.44, which included assessments, late fees, collection fees and interest. The Lien neither identifies the super-priority amount claimed by the HOA, nor describes the "deficiency in payment" required by NRS 116.31162(1)(b)(1).

9. On February 2, 2012, Silver State Trustee Services (Silver State), as agent for the master association, Mountain's Edge Masters Association (**Mountain's Edge**), recorded a Notice of Delinquent Assessment Lien. **Exhibit D**. The lien recorded by Silver State stated the amount due to the Mountain's Edge Masters Association was \$718.50, which included assessments, late fees, collection fees and interest. **Exhibit D**. The lien neither identifies the super-priority amount claimed by the HOA, nor describes the "deficiency in payment" required by NRS 116.31162(1)(b)(1). Upon information and belief, this lien was satisfied.

10. On February 27, 2012, Mandolin, through its agent NAS, recorded a Notice of Default and Election to Sell Under Homeowners Association Lien. The Notice stated the amount due

1 to the HOA was \$1,992.87, which included assessments, late fees, collection fees and interest. A true
2 and correct copy of the Notice of Default is attached as **Exhibit E**. The Notice of Default neither
3 identifies the super-priority amount claimed by the HOA, nor describes the “deficiency in payment”
4 required by NRS 116.31162(1)(b)(1).

5 ...

6 11. On August 14, 2012, Mountain’s Edge, through its agent Silver State, recorded a
7 Notice of Default and Election to Sell Under Homeowners Association Lien. The Notice stated the
8 amount due to Mountain’s Edge Masters Association was \$2,183.50, which included assessments,
9 late fees, collection fees and interest. A true and correct copy of the Notice of Default is attached as
10 **Exhibit F**. The Notice of Default neither identifies the super-priority amount claimed by the HOA,
11 nor describes the “deficiency in payment” required by NRS 116.31162(1)(b)(1).

12 12. On November 15, 2012, Mandolin, through NAS, recorded a Notice of Foreclosure
13 Sale, stating the total amount due to the HOA was \$3,954.62 and setting the sale for December 14,
14 2012. A true and correct copy of the Notice is attached as **Exhibit G**. The Notice of Sale neither
15 identifies the super-priority amount claimed by the HOA, nor describes the “deficiency in payment”
16 required by NRS 116.31162(1)(b)(1).

17 13. In none of the recorded documents nor in any notice did the HOA specify whether it
18 was foreclosing on the super-priority portion of its lien, if any, or on the sub-priority portion of its
19 lien.

20 14. In none of the recorded documents nor in any notice did the HOA specify that Bank
21 of America’s interest in the Property would be extinguished by the HOA foreclosure.

22 15. On or about March 16, 2012, Bank of America, through counsel Miles Bauer
23 requested NAS, as agent for Mandolin, provide it with information about and offered to pay the
24

1 amount of nine months of assessments. **Exhibit H.** Bank of America did not receive a response to
2 this letter. *Id.*

3 16. Bank of America, through counsel at Miles Bauer, tried again after March 16, 2012 to
4 obtain the amount of nine months of assessments in order to tender such an amount to NAS. David
5 Stone, the President of NAS, however, confirmed to Miles Bauer that he would not provide the
6 requisite payoff ledger and tender information out of concern for violating the Fair Debt Collection
7 Practices Act. As such, Bank of America's attempt to tender payment was rejected.
8

9 17. After rejecting Bank of America's offer to tender payment of the full super-priority
10 amount, the HOA non-judicially foreclosed on the Property, selling the Property to Plaintiff on or
11 about February 1, 2013 for \$14,600.00. A true and correct copy of the Foreclosure Deed is attached
12 as **Exhibit I.**
13

14 18. Bank of America, through its counsel, also requested Silver State, as agent for
15 Mountain's Edge Masters Association, provide it with information about and offered to pay the
16 amount of nine months of assessments on September 10, 2012. **Exhibit J.**
17

18 19. While Silver State did provide a payoff demand on September 20, 2012, Silver State
19 demanded payment in the amount of \$2,793.50 to satisfy the super-priority portion of the lien. A true
20 and correct copy of the payoff demand is attached as **Exhibit K.** Silver State demanded this amount
21 despite the fact that NRS 116.3116(2)(c) grants super-priority to only that portion of a HOA lien
22 equal to the last nine months of delinquent assessments.

23 20. Bank of America, through counsel at Miles Bauer, tendered payment of \$932.83 to
24 Silver State on or about October 4, 2012. This \$932.83 was equal to the last nine months of
25 delinquent assessments, which was the maximum amount the Mountain's Edge Masters Association
26 could claim had super-priority over BANA's first Deed of Trust and reasonable collection costs. A
27 true and correct copy of the tender letter and cashier's check is attached as **Exhibit L.** Nevertheless,
28 the Mountain's Edge Masters Association, through the Silver State, rejected Bank of America's
tender payment. **Exhibit M.**

1 21. Despite correspondence to the contrary, Mountain's Edge Masters Association did
2 not foreclose upon the subject property. Instead, Mandolin, through NAS, conducted its own
3 foreclosure sale.

4 22. NAS's sale of Mandolin's interest in the Property for approximately 9% of the value
5 of the senior Deed of Trust, and upon information and belief, a similarly diminutive percentage of
6 the Property's fair market value, is commercially unreasonable and not in good faith as required by
7 NRS 116.1113.

8 23. Mandolin and NAS were aware prior to the sale of a split among Nevada courts
9 concerning their ability to eliminate Bank of America's first Deed of Trust by foreclosing, and
10 proceeded to sell the Property for an extremely depressed price due to the legal uncertainty.

11 24. This foreclosure sale was commercially unreasonable because the manner in which
12 Mandolin and NAS conducted the sale, including the notices it provided, the legal uncertainty
13 concerning the effect of the sale, and other circumstances surrounding the sale, was not calculated to
14 attract proper perspective purchasers, and thus could not promote an equitable sales price of the
15 Property.

16 25. Mandolin and NAS' foreclosure sale was commercially unreasonable because, in
17 calculating the super-priority amount allegedly owed, the HOA included amounts in its supposed
18 super-priority lien – including fines, interest, late fees, and costs of collection – that were not
19 allowed to be included in its super-priority lien under NRS 116.311(c). It was also unreasonable that
20 the HOA and NAS failed to provide the chance for Bank of America to tender any alleged super-
21 priority lien.

22 26. Mandolin and NAS' foreclosure sale was invalid and did not extinguish Bank of
23 America's first Deed of Trust because Bank of America's attempted tender of the super-priority
24 amount extinguished any super-priority lien held by Mandolin.

25 27. Mandolin and NAS' foreclosure sale was commercially unreasonable because any
26 failure to receive a tender amount was caused by NAS's refusal to identify or accurately define the
27 amount of the HOA's super-priority lien.

FIRST CAUSE OF ACTION
(Declaratory Relief / Quiet Title Against Plaintiff)

43. Bank of America repeats and re-alleges the preceding paragraphs as though fully set forth herein and incorporates the same by reference.

44. Under NRS 30.010 *et seq.* and NRS 40.010, this Court has the power and authority to declare Bank of America's rights and interests in the Property and to resolve Plaintiff's adverse claim in the Property.

45. The HOA, through NAS, foreclosed on the HOA's lien on February 1, 2013.

46. Upon information and belief, Plaintiff claims an interest in the Property adverse to Bank of America, in that Plaintiff claims that the HOA and NAS' foreclosure sale extinguished Bank of America's interest in the Property. A judicial determination is necessary to ascertain the rights, obligations, and duties of the various parties.

47. Bank of America is entitled to a declaration that the HOA and NAS' foreclosure sale did not extinguish Bank of America's interest.

48. The HOA and NAS' foreclosure sale did not extinguish Bank of America's senior Deed of Trust because the recorded notices, even if they were in fact provided, failed to describe the lien in sufficient detail as required by Nevada law, including, without limitation: whether the deficiency included a "super-priority" component, the amount of the super-priority component, how the super-priority component was calculated, when payment on the super-priority component was required, where payment was to be made, or the consequences for failure to pay the super-priority component.

49. The foreclosure sale did not extinguish Bank of America's senior Deed of Trust because Bank of America attempted to tender the super-priority amount to the HOA and NAS, and the HOA and NAS wrongfully refused to provide an amount to tender.

50. The HOA and NAS' foreclosure sale did not extinguish Bank of America's senior Deed of Trust because the statute authorizing the foreclosure sale, NRS 116, *et seq.*, is facially unconstitutional because it does not mandate that deed of trust beneficiaries receive actual notice of an HOA's foreclosure sale, as required by the Due Process Clause of the United States Constitution.

54. Bank of America was required to retain an attorney to prosecute this action, and is therefore entitled to collect its reasonable attorney's fees and costs.

(Declaratory Judgment Against Plaintiff)

...

1 43. This foreclosure sale is invalid, and thus did not extinguish Bank of America's deed
2 of trust, because NRS 116, *et seq.* is facially unconstitutional, as it does not mandate that deed of
3 trust beneficiaries receive actual notice of an HOA's foreclosure sale, as required by the Due Process
4 Clause of the United States Constitution.

5 44. The HOA's foreclosure sale did not extinguish Bank of America's senior Deed of
6 Trust because the recorded notices, even if they were in fact provided, failed to describe the lien in
7 sufficient detail as required by the United States Constitution and Nevada law, including, without
8 limitation: whether the deficiency included a "super-priority" component, the amount of the super-
9 priority component, how the super-priority component was calculated, when payment on the super-
10 priority component was required, where payment was to be made, or the consequences for failure to
11 pay the super-priority component.

12 45. The foreclosure sale did not extinguish the senior Deed of Trust because the sale was
13 commercially unreasonable or otherwise failed to comply with the good faith requirement of NRS
14 116.1113 in several respects, including, without limitation: the lack of sufficient notice, NAS and the
15 HOA's failure to provide Bank of America with a payoff ledger showing the super-priority amount,
16 the sale of the Property for a fraction of the loan balance or actual market value of the Property, a
17 foreclosure that was not calculated to promote an equitable sales price for the Property or to attract
18 proper prospective purchasers, and a foreclosure sale that was designed and/or intended to result in a
19 maximum profit for the HOA and NAS without regard to the rights and interests of those who have
20 an interest in the loan and made the purchase of the Property possible in the first place.

21 46. Based on the adverse claims being asserted by the parties, there is an actual case in
22 controversy between them, and a judicial determination is necessary to ascertain the rights,
23 obligations, and duties of the various parties.

24 47. Bank of America is entitled to a declaration that the HOA sale did not extinguish the
25 senior Deed of Trust, which is superior to any interest acquired by Plaintiff through the HOA
26 foreclosure sale.

27 ...

1 48. Bank of America was required to retain an attorney to prosecute this action, and is
2 therefore entitled to collect its reasonable attorney's fees and costs.

3 **THIRD CAUSE OF ACTION**
4 **(Unjust Enrichment Against Mandolin)**

5 49. Bank of America repeats and re-alleges the preceding paragraphs as though set forth
6 fully herein and incorporates the same by reference.

7 50. Under NRS 116.3116(2), a homeowners' association's lien is split into two portions:
8 one which has super-priority, and another which is subordinate to a first deed of trust.

9 51. The portion of the lien with super-priority consists of only the last nine months of
10 assessments for common expenses incurred prior to the institution of an action to enforce the lien.
11 The remainder of a homeowners' association's lien is subordinate to a first deed of trust.

12 52. Prior to the foreclosure sale, Bank of America, through counsel at Miles Bauer,
13 requested from NAS and the HOA a payoff ledger detailing the super-priority amount Bank of
14 America would be required to tender to protect its first Deed of Trust.

15 53. NAS and the HOA refused to provide a payoff ledger in order for Bank of America to
16 identify the true super-priority amount allowed under NRS 116.3116(2)(c).

17 54. The HOA, through NAS rejected Bank of America's tender of the super-priority
18 amount by failing to provide the amount needed for tender to Bank of America.

19 55. Instead, the HOA, through NAS, foreclosed on the Property. This allowed the HOA
20 to sell the property at the foreclosure sale for \$14,600, approximately 9% of the original value of the
21 first Deed of Trust.

22 56. By foreclosing on the Property rather than permitting Bank of America to tender the
23 super-priority amount, the HOA was unjustly enriched in an amount at least equal to the difference
24 between the true super-priority portion of its lien and the amount the HOA actually recovered from
25 the foreclosure proceeds.

26 57. Bank of America was injured as a direct and proximate result of the HOA's actions.

27 58. Bank of America is entitled to a reasonable amount of the benefits obtained by the
28 HOA based on a theory of unjust enrichment.

1 59. Bank of America was required to retain an attorney to prosecute this action, and is
2 therefore entitled to collect its reasonable attorney's fees and costs.

3 **FOURTH CAUSE OF ACTION**
4 **(Unjust Enrichment Against NAS)**

5 60. Bank of America repeats and re-alleges the preceding paragraphs as though fully set
6 forth herein and incorporates the same by reference.

7 61. By refusing to accept Bank of America's offer to tender the full super-priority amount
8 necessary to prevent foreclosure, NAS provided itself with the opportunity to perform many
9 additional services relating to the foreclosure on behalf of the HOA.

10 62. Consequently, NAS has been unjustly enriched by refusing in bad faith to accept
11 Bank of America's efforts to tender the full super-priority amount and Bank of America has been
12 injured as a direct and proximate result of NAS' conduct. NAS has been unjustly enriched in an
13 amount at least equal to NAS' charges for services rendered after Bank of America attempted tender;
14 services that would have been unnecessary if NAS had agreed to provide a payoff ledger.

15 63. Bank of America is entitled to a reasonable amount of the benefits obtained by the
16 NAS based on a theory of unjust enrichment.

17 64. Bank of America was required to retain an attorney to prosecute this action, and is
18 therefore entitled to collect its reasonable attorney's fees and costs.

19 **FIFTH CAUSE OF ACTION**
20 **(Tortious Interference with Contractual Relations Against Mandolin and NAS)**

21 65. Bank of America repeats and re-alleges the preceding paragraphs as though fully set
22 forth herein and incorporates the same by reference.

23 66. On December 9, 2010, Borrower executed a Deed of Trust of trust in favor of KBA
24 Mortgage, LLC. This Deed of Trust was subsequently assigned to Bank of America, via an
25 Assignment of Deed of Trust recorded on January 6, 2012.

26 67. On November 15, 2012, NAS, as agent for the HOA, recorded a Notice of
27 Foreclosure Sale, stating the Borrower owed \$3,954.62 in assessments, dues, interest, and fees.
28

1 68. In an effort to protect its first Deed of Trust, Bank of America, through counsel at
2 Miles Bauer, reached out to NAS to obtain a payoff ledger, seeking to determine the portion of the
3 HOA's lien which had super-priority over Bank of America's first Deed of Trust. NAS failed to
4 provide a payoff ledger.

5 69. Rather than accept Bank of America's effort to tender, the HOA, through NAS,
6 foreclosed on the Property. The HOA sold the Property to Plaintiff for \$14,600, approximately 9%
7 of the original amount of the senior deed of trust.

8 70. The HOA's decision to foreclose on the Property rather than accept Bank of
9 America's tender overtures—which would have prevented foreclosure—was designed to disrupt,
10 and did disrupt, the contractual relationship between Bank of America and Borrower by
11 extinguishing Bank of America's first Deed of Trust.

12 71. The HOA and NAS' foreclosure allowed the HOA to recover the full value of its
13 delinquent assessment lien rather than just the amount of the lien with super-priority over Bank of
14 America's first Deed of Trust.

15 72. While NAS' rejection of tender and subsequent foreclosure sale allowed the HOA to
16 recover the full value of its lien, its conduct directly and proximately injured Bank of America in that
17 it has put the first priority position of Bank of America's Deed of Trust in dispute.

18 73. Bank of America is entitled to an order establishing that its Deed of Trust is the senior
19 lien encumbering the Property or, in the alternative, monetary damages equal to the value secured by
20 its first Deed of Trust that was purportedly extinguished as a direct result of the HOA and NAS and
21 Silver State's intentional acts.

22 74. Bank of America was required to retain an attorney to prosecute this action, and is
23 therefore entitled to collect its reasonable attorney's fees and costs.

24 **SIXTH CAUSE OF ACTION**

25 **(Breach of the Duty of Good Faith Against Mandolin and NAS)**

26 75. Bank of America repeats and re-alleges the preceding paragraphs as though fully set
27 forth herein and incorporates the same by reference.

1 76. NRS 116.1113 provides that every duty governed by NRS 116, the Common-Interest
2 Ownership Uniform Act, must be performed in good faith.

3 77. Prior to the foreclosure of the Property, Bank of America attempted to obtain payoff
4 information from NAS, as agent for the HOA, but NAS, acting on behalf of the HOA, refused to
5 provide the requested information.

6 78. Rather than accept a payment which would satisfy its super-priority lien, the HOA
7 determined in bad faith to foreclose on the Property pursuant to NRS 116, and thereby breached its
8 duty of good faith.

9 79. This bad-faith foreclosure allowed the HOA to recover the full value of its lien for
10 delinquent assessments, rather than the portion of the lien with priority over Bank of America's first
11 Deed of Trust. As a direct and proximate result of the HOA and NAS' conduct, the first priority
12 position of Bank of America's Deed of Trust with an original amount of \$164,032.00 has been put
13 in dispute.

14 80. Bank of America is entitled to an order establishing that its Deed of Trust is the senior
15 lien encumbering the Property or, in the alternative, monetary damages equal to the value secured by
16 its first Deed of Trust that was purportedly extinguished as a direct result of the HOA and NAS' bad-
17 faith foreclosure.

18 81. Bank of America was required to retain an attorney to prosecute this action, and is
19 therefore entitled to collect its reasonable attorney's fees and costs.

20 **SEVENTH CAUSE OF ACTION**
21 **(Wrongful Foreclosure Against Mandolin and NAS)**

22 82. Bank of America repeats and re-alleges the preceding paragraphs as though fully set
23 forth herein and incorporates the same by reference.

24 83. Prior to the foreclosure of the Property, Bank of America attempted to obtain payoff
25 information from NAS, as agent for the HOA, but NAS, acting on behalf of the HOA, refused to
26 provide the requested information.

27 ...

28 ...

85. As a direct and proximate result of the HOA and NAS' wrongful foreclosure, the first priority position of Bank of America's first Deed of Trust with an original value of \$164,032.00 has been put in dispute.

86. Bank of America is entitled to an order establishing that its Deed of Trust is the senior lien encumbering the Property or, in the alternative, monetary damages equal to the value secured by its first Deed of Trust that was purportedly extinguished as a direct result of the HOA and NAS' wrongful foreclosure.

87. Bank of America was required to retain an attorney to prosecute this action, and is therefore entitled to collect its reasonable attorney's fees and costs.

WHEREFORE, Bank of America prays for the following:

1. A declaration establishing Bank of America's Deed of Trust is the senior lien encumbering the property;

2. A declaration establishing Bank of America's Deed of Trust is senior and superior to any right, title, interest, lien, equity, or estate of Plaintiff;

3. A declaration establishing that the super-priority portion of the HOA's lien is eliminated as a result of the HOA's refusal to accept Bank of America's offer to tender the full super-priority amount;

4. A preliminary injunction prohibiting Plaintiff, its successors, assigns, or agents, from conducting any sale, transfer, or encumbrance of the Property that is claimed to be superior to the senior Deed of Trust, or not subject to the senior Deed of Trust;

1 5. A preliminary injunction requiring Plaintiff to pay all taxes, insurance, and
2 homeowner's association dues during the pendency of this action;

3 6. Judgment in Bank of America's favor against Plaintiff for the amount that it was
4 unjustly enriched in an amount in excess of \$10,000;

5 7. Judgment in Bank of America's favor against the HOA for the damages it caused
6 Bank of America in an amount in excess of \$10,000;

7 8. Judgment in Bank of America's favor against NAS for the damages it caused Bank of
8 America in an amount in excess of \$10,000;

9 9. Reasonable attorney's fees as special damages and the costs of the suit; and
10

11 10. For such other and further relief the Court deems proper.

12 DATED: August 10, 2016

AKERMAN LLP

/s/ Rebekkah B. Bodoff, Esq.

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

REBEKKAH B. BODOFF, ESQ.

Nevada Bar No. 12703

AKERMAN LLP

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

Attorneys for Defendant Bank of America, N.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 10th day of August, 2016 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **DEFENDANT BANK OF AMERICA, N.A.’S AMENDED ANSWER TO COMPLAINT, COUNTERCLAIMS AGAINST PLAINTIFF, AND CROSSCLAIMS AGAINST MANDOLIN HOMEOWNERS ASSOCIATION AND NEVADA ASSOCIATION SERVICES, INC. (To Correct Improperly Named Cross-Defendants)**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

Law Offices of Michael F. Bohn, Esq. – Attorney for Plaintiff		
Contact	Email	
Eserve Contact	office@bohnlawfirm.com	
Michael F Bohn Esq	mbohn@bohnlawfirm.com	

Michael F. Bohn, Esq.
Law Offices Of Michael F. Bohn, Esq. Ltd.
376 East Warm Springs Road, Suite 125
Las Vegas, Nevada 89119

/s/ Carla Llarena
An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A

Assessor's Parcel Number:
176-34-114-031
After Recording Return To:

Inst #: 201012100002325
Fees: \$37.00
N/C Fee: \$0.00
12/10/2010 02:06:11 PM
Receipt #: 608447
Requestor:
NORTH AMERICAN TITLE MAIN
Recorded By: OSA Pgs: 24
DEBBIE CONWAY
CLARK COUNTY RECORDER

Recon Trust Co./TX2-979-01-0
P.O. Box 619003
Dallas, TX 75261-9003
Prepared By:
LING TING
Recording Requested By:
M. WARNER

KBA Mortgage, LLC

7660 DEAN MARTIN DR, STE
201A
LAS VEGAS
NV 89139

[Space Above This Line For Recording Data]

LAP454562778322 45002-10-12984 000 2010
[Case #] [Escrow/Closing #] [Doc ID #]

Lender affirms that this instrument does not contain Personal Information as that term is defined in Nevada
Revised Statutes §603A.040.

DEED OF TRUST

MIN 1001337-0003726029-9

**NOTICE: THIS LOAN IS NOT ASSUMABLE WITHOUT
THE APPROVAL OF THE DEPARTMENT OF
VETERANS AFFAIRS OR ITS AUTHORIZED AGENT.**

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

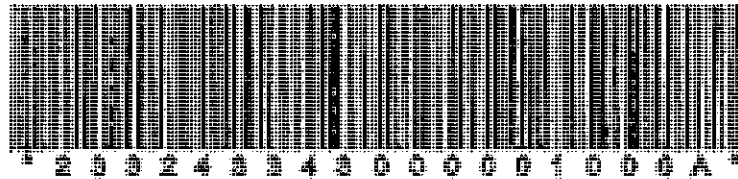
Form 3029 1/01

MERS Deed of Trust-NV
1006A-NV (08/08)(d/l)

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* 2 5 9 9 1 *



* 2 5 9 2 4 2 2 4 2 0 0 0 0 0 1 0 0 6 A *

CASE #: LAP454562778322

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12010

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated DECEMBER 09, 2010 together with all Riders to this document.

(B) "Borrower" is

DOMINIC J NOLAN, A SINGLE MAN

Borrower is the trustor under this Security Instrument.

(C) "Lender" is

KRA Mortgage, LLC

Lender is a

CORPORATION

organized and existing under the laws of DELAWARE

Lender's address is

27001 Agoura Road, Suite 200

Calabasas Hills, CA 91301

(D) "Trustee" is

NORTH AMERICAN TITLE COMPANY

3571 E SUNSET ROAD

LAS VEGAS, NV 89120

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated DECEMBER 09, 2010

The Note states that Borrower owes Lender

ONE HUNDRED SIXTY FOUR THOUSAND THIRTY TWO and 00/100

Dollars (U.S. \$ 164,032.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JANUARY 01, 2041

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

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

Form 3029 1/01

MERS Deed of Trust-NV
1006A-NV (08/08)

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CASE #: LAF454562778322

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12010

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|--|--|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input checked="" type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input checked="" type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Other(s) [specify] |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appellable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following

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

Form 3029 1/01

MERS Deed of Trust-NV
1006A-NV (08/08)

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BANA/Nolan-01-000012

CASE #: LAP454562778322

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2010

described property located in the

COUNTY

of

[Type of Recording Jurisdiction]

CLARK

:

[Name of Recording Jurisdiction]

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

which currently has the address of

7510 PERLA DEL MAR AVE, LAS VEGAS

[Street/City]

Nevada 89179-2500 ("Property Address");

[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully 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,

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

Form 3029 1/01

MERS Deed of Trust-NV
1008A-NV (08/08)

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BANA/Nolan-01-000013

subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. **Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all

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insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by,

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or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for

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public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing

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in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further;

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(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest

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in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a

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substitute notice address by notice to Lender, Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument; (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity;

**NEVADA—Single Family—Fannie Mae/Freddie Mac
UNIFORM INSTRUMENT (MERS)**

Form 3029 1/01

MERS Deed of Trust-NV
1006A-NV (08/08)

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or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance

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

Form 3029 1/01

MERS Deed of Trust-NV
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affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

CASE #: LAP454562778322

DOC ID #: 000

12010

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of
U.S.\$ 300.00

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.



DOMINIC J. NOLAN

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

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

Form 3029 1/01

MERS Deed of Trust-NV
1006A-NV (08/08)

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BANA/Nolan-01-000024

CASE #: LAP454562778322

DOC ID #: 000

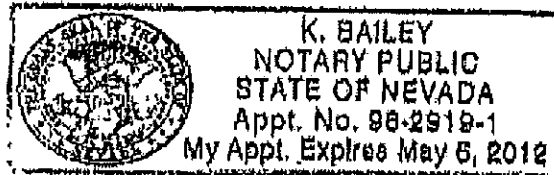
L2010

STATE OF NEVADA
COUNTY OF Clark

This instrument was acknowledged before me on 12-9-10 by
Dominic J. Nolan

Mail Tax Statements To:
TAX DEPARTMENT SV3-24

450 American Street
Simi Valley CA, 93065



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

Form 3029 1/01

MERS Deed of Trust-NV
1006A-NV (08/08)

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BANA/Nolan-01-000025

CASE #: LAP454562778322

DOC ID #: 000.

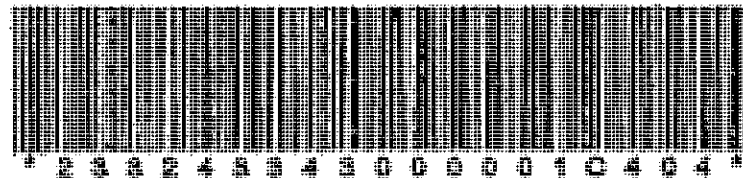
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LEGAL DESCRIPTION EXHIBIT A

Parcel One(1): Lot Sixty-Three(63) of Mandolin Phase 3 at Mountains Edge (A Planned Unit Development and Common Interest Community) as shown by map thereof on file in Book 134 of Plats, Page 21, in the Office of the County Recorder of Clark County, Nevada. Parcel Two(2): Non-exclusive easements for vehicular and pedestrian traffic as provided for and subject to the terms and conditions as set forth in that certain "Master Declaration of Covenants, Conditions and Restrictions and Reservation of easements for Mountains Edge," Recorded April 14, 2003 in Book 20030414 as Document No. 2089, of Official Records. Parcel Three(3): Non-Exclusive easements for ingress, egress and utility purposes as set forth in that certain "Declaration of Covenants, Conditions and Restrictions for Mandolin," Recorded July 6, 2006 in Book 20060706 as Document No. 2647, of Official Records.

Legal Description Exhibit A
1C404-XX (08/08)(d/l)

Page 1 of 1



VA GUARANTEED LOAN AND ASSUMPTION POLICY RIDER

LAP454562778322
[Case #]

45002-10-12984
[Escrow/Closing #]

000: 12010
[Doc ID #]

NOTICE: THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT.

THIS VA GUARANTEED LOAN AND ASSUMPTION POLICY RIDER is made this NINTH day of DECEMBER, 2010 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Deed to Secure Debt (herein "Security Instrument") dated of even date herewith, given by the undersigned (herein "Borrower") to secure Borrower's Note to KBA Mortgage, LLC

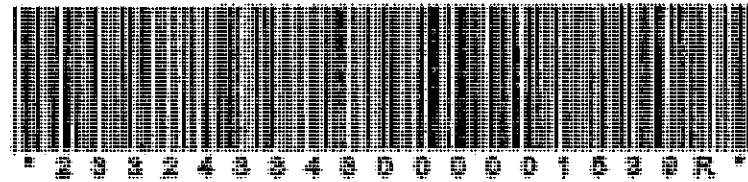
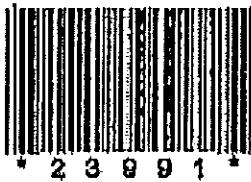
(herein "Lender") and covering the Property described in the Security Instrument and located at
7510 PERLA DEL MAR AVE, LAS VEGAS, NV 89179-2500 .

[Property Address]

VA GUARANTEED LOAN COVENANT: In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

If the indebtedness secured hereby be guaranteed or insured under Title 38, United States Code, such Title and Regulations issued thereunder and in effect on the date hereof shall govern the rights, duties and liabilities of Borrower and Lender. Any provisions of the Security Instrument or other instruments executed in connection with said indebtedness which are inconsistent with said Title or Regulations, including, but not limited to, the provision for payment of any sum in connection with prepayment of the secured indebtedness and the provision that the Lender may accelerate payment of the secured indebtedness pursuant to Covenant 18 of the Security Instrument, are hereby amended or negated to the extent necessary to conform such instruments to said Title or Regulations.

VA Guaranteed Loan and Assumption Policy Rider
1539R-XX (07/10)(d/l) Page 1 of 3



CASE #: LAP454562778322

DOC ID #: 000:

12010

LATE CHARGE: At Lender's option, Borrower will pay a "late charge" not exceeding four per centum (4%) of the overdue payment when paid more than fifteen (15) days after the due date thereof to cover the extra expense involved in handling delinquent payments, but such "late charge" shall not be payable out of the proceeds of any sale made to satisfy the indebtedness secured hereby, unless such proceeds are sufficient to discharge the entire indebtedness and all proper costs and expenses secured hereby.

TRANSFER OF THE PROPERTY: This loan may be declared immediately due and payable upon transfer of the Property securing such loan to any transferee, unless the acceptability of the assumption of the loan is established pursuant to Section 3714 of Chapter 37, Title 38, United States Code.

An authorized transfer ("assumption") of the Property shall also be subject to additional covenants and agreements as set forth below:

- (a) **ASSUMPTION FONDING FEE:** A fee equal to one half of one percent (0.50 %) of the balance of this loan as of the date of transfer of the Property shall be payable at the time of transfer to the loan holder or its authorized agent, as trustee for the Department of Veterans Affairs. If the assumer fails to pay this fee at the time of transfer, the fee shall constitute an additional debt to that already secured by this instrument, shall bear interest at the rate herein provided, and, at the option of the payee of the indebtedness hereby secured or any transferee thereof, shall be immediately due and payable. This fee is automatically waived if the assumer is exempt under the provisions of 38 U.S.C. 3729 (c).
- (b) **ASSUMPTION PROCESSING CHARGE:** Upon application for approval to allow assumption of this loan, a processing fee may be charged by the loan holder or its authorized agent for determining the creditworthiness of the assumer and subsequently revising the holder's ownership records when an approved transfer is completed. The amount of this charge shall not exceed the maximum established by the Department of Veterans Affairs for a loan to which Section 3714 of Chapter 37, Title 38, United States Code applies.
- (c) **ASSUMPTION INDEMNITY LIABILITY:** If this obligation is assumed, then the assumer hereby agrees to assume all of the obligations of the veteran under the terms of the instruments creating and securing the

CASE #: LAP454562778322

DOC ID #: 000

12010

loan. The assumer further agrees to indemnify the Department of Veterans Affairs to the extent of any claim payment arising from the guaranty or insurance of the indebtedness created by this instrument.

IN WITNESS WHEREOF, Borrower(s) has executed this VA Guaranteed Loan and Assumption Policy Rider.



DOMINIC J. NOLAN

- Borrower

- Borrower

- Borrower

- Borrower

PLANNED UNIT DEVELOPMENT RIDER

LAP454562778322

[Case #]

45002-10-12984

[Escrow/Closing #]

000

[Doc ID #]

L2010

THIS PLANNED UNIT DEVELOPMENT RIDER is made this NINTH day of
DECEMBER, 2010, and is incorporated into and shall be deemed to amend and supplement the
Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the
undersigned (the "Borrower") to secure Borrower's Note to
KBA Mortgage, LLC.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

7510 PERLA DEL MAR AVE
LAS VEGAS, NV 89179-2500

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such
parcels and certain common areas and facilities, as described in

THE COVENANTS, CONDITIONS, AND RESTRICTIONS FILED OF RECORD
THAT AFFECT THE PROPERTY

(the "Declaration"). The Property is a part of a planned unit development known as

MANDOLIN

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity
owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses,
benefits and proceeds of Borrower's interest.

MULTISTATE PUD RIDER--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3150 1/01

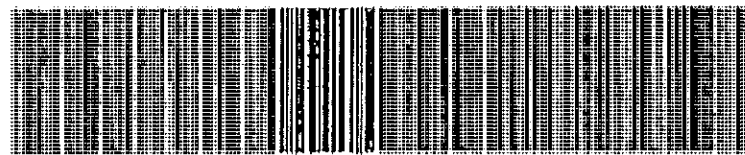
Planned Unit Development Rider

1007R-XX (05/08)(d/1)

Page 1 of 3



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

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to ensure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

MULTISTATE PUD RIDER--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3150 1/01

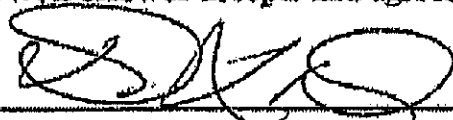
CASE #: LAP454562778322

DOC ID #: 000

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F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.



DOMINIC J. NOLAN (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

MULTISTATE PUD RIDER--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3150 1/01

Planned Unit Development Rider
1007R-XX (05/08)

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BANA/Nolan-01-000032

CASE #: LAP454562778322

LOAN #:

LEGAL DESCRIPTION EXHIBIT A

Parcel One(1): Lot Sixty-Three(63) of Mandolin Phase 3 at Mountains Edge (A Planned Unit Development and Common Interest Community) as shown by map thereof on file in Book 134 of Plats, Page 21, in the Office of the County Recorder of Clark County, Nevada. Parcel Two(2): Non-exclusive easements for vehicular and pedestrian traffic as provided for and subject to the terms and conditions as set forth in that certain "Master Declaration of Covenants, Conditions and Restrictions and Reservation of easements for Mountains Edge," Recorded April 14, 2003 in Book 20030414 as Document No. 2089, of Official Records. Parcel Three(3): Non-Exclusive easements for ingress, egress and utility purposes as set forth in that certain "Declaration of Covenants, Conditions and Restrictions for Mandolin," Recorded July 6, 2006 in Book 20060706 as Document No. 2647, of Official Records.

Legal Description Exhibit A
2C404-XX (07/10) (d/i)

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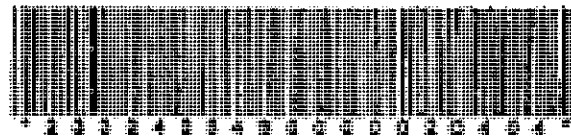


EXHIBIT B

EXHIBIT B

Recording Requested By:
Bank of America
Prepared By: Aida Duenas
888-603-9011
When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036



DocID# 122 10733
Tax ID: 176-34-114-031
Property Address:
7510 Perla Del Mar Ave
Las Vegas, NV 89179-2500
NVO-ADT 16687097 1/3/2012

Inst #: 201201060000225
Fees: \$18.00
N/C Fee: \$0.00
01/06/2012 08:01:36 AM
Receipt #: 1028277
Requestor:
CORELOGIC
Recorded By: MSH Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

This space for Recorder's use

MIN #: 1001337-0003726029-9

MERS Phone #: 888-679-6377

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 1901 E Voorhees Street, Suite C, Danville, IL 61834 does hereby grant, sell, assign, transfer and convey unto BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP whose address is 451 7TH ST.SW #B-133, WASHINGTON DC 20410 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: KBA MORTGAGE, LLC
Made By: DOMINIC J NOLAN, A SINGLE MAN
Trustee: NORTH AMERICAN TITLE COMPANY
Date of Deed of Trust: 12/9/2010 Original Loan Amount: \$164,032.00

Recorded in Clark County, NV on: 12/10/2010, book 20101210, page 0002325 and instrument number N/A

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

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on

1-3-2012

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.

By: 

Cynthia Santos Assistant Secretary

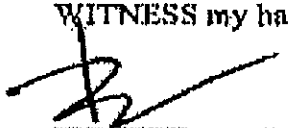
State of California
County of Ventura

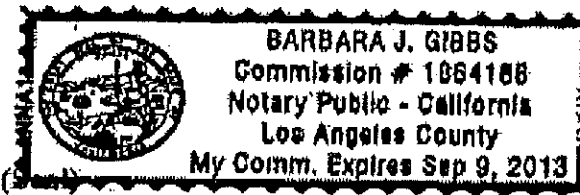
On JAN 09 2012 before me, Barbara J. Gibbs, Notary Public, personally appeared
Cynthia Santos

, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that ~~he~~she ~~they~~ executed the same in his her ~~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: Barbara J. Gibbs
My Commission Expires: September 9, 2013



DocID# 12223324334310733

EXHIBIT C

EXHIBIT C

Inet #: 201201040001123
Fees: \$17.00
N/C Fee: \$0.00
01/04/2012 09:18:22 AM
Receipt #: 1025708
Requestor:
NORTH AMERICAN TITLE COMPAN
Recorded By: SOL Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

Accommodation

APN # 176-34-114-031
N69603

NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on July 6, 2006, as instrument number 000347 BK 20060706, of the official records of Clark County, Nevada, the Mandolin has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 7510 Perla Del Mar Ave Las Vegas, NV 89179 particularly legally described as: Mandolin Phase 3 At Mountains Edge, Plat Book 134, Page 21, Lot 63 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):
Dominic J Nolan

Mailing address(es):
7510 Perla Del Mar Ave Las Vegas, NV 89179

*Total amount due as of today's date is \$987.44.

This amount includes late fees, collection fees and interest in the amount of \$648.34

* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.

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

Dated: December 29, 2011



By Shea Watkins, of Nevada Association Services, Inc., as agent for Mandolin

When Recorded Mail To:
Nevada Association Services
TS # N69603
6224 W. Desert Inn Rd, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885 Toll Free: (888) 627-5544

EXHIBIT D

EXHIBIT D

(2)

Inst #: 201202020001210

Fees: \$18.00

N/C Fee: \$0.00

02/02/2012 09:32:38 AM

Receipt #: 1064971

Requestor:

NORTH AMERICAN TITLE COMPAN

Recorded By: LEX Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded return to:
Silver State Trustee Services, LLC
In affiliation with
Robert Walsh, Esq.
1424 South Jones Blvd.
Las Vegas, NV 89146-1231

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

Accommodation

Notice of Delinquent Assessment Lien

Notice is hereby given pursuant to NRS 116.3116, **Mountains Edge Master Association**, having a declaration of Covenants, Conditions and Restrictions recorded 04/14/2003 Instrument No. 02089, Book # 20030414 claims a lien upon real property, building, improvements and structures thereon, described below.

The amount of assessments, interest costs and penalties in arrears is \$323.50 together with collection and lien costs and fees of \$395.00 the **total amount due is: \$718.50. Due by 03/09/2012.** If not cured within thirty (30) days, a Notice of Default Election to Sell Real Property under Assessment Claim & Lien will be recorded against the property.

Property Address: 7510 Perla Del Mar Avenue
Las Vegas, NV 89179-2500

Legal Description: Plat Book 134, Page 21; Lot 63 Block --
Mandolin Phase 3 at Mountains Edge

Owner of Record: Nolan, Dominic J.

Mailing Address: Same

The amount owed to cure this lien increases at the rate of quarterly assessments, monthly late fees, interest and special assessments as well as all additional fees of the Agent for the Association and/or Management body.


Dated this 31ST day of January 2012
Contracted Agent for
Mountains Edge Master Association



Monique Washington

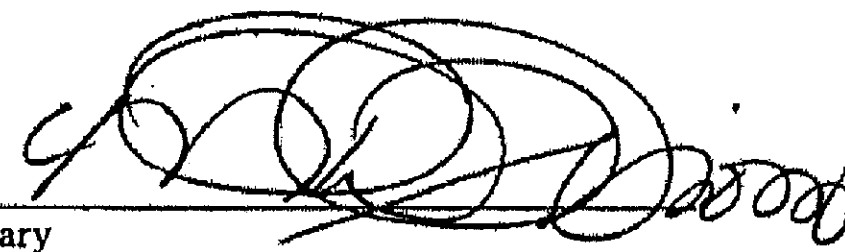
State of Nevada }
County of Clark }

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



Monique Washington

Subscribed and Sworn to before
me the 31ST day of January, 2012.



Notary

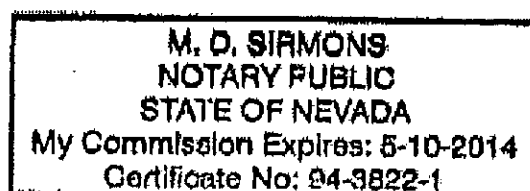


EXHIBIT E

EXHIBIT E

Inst #: 201202270002448
Fees: \$18.00
N/C Fee: \$0.00
02/27/2012 02:41:00 PM
Receipt #: 1078502
Requestor:
NORTH AMERICAN TITLE SUNSET
Recorded By: LEX Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN # 176-34-114-031
NAS # N69603
North American Title # 36179
Property Address: 7310 Perla Del Mar Ave

Accommodation

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

IMPORTANT NOTICE

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

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

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

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

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

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

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

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

NAS # N69603

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

**REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT
TAKE PROMPT ACTION.**

**NOTICE IS HEREBY GIVEN THAT NEVADA ASSOCIATION
SERVICES, INC.**

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

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

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

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

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

Dated: February 23, 2012



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

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

EXHIBIT F

EXHIBIT F

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

(2)

Inst #: 201208140001300
Fees: \$18.00
N/C Fee: \$0.00
08/14/2012 09:19:44 AM
Recalpt #: 1270840
Requestor:
NORTH AMERICAN TITLE COMPAN
Recorded By: ADF Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

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

Accommodation

37789

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

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

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

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

Pursuant to Nevada Revised Statutes 116.31116, a sale will be held if this obligation is not completely satisfied and paid within ninety (90) days from the recording date of the Notice, on real property described hereinabove.

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

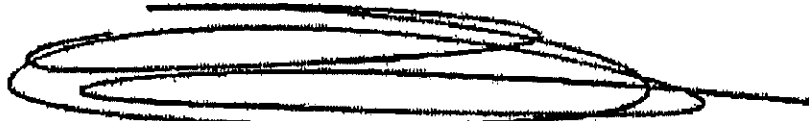
As Agent for Mountains Edge Master Association



Marques Sirmons
Dated the 9TH day of August 2012.

State of Nevada)
County of Clark)

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



Marques Sirmons

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


Notary Public

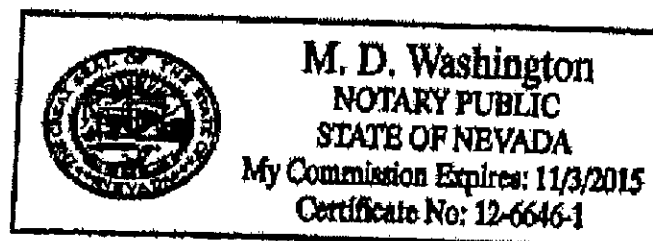


EXHIBIT G

EXHIBIT G

2

RECORDING COVER PAGE

Must be typed or printed clearly in black ink only.

APN# 176-34-114-031
11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrealprop/owner.aspx>

Inst #: 20121150002280
Fee: \$18.00
N/C Fee: \$0.00
11/16/2012 09:36:24 AM
Receipt #: 1383723
Requestor:
NORTH AMERICAN TITLE COMPAN
Recorded By: KGP Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

TITLE OF DOCUMENT (DO NOT Abbreviate)

NOTICE OF FORECLOSURE SALE

Title of the Document on cover page must be EXACTLY as it appears on the first page of the document to be recorded.

Recording requested by:

NORTH AMERICAN TITLE COMPANY

Return to:

Name NORTH AMERICAN TITLE COMPANY

Address 8485 W. SUNSET ROAD #111

City/State/Zip LAS VEGAS, NV 89113

This page provides additional information required by NRS 111.912 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly—do not use page scaling.

P:\RecorderForms 12_2010

APN # 176-34-114-031
Mandolin

NAS # N69603

Accommodation NOTICE OF FORECLOSURE SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL NEVADA ASSOCIATION SERVICES, INC. AT (702) 804-8885. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A DELINQUENT ASSESSMENT LIEN, December 29, 2011. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN THAT on 12/14/2012 at 10:00 am at the front entrance to the Nevada Association Services, Inc. 6224 West Desert Inn Road, Las Vegas, Nevada, under the power of sale pursuant to the terms of those certain covenants conditions and restrictions recorded on July 6, 2006 as instrument number 000347 BK 20060706 of official records of Clark County, Nevada Association Services, Inc., as duly appointed agent under that certain Delinquent Assessment Lien, recorded on January 4, 2012 as document number 0001123 Book 20120104 of the official records of said county, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the following commonly known property known as: 7510 Perla Del Mar Ave, Las Vegas, NV 89179. Said property is legally described as: Mandolin Phase 3 At Mountains Edge, Plat Book 134, Page 21, Lot 63, official records of Clark County, Nevada.

The owner(s) of said property as of the date of the recording of said lien is purported to be: Dominic J Nolan

The undersigned agent disclaims any liability for incorrectness of the street address and other common designations, if any, shown herein. The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, or encumbrances, or obligations to satisfy any secured or unsecured liens. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$3,954.62. Payment must be in cash or a cashier's check drawn on a state or national bank, check drawn on a state or federal savings and loan association, savings association or savings bank and authorized to do business in the State of Nevada. The Notice of Default and Election to Sell the described property was recorded on 2/27/2012 as instrument number 0002448 Book 20120227 in the official records of Clark County.

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

November 12, 2012

When Recorded Mail To:
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146

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

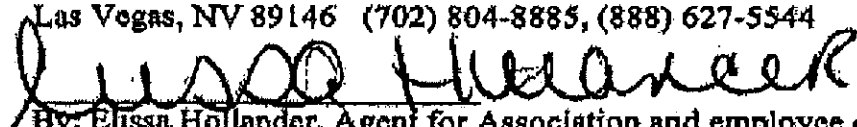

By: Elissa Hollander, Agent for Association and employee of
Nevada Association Services, Inc.

EXHIBIT H

EXHIBIT H

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



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

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

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

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

March 16, 2012

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

SENT VIA FIRST CLASS MAIL

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

Dear Sirs:

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

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

The association has a lien on a unit for:

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

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

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

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

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

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

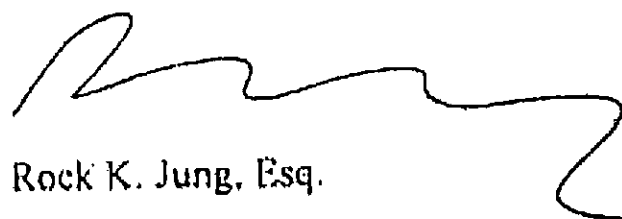
Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated February 23, 2012. For purposes of calculating the nine-month period,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

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

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

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Rock K. Jung, Esq.

EXHIBIT I

EXHIBIT I

Inet #: 201302070001210
Fees: \$18.00 N/C Fee: \$0.00
RPTT: \$75.50 Ex: #
02/07/2013 09:34:04 AM
Receipt #: 1489157
Requestor:
NORTH AMERICAN TITLE COMPAN
Recorded By: RNS Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

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

FORECLOSURE DEED

APN # 176-34-114-031
North American Title #45010-12-36179

NAS # N69603

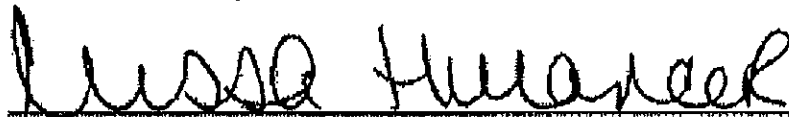
The undersigned declares:

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

AGENT STATES THAT:

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

Dated: February 2, 2013



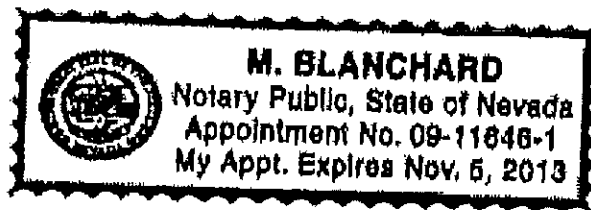
By Elissa Hollander, Agent for Association and Employee of Nevada Association Services

STATE OF NEVADA)
COUNTY OF CLARK)

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

(Seal)

(Signature)



M. Blanchard

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 176-34-114-031
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 14,600.00

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

c. Transfer Tax Value:

\$ 14,600.00

d. Real Property Transfer Tax Due

\$ 76.50

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest; Percentage being transferred: 100 %

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

Signature [Signature] Capacity: Agent

Signature _____ Capacity: _____

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

Print Name: Nevada Association Services

Address: 6224 W. Desert Inn Rd.

City: Las Vegas

State: NV

Zip: 89146

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

Print Name: 7510 Perla Del Mar Ave Trust

Address: PO Box 36208

City: Las Vegas

State: NV

Zip: 89133

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

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

Escrow # 36179 / N69603

State: _____

Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT J

EXHIBIT J

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



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

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

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

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

September 10, 2012

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

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

Dear Sir or Madam:

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

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

The association has a lien on a unit for:

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

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

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

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

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

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

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

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

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

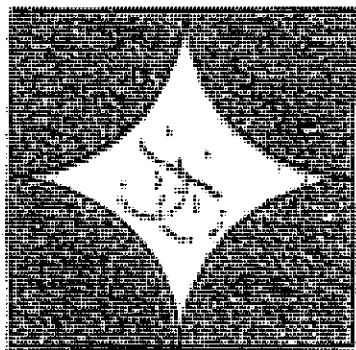
Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP

Rock K. Jung, Esq.

EXHIBIT K

EXHIBIT K



Silver State Trustee Services, LLC

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

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

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

September 20, 2012

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

SERVICER/MORTGAGE DEMAND

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

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

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

Due By:

October 22, 2012

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

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

EXHIBIT L

EXHIBIT L

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



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

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

CALIFORNIA OFFICE
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RICHARD J. BAUER, JR.
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THOMAS B. SONG
S. SHELLY RAISZADEH
SHANNON C. WILLIAMS
LAWRENCE R. BOIVIN
RICK J. NEHORAOFF
BRIAN M. LUNA
ELIZABETH D. SCOTT

October 4, 2012

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

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

Dear Sir/Madame:

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

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

The association has a lien on a unit for:

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

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

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

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

Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n). Nevertheless, due to the Nevada Real Estate Division's Advisory Opinion of December 2010, which was recently ratified in the Nevada Supreme Court's *non-published* opinion on May 23, 2012, our client wishes to also make a good-faith tender of your collection costs as part of the super-priority amount. Bear in mind that NRS 116.3103(1) only allows "[a]n association [to] charge a unit's owner reasonable fees to cover the costs of collecting any past due obligation." Here, reasonable collection costs in relation to my client's position as the first deed of trust lienholder, as opposed to a unit owner, is thought to be \$707.83.

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

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

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Rock K. Jung, Esq.

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

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

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

Bank of America
 1100 N. Green Valley Parkway
 Henderson, NV 89074
 16-661220
 1020
 12-H1796
 Loan # 16953

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

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

Check Void After 90 Days

Security Features Included. Details on back.

Handwritten mark resembling a large 'C' or checkmark.



EXHIBIT M

EXHIBIT M

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct

12-H1796

Initials: SRN

Payee: SILVER STATE TRUSTEE SERVICES

Check #: 16953

Date: 10/1/2012 Amount: 932.83

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

Miles, Bauer, Bergstrom & Winters, LLP
Trust Account

1231 E. Dyer Road, #100
Santa Ana, CA 92705
Phone: (714) 481-9100

Bank of America
1100 N. Green Valley Parkway
Henderson, NV 89074

16-66/1220
1020

12-H1796

Loan # 3

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

SILVER STATE TRUSTEE SERVICES

RECEIVED

OCT 26 2012

M.B.B. & W.
ACCOUNTING DEPT

16953

Date: 10/1/2012

Amount \$*****932.83

Check Void After 90 Days

VOIDED


Details on back:

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Security Features Included:

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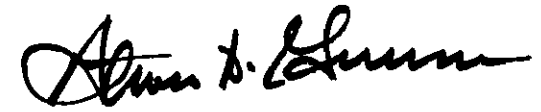
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CLERK OF THE COURT

1 **DFJD**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 ADAM R. TRIPPIEDI, ESQ.
6 Nevada Bar No.: 12294
7 atrippiedi@bohnlawfirm.com
8 LAW OFFICES OF
9 MICHAEL F. BOHN, ESQ.
10 376 East Warm Springs Road, Ste. 140
11 Las Vegas, Nevada 89119
12 (702) 642-3113/ (702) 642-9766 FAX
13 Attorney for plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

11 7510 PERLA DEL MAR AVE TRUST,
12 Plaintiff,

13 vs.

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

Defendants.

CASE NO.: A-13-686277-C
DEPT NO.: XXX

Date of Hearing: May 2, 2017
Time of Hearing: 9:00 a.m.

DEFAULT JUDGMENT

19 Plaintiff's Motion for default judgment against defendant Donimic J. Nolan, having come on for
20 hearing before the Court on May 2, 2017, Michael F. Bohn, Esq., appearing on behalf of plaintiff, and
21 the Court having reviewed the motion and having heard the arguments of counsel, and for good cause
22 appearing, the court finds that defendant Donimic J. Nolan was served with Summons and Complaint,
23 and having failed to appear and answer the plaintiff's complaint filed herein, the time for answering
24 having expired, and no answer having been filed, the default of said defendant, was been duly entered
25 according to law.
26
27
28

1 NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment
2 is entered in favor of plaintiff 7510 Perla Del Mar Ave Trust and against defendant Donimic J. Nolan
3 only.

4 IT IS FURTHER ORDERED that title to the real property commonly known as 7510 Perla Del
5 Mar Avenue, Las Vegas, Nevada and legally described as:

6 Parcel One (1):

7 Lot Sixty-Three (63) of Mandolin Phase 3 at Mountains edge (A Planned Unit
8 Development and Common Interest Community) as shown by map thereof on file in Book
134 of Plats, Page 21, in the office of the County Recorder of Clark County, Nevada.

9 Parcel Two (2):

10 Non-exclusive easement for vehicular and pedestrian traffic as provided for and subject
11 to the terms and conditins as wet forth in that certain "Master Declaration of Covenants,
Conditions and Restrictions and Reservation of easements for Mountains Edge" Recorded
12 April 13, 2003 in Book 2030414 as Document No. 2089, of Official records.

13 Parcel Three (3):

14 Non-Exclusive easements for ingress, egress and utility purposes as set forth in that
15 certain "Declaration of Covenants, Conditions and Restrictions and Reservation of
easements for Mandolin," Recorded July 6, 2006 in Book 20060706 as Document No.
2647, of Official Records.

16 APN 176-34-114-031

17 is hereby quieted in the name of 7510 Perla Del Mar Ave Trust

18 IT IS FURTHER ORDERED that as a result of the foreclosure sale conducted on February 1,
19 2013 and the foreclosure deed recorded on February 7, 2013 as instrument 201302070001219, the
20 interests of defendant Donimic J. Nolan as well as his heirs and assigns in the property commonly
21 known as 7510 Perla Del Mar Avenue, Las Vegas, Nevada are extinguished.

22 ///

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1 IT IS FURTHER ORDERED that defendant Donimic J. Nolan , as well as his heirs and assigns
2 have no further right, title or claim to the real property commonly known as 7510 Perla Del Mar Avenue,
3 Las Vegas, Nevada .

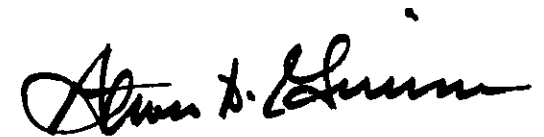
4 DATED this 8 day of May, 2017


DISTRICT COURT JUDGE

7 Respectfully submitted by:

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

10
11 By: 
12 Michael F. Bohn, Esq.
13 376 E. Warm Springs Rd., Ste. 140
14 Las Vegas, Nevada 89119
15 Attorney for plaintiff
16
17
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22
23
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25
26
27
28



CLERK OF THE COURT

NEDJ
MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
ADAM R. TRIPPIEDI, ESQ.
Nevada Bar No. 12294
atrippiedi@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX
Attorney for plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

7510 PERLA DEL MAR AVE TRUST,
Plaintiff,

vs.

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

CASE NO.: A686277
DEPT NO.: XXX

NOTICE OF ENTRY OF DEFAULT JUDGMENT

TO: Parties above-named; and

TO: Their Attorney of Record

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that a **DEFAULT JUDGMENT**

///

///

///

1 has been entered on the 9th day of May, 2017, in the above captioned matter, a copy of which is attached
2 hereto.

3 Dated this 9th day of May, 2017.

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

6 By: /s/ /Michael F. Bohn, Esq./
7 MICHAEL F. BOHN, ESQ.
8 ADAM R. TRIPPIEDI, ESQ.
9 376 E. Warm Springs Rd., Ste. 140
10 Las Vegas, NV 89119
11 Attorney for plaintiff

12 **CERTIFICATE OF SERVICE**

13 Pursuant to NRCPP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW
14 OFFICES OF MICHAEL F. BOHN., ESQ., and on the 9th day of May, 2017, an electronic copy of the
15 **NOTICE OF ENTRY OF DEFAULT JUDGMENT** was served on opposing counsel via the Court's
16 electronic service system and/or deposited for mailing in the U.S. Mail, postage prepaid to the following:

17 VIA Wiznet

18 Darren T. Brenner, Esq.
19 Rebekkah B. Bodoff, Esq.
20 AKERMAN LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 8944
Attorneys for Bank of America, N.A.

Via U.S. Mail

Dominc J. Nolan
10451 Gold Shadow Ave.
Las Vegas, NV 89129

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



CLERK OF THE COURT

1 **DFJD**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 ADAM R. TRIPPIEDI, ESQ.
6 Nevada Bar No.: 12294
7 atrippiedi@bohnlawfirm.com
8 LAW OFFICES OF
9 MICHAEL F. BOHN, ESQ.
10 376 East Warm Springs Road, Ste. 140
11 Las Vegas, Nevada 89119
12 (702) 642-3113/ (702) 642-9766 FAX
13 Attorney for plaintiff

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 7510 PERLA DEL MAR AVE TRUST,
17 Plaintiff,

18 vs.

19 BANK OF AMERICA, N.A.; NORTH
20 AMERICAN TITLE COMPANY, A NEVADA
21 CORPORATION; MOUNTAINS EDGE
22 MASTER ASSOCIATION; and DOMINIC J.
23 NOLAN,
24 Defendants.

CASE NO.: A-13-686277-C
DEPT NO.: XXX

Date of Hearing: May 2, 2017
Time of Hearing: 9:00 a.m.

25 **DEFAULT JUDGMENT**

26 Plaintiff's Motion for default judgment against defendant Donimic J. Nolan, having come on for
27 hearing before the Court on May 2, 2017, Michael F. Bohn, Esq., appearing on behalf of plaintiff, and
28 the Court having reviewed the motion and having heard the arguments of counsel, and for good cause
appearing, the court finds that defendant Donimic J. Nolan was served with Summons and Complaint,
and having failed to appear and answer the plaintiff's complaint filed herein, the time for answering
having expired, and no answer having been filed, the default of said defendant, was been duly entered
according to law.

1 NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment
2 is entered in favor of plaintiff 7510 Perla Del Mar Ave Trust and against defendant Donimic J. Nolan
3 only.

4 IT IS FURTHER ORDERED that title to the real property commonly known as 7510 Perla Del
5 Mar Avenue, Las Vegas, Nevada and legally described as:

6 Parcel One (1):

7 Lot Sixty-Three (63) of Mandolin Phase 3 at Mountains edge (A Planned Unit
8 Development and Common Interest Community) as shown by map thereof on file in Book
134 of Plats, Page 21, in the office of the County Recorder of Clark County, Nevada.

9 Parcel Two (2):

10 Non-exclusive easement for vehicular and pedestrian traffic as provided for and subject
11 to the terms and conditins as wet forth in that certain "Master Declaration of Covenants,
Conditions and Restrictions and Reservation of easements for Mountains Edge" Recorded
12 April 13, 2003 in Book 2030414 as Document No. 2089, of Official records.

13 Parcel Three (3):

14 Non-Exclusive easements for ingress, egress and utility purposes as set forth in that
15 certain "Declaration of Covenants, Conditions and Restrictions and Reservation of
easements for Mandolin," Recorded July 6, 2006 in Book 20060706 as Document No.
2647, of Official Records.

16 APN 176-34-114-031

17 is hereby quieted in the name of 7510 Perla Del Mar Ave Trust

18 IT IS FURTHER ORDERED that as a result of the foreclosure sale conducted on February 1,
19 2013 and the foreclosure deed recorded on February 7, 2013 as instrument 201302070001219, the
20 interests of defendant Donimic J. Nolan as well as his heirs and assigns in the property commonly
21 known as 7510 Perla Del Mar Avenue, Las Vegas, Nevada are extinguished.

22 ///

23 ///

24 ///

25

26

27

28


1 IT IS FURTHER ORDERED that defendant Donimic J. Nolan , as well as his heirs and assigns
2 have no further right, title or claim to the real property commonly known as 7510 Perla Del Mar Avenue,
3 Las Vegas, Nevada .

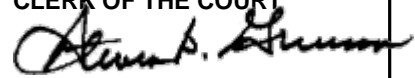
4 DATED this 8 day of May, 2017

5
6 
DISTRICT COURT JUDGE
EB

7 Respectfully submitted by:

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

10
11 By: 
12 Michael F. Bohn, Esq.
13 376 E. Warm Springs Rd., Ste. 140
Las Vegas, Nevada 89119
Attorney for plaintiff



**DISTRICT COURT
CLARK COUNTY, NEVADA**

7510 PERLA DEL MAR AVE TRUST,

Plaintiff,

v.

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

Defendants.

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

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

BANK OF AMERICA, N.A.,

Counter-Claimant,

v.

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

Counter-Defendants.

BANK OF AMERICA, N.A.,

Cross-Claimant,

v.

MANDOLIN HOMEOWNERS ASSOCIATION
and NEVADA ASSOCIATION SERVICES,
INC.

Cross-Defendants.

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

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

2 **FINDINGS OF FACT**

3 ***The Deed of Trust***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 Section 6.2.8 of the CC&Rs provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **CONCLUSIONS OF LAW**
27
28

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

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

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

11 3. NRS116.3116 provides in part:

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

16 *(emphasis added)*

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

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

24 6. The HOA's foreclosure begins at the recording of the notice of delinquent
25 assessment lien. *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank,*
26 *N.A.*, 388 P.3d 226, 231, 133 Nev. Adv. Op. 3 __ (2017). *See also Property Plus*
27
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 ***II. Equitable Balancing***

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

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

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

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

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

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

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

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

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

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

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

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

14 JUDGMENT

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

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

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

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

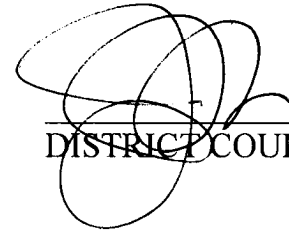
25 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that BANA's Deed
26 of Trust recorded on December 10, 2010 remains a first position lien against the Property
27 and is superior to the interest conveyed in the Foreclosure Deed; and
28

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

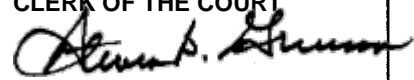
4 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that BANA shall
5 have its cost of suit, any issues regarding attorneys' fees to be deferred pending motion
6 practice directed thereto.

7 DATED 21 March, 2018.

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DISTRICT COURT JUDGE



DISTRICT COURT
CLARK COUNTY, NEVADA

7510 PERLA DEL MAR AVE TRUST,

Plaintiff,

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

v.

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

Defendants.

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

BANK OF AMERICA, N.A.,

Counter-Claimant,

v.

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

Counter-Defendants.

BANK OF AMERICA, N.A.,

Cross-Claimant,

v.

MANDOLIN HOMEOWNERS ASSOCIATION
and NEVADA ASSOCIATION SERVICES,
INC.

Cross-Defendants.

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

DATED this 20th day of March 2018.


JERRY A. WILSE
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

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

ariel.stern@akerman.com

akermanlas@akerman.com

elizabeth.streible@akerman.com

office@bohnlawfirm.com

mbohn@bohnlawfirm.com

rebekkah.bodoff@akerman.com

karen.whelan@akerman.com



Tatyana Ristic, JEA



DISTRICT COURT
CLARK COUNTY, NEVADA

7510 PERLA DEL MAR AVE TRUST,

Plaintiff,

v.

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

Defendants.

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

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

BANK OF AMERICA, N.A.,

Counter-Claimant,

v.

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

Counter-Defendants.

BANK OF AMERICA, N.A.,

Cross-Claimant,

v.

MANDOLIN HOMEOWNERS ASSOCIATION
and NEVADA ASSOCIATION SERVICES,
INC.

Cross-Defendants.

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

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

2 **FINDINGS OF FACT**

3 ***The Deed of Trust***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 13 Section 6.2.8 of the CC&Rs provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **CONCLUSIONS OF LAW**

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

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

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

11 3. NRS116.3116 provides in part:

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

16 *(emphasis added)*

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

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

24 6. The HOA's foreclosure begins at the recording of the notice of delinquent
25 assessment lien. *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank,*
26 *N.A.*, 388 P.3d 226, 231, 133 Nev. Adv. Op. 3 __ (2017). *See also Property Plus*
27
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 ***II. Equitable Balancing***

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

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

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

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

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

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

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

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

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

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

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

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

14 JUDGMENT

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

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

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

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

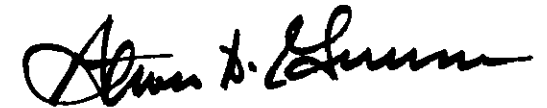
25 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that BANA's Deed
26 of Trust recorded on December 10, 2010 remains a first position lien against the Property
27 and is superior to the interest conveyed in the Foreclosure Deed; and
28

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

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

7 DATED 21 March, 2018.

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11 DISTRICT COURT JUDGE
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1 SAO
2 WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP CLERK OF THE COURT

3 ANDRE FARINHA
4 Nevada Bar No. 10035
5 GREGORY P. KERR, ESQ.
6 Nevada Bar No. 10383
7 3556 E. Russell Road, Second Floor
8 Las Vegas, Nevada 89120
9 (702) 341-5200/Fax: (702) 341-5300
10 mlemcool@wrslawyers.com
11 gkerr@wrslawyers.com

12 Attorneys for Defendant, Mountains Edge Master
13 Association

14
15 IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
16
17 IN AND FOR THE COUNTY OF CLARK

18 7510 PERLA DEL MAR AVE TRUST,
19
20 Plaintiff,

21 vs.

22 BANK OF AMERICA, N.A.; NORTH
23 AMERICAN TITLE COMPANY, A
24 NEVADA CORPORATION;
25 MOUNTAINS EDGE MASTER
26 ASSOCIATION and DOMINIC J.
27 NOLAN;

28 Defendants.

Case No. A686277

Dept. No.: XXX

STIPULATION AND ORDER OF
DISMISSAL OF MOUNTAINS EDGE
MASTER ASSOCIATION

Plaintiff, 7510 PERLA DEL MAR AVE TRUST ("Plaintiff"), by and through its attorney, Michael F. Bohn, Esq., and the above identified Defendant listed as MOUNTAINS EDGE MASTER ASSOCIATION ("Master Association"), by and through its attorneys, WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP, by Gregory P. Kerr, Esq., hereby agree and stipulate as follows:

1. This matter concerns real property located at 7510 Perla Del Mar Ave., Las Vegas, NV 89179 ("Property").

2. Plaintiff obtained title to the Property by way of foreclosure deed recorded on February 7, 2013.

1 3. Plaintiff purchased the Property at a foreclosure sale conducted by Mandolin
2 Homeowners Association ("Mandolin") for unpaid assessments owed to it by the previous owner
3 of the Property, Mr. Dominic Nolan.

4 4. Mandolin is a sub-association in the Master Association. The Property is subject to
5 both the Declaration of Covenants, Conditions and Restrictions ("CC&Rs") of Mandolin and the
6 CC&Rs of the Master Association, which are recorded against the property.

7 5. NRS 116.3116 gives a statutory lien to both Mandolin and the Master Association
8 for assessments levied against all properties located within the Mandolin and Master Association
9 communities, which includes the Property.

10 6. At the time of the foreclosure sale by Mandolin, there were delinquent assessments
11 owed to the Master Association for which it has a lien against the Property under NRS 116.3116.

12 7. Also, Bank of America is the assignee of a deed of trust which was recorded as an
13 encumbrance on the Property on December 10, 2010.

14 8. As a result of the foreclosure sale, the delinquent assessments owed to Mandolin
15 were satisfied from the proceeds of the sale and surplus funds remained.

16 9. On or about December 12, 2013, the Master Association's lien for delinquent
17 assessments owing up to the date of the foreclosure sale was satisfied from the surplus funds and
18 is no longer owed any amounts under the lien on the Property prior to and through the foreclosure
19 sale.

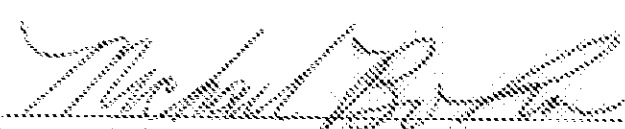
20 10. Plaintiff's Complaint seeks a declaration that the liens and encumbrances recorded
21 against the property as of the date of the foreclosure sale are wiped out and that the Plaintiff owns
22 the Property free and clear of those liens and encumbrances.

23 11. Because the Master Association's lien for all amounts owed through the foreclosure
24 were satisfied, the Master Association has no further interest or stake in the outcome of this
25 litigation and only maintains that its statutory lien under NRS 116.3116 remains in place as a
26 matter of law for assessment amounts owed post-foreclosure. As such, Plaintiff and the Master
27 Association agree and stipulate that the Master Association is hereby dismissed from this case
28 without prejudice at this time.

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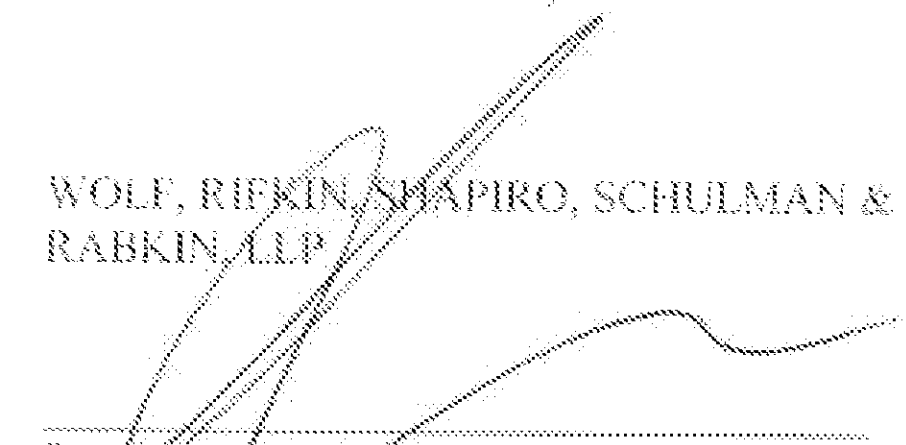
DATED: December ~~19~~ 23, 2013

LAW OFFICES OF MICHAEL F. BOHN


By: Michael F. Bohn, Esq., Attorney for
7510 Perla Del Mar Ave., Trust


DATED: December 23, 2013

WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP

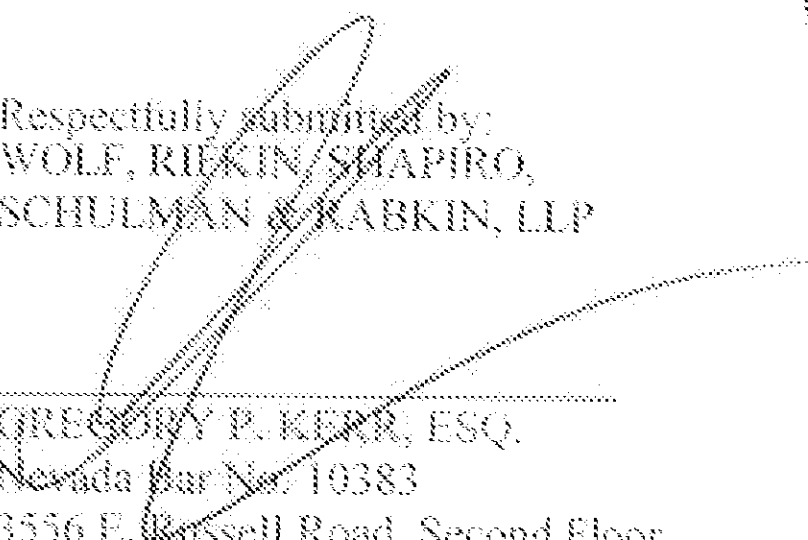

By: Gregory P. Kerr, Esq., Attorneys for
MOUNTAINS EDGE MASTER ASSOCIATION

IT IS SO ORDERED.

DATED this 26th day of December 2014.
2013


Hon. _____
DISTRICT COURT JUDGE

Respectfully submitted by:
WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP


GREGORY P. KERR, ESQ.
Nevada Bar No. 10383
3556 E. Russell Road, Second Floor
Las Vegas, Nevada 89120
(702) 341-5200/Fax: (702) 341-5300
*Attorneys for Defendant,
Mountains Edge Master Association*



CLERK OF THE COURT

1 NESO
2 WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
3 ANDRE FARINHA
4 Nevada Bar No. 10035
5 GREGORY P. KERR, ESQ.
6 Nevada Bar No. 10383
7 3556 E. Russell Road, Second Floor
8 Las Vegas, Nevada 89120
9 (702) 341-5200/Fax: (702) 341-5300
10 mlemcool@wrslawyers.com
11 gkerr@wrslawyers.com

12 *Attorneys for Defendant, Mountains Edge Master*
13 *Association*

14 **IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA**

15 **IN AND FOR THE COUNTY OF CLARK**

16 7510 PERLA DEL MAR AVE TRUST,

17 Plaintiff,

18 vs.

19 BANK OF AMERICA, N.A.; NORTH
20 AMERICAN TITLE COMPANY, A
21 NEVADA CORPORATION; MOUNTAINS
22 EDGE MASTER ASSOCIATION and
23 DOMINIC J. NOLAN;

24 Defendants.

Case No. A686277

Dept. No.: XXX

**NOTICE OF ENTRY OF STIPULATION
AND ORDER OF DISMISSAL OF
MOUNTAINS EDGE MASTER
ASSOCIATION**

25 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

26 PLEASE TAKE NOTICE that the attached STIPULATION AND ORDER OF
27 DISMISSAL OF MOUNTAINS EDGE MASTER ASSOCIATION was signed by the Court on
28 December 26, 2013, and filed on December 27, 2013.

///

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///

///

1 A true and correct copy of said Stipulation and Order is attached hereto.

2 DATED this 8th day of January, 2014.

3 WOLF, RIFKIN, SHAPIRO,
4 SCHULMAN & RABKIN, LLP

5
6 By:

ANDRE V. FARINHA, ESQ.

Nevada Bar No. 10035

GREGORY P. KERR, ESQ.

Nevada Bar No. 10383

3556 E. Russell Road, Second Floor

Las Vegas, Nevada 89120

(702) 341-5200/Fax: (702) 341-5300

*Attorneys for Defendant, Mountains Edge Master
Association*

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on this 8th day of January, 2014, a true and correct copy

15 of NOTICE OF ENTRY OF STIPULATION AND ORDER OF DISMISSAL OF

16 MOUNTAINS EDGE MASTER ASSOCIATION was placed in an envelope, postage prepaid,

17 addressed as stated below, in the basket for outgoing mail before 4:00 p.m. at WOLF, RIFKIN,

18 SHAPIRO, SCHULMAN & RABKIN, LLP. The firm has established procedures so that all mail

19 placed in the basket before 4:00 p.m. is taken that same day by an employee and deposited in a

20 U.S. Mail box.

21 Michael F. Bohn, Esq.

Michael F. Bohn, Esq., LTD

376 East Warm Springs Road, Suite 125

Las Vegas, NV 89119

Attorney for Plaintiff

7510 Perla Del Mar Ave Trust

Ariel E. Stern, Esq.

Akerman Senterfitt LLP

1160 Town Center Drive, Suite 330

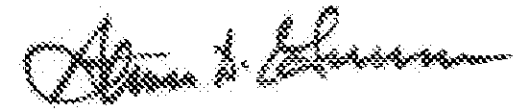
Las Vegas, NV 89101

Attorneys for Defendant, Bank of America

25
26 By

Nina Miller, an Employee of

WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP



SAO
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP CLERK OF THE COURT

ANDRE FARINHA

Nevada Bar No. 10035

GREGORY P. KERR, ESQ.

Nevada Bar No. 10383

3556 E. Russell Road, Second Floor

Las Vegas, Nevada 89120

(702) 341-5200 Fax: (702) 341-5300

mfemcoo@wrslawyers.com

gkerr@wrslawyers.com

Attorneys for Defendant, Mountains Edge Master
Association

IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

7510 PERLA DEL MAR AVE TRUST,

Case No. A686277

Plaintiff,

Dept. No.: XXX

vs.

STIPULATION AND ORDER OF
DISMISSAL OF MOUNTAINS EDGE
MASTER ASSOCIATION

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

Defendants.

Plaintiff, 7510 PERLA DEL MAR AVE TRUST ("Plaintiff"), by and through its
attorney, Michael F. Bohn, Esq., and the above identified Defendant listed as MOUNTAINS
EDGE MASTER ASSOCIATION ("Master Association"), by and through its attorneys, WOLF,
RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP, by Gregory P. Kerr, Esq., hereby agree and
stipulate as follows:

1. This matter concerns real property located at 7510 Perla Del Mar Ave., Las Vegas,
NV 89179 ("Property").

2. Plaintiff obtained title to the Property by way of foreclosure deed recorded on
February 7, 2013.

STIPULATION AND ORDER

1 3. Plaintiff purchased the Property at a foreclosure sale conducted by Mandolin
2 Homeowners Association ("Mandolin") for unpaid assessments owed to it by the previous owner
3 of the Property, Mr. Dominic Nolan.

4 4. Mandolin is a sub-association in the Master Association. The Property is subject to
5 both the Declaration of Covenants, Conditions and Restrictions ("CC&Rs") of Mandolin and the
6 CC&Rs of the Master Association, which are recorded against the property.

7 5. NRS 116.3116 gives a statutory lien to both Mandolin and the Master Association
8 for assessments levied against all properties located within the Mandolin and Master Association
9 communities, which includes the Property.

10 6. At the time of the foreclosure sale by Mandolin, there were delinquent assessments
11 owed to the Master Association for which it has a lien against the Property under NRS 116.3116.

12 7. Also, Bank of America is the assignee of a deed of trust which was recorded as an
13 encumbrance on the Property on December 10, 2010.

14 8. As a result of the foreclosure sale, the delinquent assessments owed to Mandolin
15 were satisfied from the proceeds of the sale and surplus funds remained.

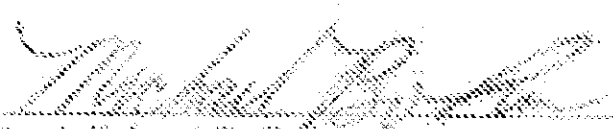
16 9. On or about December 12, 2013, the Master Association's lien for delinquent
17 assessments owing up to the date of the foreclosure sale was satisfied from the surplus funds and
18 is no longer owed any amounts under the lien on the Property prior to and through the foreclosure
19 sale.

20 10. Plaintiff's Complaint seeks a declaration that the liens and encumbrances recorded
21 against the property as of the date of the foreclosure sale are wiped out and that the Plaintiff owns
22 the Property free and clear of those liens and encumbrances.

23 11. Because the Master Association's lien for all amounts owed through the foreclosure
24 were satisfied, the Master Association has no further interest or stake in the outcome of this
25 litigation and only maintains that its statutory lien under NRS 116.3116 remains in place as a
26 matter of law for assessment amounts owed post-foreclosure. As such, Plaintiff and the Master
27 Association agree and stipulate that the Master Association is hereby dismissed from this case
28 without prejudice at this time.

1
2 DATED: December 22, 2013

LAW OFFICES OF MICHAEL F. BOHN

3
4 
By: Michael F. Bohn, Esq., Attorney for
7510 Perla Del Mar Ave., Trust

5
6
7 DATED: December 23, 2013

WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP

8
9
10 By: Gregory F. Kier, Esq., Attorneys for
MOUNTAINS EDGE MASTER ASSOCIATION

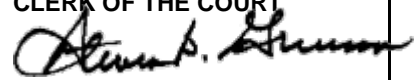
11
12 IT IS SO ORDERED.

13 DATED this 24th day of December 2013.

14
15
16 
DISTRICT COURT JUDGE

17 Respectfully submitted by
18 WOLF, RIFKIN, SHAPIRO,
19 SCHULMAN & RABKIN, LLP

20
21 GREGORY F. KIER, ESQ.
Nevada Bar No. 10383
22 3556 E. Russell Road, Second Floor
Las Vegas, Nevada 89130
23 (702) 341-5200/Fax: (702) 341-5300
24 Attorneys for Defendants,
Mountains Edge Master Association



NVDP
MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
2260 Corporate Circle, Suite 480
Henderson, Nevada 89074
(702) 642-3113/ (702) 642-9766 FAX
Attorney for plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

7510 PERLA DEL MAR AVE TRUST,

Plaintiff,

vs.

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

Defendants.

CASE NO.: A-13-686277-C
DEPT NO.: XXX

NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE

Please take notice the plaintiff, 7510 Perla Del Mar Ave Trust, hereby voluntarily dismisses
NORTH AMERICAN TITLE COMPANY 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.

A-13-686277-C

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NORTH AMERICAN TITLE COMPANY has not served an answer or a motion for summary judgment. NORTH AMERICAN TITLE COMPANY's filing fees, if any, will be paid concurrently with service of this notice.

Dated this 9th Day of May, 2017

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

By: /s/ Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
2260 Corporate Circle, Suite 480
Henderson, Nevada 89074
Attorney for plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law Offices of Michael F. Bohn., Esq., and on the 9th day of May, 2018 an electronic copy of the **NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE** was served on opposing counsel via the Court's electronic service system to the following counsel of record:

Darren T. Brenner, Esq.
Rebekkah B. Bodoff, Esq.
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada, 89134

/s/ Marc Sameroff /
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.