

IN THE SUPREME COURT OF NEVADA

SATICOY BAY, LLC 34
INNISBROOK,

Appellant,

vs.

THORNBURG MORTGAGE
SECURITIES TRUST 2007-3; FRANK
TIMPA; MADELAINE TIMPA;
TIMPA TRUST; RED ROCK
FINANCIAL SERVICES, LLC;
SPANISH TRAIL MASTER
ASSOCIATION; REPUBLIC
SERVICES; AND LAS VEGAS
VALLEY WATER DISTRICT,

Respondents.

Supreme Court Case No. 80111

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JOINT APPENDIX VOLUME 8

Counsel for Appellant:

Roger P. Croteau, Esq.
Nevada Bar No. 4958
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89102
Tel: (702) 254-7775
Fax: (702) 228-7719
Email: croteaulaw@croteaulaw.com

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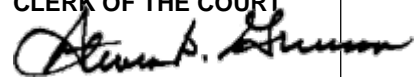
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1 **OPPC**
2 **LEACH JOHNSON SONG & GRUCHOW**

3 SEAN L. ANDERSON

4 Nevada Bar No. 7259

5 RYAN D. HASTINGS

6 Nevada Bar No. 12394

7 he unit at public auction to the

8 Las Vegas, Nevada 89148

9 Telephone: (702) 538-9074

10 Facsimile: (702) 538-9113

11 Attorneys for Counter-Defendant

12 Spanish Trail Master Association

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 SATICOY BAY LLS SERIES 34
16 INNISBROOK,

17 Plaintiff,

18 vs.

19 THORNBURG MORTGAGE
20 SECURITIES TRUST 2007-3;
21 RECONSTRUST COMPANY, N.A. a
22 division of BANK OF AMERICA; FRANK
23 TIMPA and MADELAINE TIMPA,
24 individually and as trustees of the TIMPA
25 TRUST,

26 Defendants.

27 THORNBURG MORTGAGE SECURITIES
28 TRUST 2007-3,

Counterclaimant

vs.

SATICOY BAY LLC SERIES 34
INNISBROOK, a Nevada limited-liability
company; SPANISH TRAIL MASTER
ASSOCIATION, a Nevada Non-Profit
Corporation; RED ROCK FINANCIAL
SERVICES, an unknown entity; FRANK
TIMPA, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Counter-Defendants.

Case No.: A-14-710161-C

Dept. No.: XXVI

**COUNTER-DEFENDANT SPANISH
TRAIL MASTER ASSOCIATION'S
OPPOSITION TO THORNBURG
MORTGAGE'S MOTION FOR
SUMMARY JUDGMENT AND
COUNTERMOTION FOR SUMMARY
JUDGMENT**

Hearing Date: June 5, 2018

Hearing Time: 9:30 a.m.

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

JA1156

RED ROCK FINANCIAL SERVICES,

Counterclaimant

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3; COUNTRYWIDE HOME
LOANS, INC.; ESTATES WEST AT
SPANISH TRAILS; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; REPUBLIC SERVICES;
LAS VEGAS VALLEY WATER
DISTRICT; FRANK TIMPA and
MADELAINE TIMPA, individually and as
trustees of the TIMPA TRUS U/T/D March
3, 1999; and DOES 1-100, inclusive,

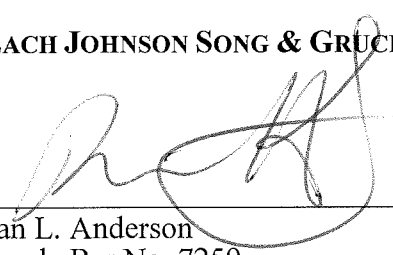
Counter-Defendants.

Defendant Spanish Trail Master Association (the “Association”), by and through its attorneys, Leach Johnson Song & Gruchow, respectfully submits its Opposition to Defendant Thornburg Mortgage Securities Trust 2007-3’s (“Bank”) Motion for Summary Judgment (“Opposition”) and Countermotion for Summary Judgment (“Countermotion”).

This Opposition and Countermotion is based upon the attached Memorandum of Points and Authorities, together with such other and further evidence and argument as may be presented and considered by this Court at any hearing of this Motion.

Dated this 22nd day of May, 2018.

LEACH JOHNSON SONG & GRUCHOW



Sean L. Anderson
Nevada Bar No. 7259
RYAN D. HASTINGS
Nevada Bar No. 1239
8945 W. Russell Road, Suite 330
Las Vegas, Nevada 89148
*Attorney for Defendant Spanish Trails
Master Association*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Bank's Motion for Summary Judgment ("Motion") would be more accurately
4 captioned "Motion for Partial Summary Judgment." Despite maintaining several claims in its
5 Answer, Counterclaims and Crossclaims against multiple parties, the Bank's Motion asks this
6 Court to declare only that Plaintiff's interest in the Property is subject to the Bank's Deed of
7 Trust. The Association has maintained throughout this litigation that it is not a proper party to
8 the quiet title/declaratory relief dispute between the Bank and Plaintiff. Indeed, the Association
9 has never taken a position as to the effect, if any, of its foreclosure sale on the interests of
10 Plaintiff or the Bank. Therefore, the Association submits the present Opposition and
11 Countermotion to clarify the limited relief sought by the Bank in this case and to demonstrate
12 that the Association at all times acted in accordance with Nevada law.

13 **II. PROCEDURAL HISTORY**

14 This action emanates from the Association's foreclosure of a delinquent assessment lien
15 against the property located at 34 Innisbrook Ave., Las Vegas, NV 89113; APN: 163-28-614-00
16 (the "Property") on November 7, 2014. According to the Complaint, Plaintiff was the successful
17 bidder at the foreclosure sale, taking title to the Property by way of a foreclosure deed.

18 Plaintiff filed the present action to quiet title in the Property as against the holder of the
19 first deed of trust against the Property, Defendant Thornburg Mortgage Securities ("Bank" or
20 "Defendant"). On May 30, 2017, the Bank filed its Third Amended Answer and Counterclaim
21 ("Counterclaim") wherein the Bank brought several causes of action against the Association
22 alleging violations of Nevada law with respect to the actions leading up to the Association's
23 foreclosure sale. Specifically, the Bank brought the following claims against the Association:
24 wrongful foreclosure, negligence, negligence per se, breach of contract, misrepresentation, unjust
25 enrichment, and breach of covenant of fair dealing. *See* Third Am. Ans. and Countercl. at 18-25.

26 On August 9, 2017 the Association filed a motion to dismiss the Bank's counterclaims.
27 On October 5, 2017, this Court granted in part, and denied in part the Association's Motion
28 dismissing the Bank's claims for quiet title/declaratory relief, negligence per se, breach of

contract, and breach of covenant of good faith and fair dealing.

Because the Association acted at all times in accordance with Nevada law when conducting its foreclosure sale, it is entitled to summary judgment on the Bank's remaining tort based claims against the Association.

III. UNDISPUTED Facts

1. The property at issue in this case is located at 34 Innisbrook Ave., Las Vegas, NV 89113 (the "Property").

2. The Property is located with the Association and, as such, is subject to and governed by NRS Chapter 116 and the Association governing documents.

3. Based upon the Bank's pleading, on or about December 21, 2006, Frank Timpa ("Timpa") purchased the Property as evidenced by a Deed of Trust. *See* Deed of Trust attached to Bank's Answer and Counterclaims as Exhibit 1.

4. Included within the Deed of Trust is a Planned Unit Development Rider. *Id.*

5. According to the Bank, on June 9, 2010, it was the assigned Beneficiary under the Deed of Trust. *See* Bank Cross-claim ¶ 4; *see also* Assignment of Deed of Trust, attached to Bank's Crossclaims as Exhibit 2.

6. An owner's failure to pay homeowner assessments can, and did in this case, result in an automatically perfected, foreclosable delinquent assessment lien. *See generally* NRS 116.3116-31168.

7. Timpa failed to pay overdue homeowners' assessments due and owing to the Association. *See* Bank Counter-claim ¶ 6.

8. Red Rock Financial Services ("Red Rock"), was retained by the Association to perform collection related services for the Property in accordance with Nevada law.

9. Accordingly, on August 4, 2011, a Notice of Delinquent Assessment was recorded against the Property by Red Rock, which notice was mailed to the Property and to Timpa via regular and certified return receipt requested to the Property pursuant to NRS 116.31162(1)(a). *See* Notice of Delinquent Assessment, **Exhibit A**.

10. On December 6, 2011, (which is over 30 days after mailing of the Delinquent

1 Assessment Lien as required under NRS 116.31162(1)(b)) a Notice of Default and Election to
2 Sell was recorded by Red Rock against the Property, which notice was mailed to Timpa and the
3 Bank (or its predecessor in interest) via certified mail return receipt requested. *See* Notice of
4 Default and Election to Sell, **Exhibit B**.

5 11. The Notice of Default and Election to Sell contained the same information as set
6 forth in the Notice of Delinquent Assessment. *Id.*

7 12. On September 15, 2014, the Notice of Foreclosure Sale was recorded by Red
8 Rock against the Property, which notice was mailed to Timpa and the Bank (or its predecessor in
9 interest) via certified and first class mail. *See* Notice of Foreclosure Sale, **Exhibit C**.

10 13. The Notice of Foreclosure Sale contained all information required pursuant to
11 NRS 116.311635, including, but not limited to, the time and place of the sale of the Property. *Id.*

12 14. In addition, the Notice of Foreclosure Sale was published and posted as required
13 by Nevada law. *See* NRS 116.311635 and NRS 21.130(1)(c)(2) and (3); *see also* Affidavit of
14 Publishing and Posting, **Exhibit D**.

15 15. On November 7, 2014, after complying with all requirements under Nevada law,
16 the Property was sold to Saticoy Bay LLC, Series 34 Innisbrook for the sum of \$1,201,000.00, as
17 evidenced by the Foreclosure Deed. *See* Foreclosure Deed, **Exhibit E**.

18 IV. LEGAL Standard

19 Summary judgment is appropriate “if the pleadings, depositions, answers to
20 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
21 genuine issue as to any material fact and that the moving party is entitled to a judgment as a
22 matter of law.” *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552 (1986).
23 “Judgment as a matter of law is appropriate where there is no legally sufficient evidentiary basis
24 for a reasonable jury to find for the nonmoving party.” *Nichols v. Byrd*, 435 F.Supp.2d 1101,
25 1104 (D. Nev. 2006) (citing Fed.R.Civ.P. 50(a)). A fact is material if it “might affect the
26 outcome of the suit under to governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
27 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). An issue is genuine if “the evidence is such that a
28 reasonable jury could return a verdict for the nonmoving party.” *Id.*

“The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the facts before the court.” *Northwest Motorcycle Ass’n v. U.S. Dept. of Agriculture*, 18 F.3d 1468, 1471-72 (9th Cir. 1994) (citing *Zweig v. Hearst Corp.*, 521 F.2d 1129 (9th Cir.1975), *cert. denied*, 423 U.S. 1025, 96 S.Ct. 469, 46 L.Ed.2d 399 (1975)). In a motion for summary judgment, the moving party bears the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). If the moving party satisfies their burden, the “party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256, 106 S.Ct. 2505, 2514 (1986). Only evidence which might be admissible at trial may be considered by a trial court in ruling on a motion for summary judgment. Fed.R.Civ.P. 56(c); *Beyene v. Coleman Sec. Servs., Inc.*, 854 F.2d 1179, 1181 (9th Cir.1988).

V. ARGUMENTS

A. The Association Complied with Nevada Law in Foreclosing on the Property.

Despite the fact that the Bank has maintained several claims against the Association in this case, it is clear that the Bank’s present Motion seeks only a declaration that the Bank’s deed of trust survived the Association’s foreclosure sale. See Motion at 3:5-6, 16. The Bank’s Motion does not ask this Court to declare the Association’s sale void or otherwise argue to have the sale set aside or unwound. Indeed, the Bank’s quiet title and declaratory relief claims in this case are no longer maintained against the Association, nor could they be. The Association has never taken a position as to what effect, if any, the foreclosure had on any parties’ interests. Rather, the Association has simply maintained that it has at all times complied with Nevada law in foreclosing on its valid delinquent assessment lien.

NRS Chapter 116 specifically authorizes a homeowners’ association to foreclose on the entirety of its delinquent assessment lien against the homeowner. See NRS 116.31162-116.31168. The Association complied with the statutes, all required notices were provided, there was a default when the power of sale was exercised and the Association had the authority to foreclose upon the Property. This should represent an end to the Association’s participation in

1 this inquiry.

2 There can be no dispute that at the time of the Association's foreclosure sale that the
3 relevant statutes provided "specific timing and notice requirements," which were followed by the
4 Association. *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408, 411 (2014), *reh'g denied* (Oct.
5 16, 2014). The statutory process was as follows:

- 6 a. The Association mails by certified or registered mail, return receipt requested, to the
7 unit's owner, at his or her address, if known, and at the address of the unit, a ***notice of***
8 ***delinquent assessment***. See NRS 116.31162(1)(a).
- 9 b. Not less than 30 days after mailing the notice of delinquent assessment, the association or
10 other person conducting the sale executes and causes to be recorded in the county where
11 the Association is located a ***notice of default and election to sell*** and then mails this
12 notice to the unit's owner by certified or registered mail, return receipt requested, at his
13 or her address, if known, and at the address of the unit. See NRS 116.31162(1)(b) and
14 (3)(b).
- 15 c. Within 10 days after recording the notice of default and election to sell, the Association
16 mails a copy of the notice to various entities who have requested interest. See NRS §
17 116.31163.
- 18 d. The Association waits 90 days following the recording of the notice of default and
19 election to sell, with the 90 day period beginning on either the date the notice is recorded
20 or mailed certified, return receipt requested, whichever is later. See NRS 116.31162(3).
- 21 e. If after 90 days, the unit's owner has not paid the amount of the lien, including costs, fees
22 and expenses incident to its enforcement, the Association may record a ***notice of sale***
23 against the unit owner and give notice of the time and place of the sale by mailing a copy
24 of the notice of sale by certified or registered mail, return receipt requested, to the unit's
25 owner ... at his or her address, if known, and to the address of the unit and either
26 personally serving the occupant of the unit or posting the notice of sale conspicuously on
27 the unit. See NRS 116.31162(1)(c) and .311635(1). A certificate of mailing which
28

1 evidences that the notice was mailed through the United States Postal Service is proof of
2 service for the notice of sale. See NRS 116.311635(4).

3 f. In other words, “[i]f the lien is not paid off, then the HOA may proceed to foreclosure
4 sale.” *SFR Inv. Pool 1*, 334 P.3d at 411 (citing NRS 116.31162). “Before doing so, the
5 HOA must give notice of the sale to the owner and to the holder of a recorded security
6 interest if the security interest holder ‘has notified the association, before the mailing of
7 the notice of sale of the existence of the security interest.’” *Id.* (citing
8 116.311635(1)(b)(2), 107.090(3)(b), (4)).

9 g. The Association, its agent or its attorney, or a title insurance company or escrow agent
10 may conduct the foreclosure sale. See NRS § 116.31164(1). The Association or other
11 person conducting the sale *may from time to time postpone the sale* by such
12 advertisement and notice as it considers reasonable *or, without further advertisement or*
13 *notice*, by proclamation made to the persons assembled at the time and place previously
14 set and advertised for the sale. *Id.*

15 With regard to the process for the actual foreclosure sale, the person conducting the sale
16 may sell the unit at public auction to the highest cash bidder. See NRS 116.31164(2). “Unless
17 otherwise provided in the declaration or by agreement, the association may purchase the unit and
18 hold, lease, mortgage or convey it.” *Id.* “After the sale, the person conducting the sale shall: (a)
19 Make, execute and, after payment is made, deliver to the purchaser, or his or her successor or
20 assign, a deed without warranty which conveys to the grantee all title of the unit’s owner to the
21 unit; (b) Deliver a copy of the deed to the Ombudsman; and (c) Apply the proceeds of the sale in
22 the manner prescribed by law.” See NRS 116.31164(3).

23 In this case, the prior homeowner failed to pay overdue homeowners’ assessments and,
24 accordingly, on August 4, 2011, a Notice of Delinquent Assessment was recorded against the
25 Property, which notice was mailed to the Property and to the prior homeowner via regular and
26 certified return receipt requested to the Property pursuant to NRS 116.31162(1)(a). See Notice
27 of Delinquent Assessment, **Exhibit A**. On December 6, 2011, (which is over 30 days after
28 mailing of the Delinquent Assessment Lien as required under NRS 116.31162(1)(b)) a Notice of

1 Default and Election to Sell was recorded against the Property, which notice was mailed to the
2 prior owner and all interested parties (including the Bank) via certified mail return receipt
3 requested. *See* Notice of Default and Election to Sell, **Exhibit B**. The Notice of Default and
4 Election to Sell contained the same information as set forth in the Notice of Delinquent
5 Assessment. *Id.*

6 On September 14, 2014, several months after the recording of the Notice of Default and
7 Election to Sale, a Notice of Foreclosure Sale was recorded against the Property, which notice
8 was mailed to the prior owner and all interested parties (including the Bank) via certified and
9 first class mail. *See* Notice of Foreclosure Sale, **Exhibit C**. The Notice of Foreclosure Sale
10 contained all information required pursuant to NRS 116.311635, including, but not limited to,
11 the time and place of the sale of the Property. *Id.* In addition, the Notice of Foreclosure Sale
12 was published and posted as required by Nevada law. *See* NRS 116.311635 and NRS
13 21.130(1)(c)(2) and (3); see also Affidavit of Posting, **Exhibit D**.

14 On November 7, 2014, after complying with all requirements under Nevada law, the
15 Property was sold at public auction to Saticoy Bay LLC, Series 34 Innisbrook, for the sum of
16 \$1,201,000 as evidenced by a Foreclosure Deed. *See* Foreclosure Deed, **Exhibit E**. The
17 Association complied with the law and the very statutory enactment governing the non-judicial
18 foreclosure process. The Bank was provided with all required notices under Nevada law. *See*
19 Notice of Default and Election to Sell, **Exhibit B**; Notice of Foreclosure Sale, **Exhibit C**. Based
20 on the foregoing, this Court may easily conclude that the sale was done in accordance with
21 Nevada law and grant summary judgment as to each of the claims asserted by the Bank against
22 the Association.

23 ///

24 ///

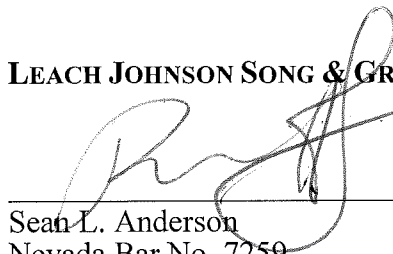
25 ///

VI. CONCLUSION

For the foregoing reasons, the Court should deny the Bank's motion in its entirety and grant summary judgment in favor of the Association.

Dated this 22nd day of May, 2018.

LEACH JOHNSON SONG & GRUCHOW



Sean L. Anderson
Nevada Bar No. 7259
Ryan D. Hastings
Nevada Bar No. 12394
8945 W. Russell Road, Suite 330
Las Vegas, Nevada 89148
*Attorneys for Counter-Defendant Spanish Trail
Master Association*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the undersigned, an employee of LEACH JOHNSON SONG & GRUCHOW, hereby certifies that on this 22nd day of May, 2018, service of the foregoing, *Counter-Defendant Spanish Trail Master Association's Opposition to Thornburg Mortgage's Motion For Summary Judgment and Countermotion For Summary Judgment*, was made on all parties via the Court's CM/ECF System, as follows:

Koch & Scow LLC

Contact

Email

David R. Koch

dkoch@kochscow.com

Staff

aeshenbaugh@kochscow.com

Steven B. Scow

sscow@kochscow.com

Law Offices of Michael F. Bohn, Esq.

Contact

Email

Eserve Contact

office@bohnlawfirm.com

Michael F Bohn Esq

mbohn@bohnlawfirm.com

Olympia Law PC

Contact

Email

Bryan Naddafi, Esq.

bryan@olympialawpc.com

Williams & Associates

Contact

Email

Donald H. Williams, Esq.

dwilliams@dhwlawlv.com

Robin Gullo

rgullo@dhwlawlv.com

Wright, Finlay & Zak, LLP

Contact

Email

Faith Harris

fharris@wrightlegal.net

Sarah Greenberg Davis

sgreenberg@wrightlegal.net

/s/ Gina M. LaCascia

An Employee of LEACH JOHNSON
SONG & GRUCHOW

Exhibit A

Exhibit A

Exhibit A

Assessor Parcel Number: 163-28-614-007
File Number: R74507

Accommodation

Inst #: 201108040002324
Fees: \$14.00
N/C Fee: \$0.00
08/04/2011 09:30:58 AM
Receipt #: 868886
Requestor:
NORTH AMERICAN TITLE
COMPAN
Recorded By: CDE Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

LIEN FOR DELINQUENT ASSESSMENTS

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

NOTICE IS HEREBY GIVEN: Red Rock Financial Services, a division of RMI Management LLC, officially assigned as agent by the Spanish Trail Master Association, herein also called the Association, in accordance with Nevada Revised Statutes 116 and outlined in the Association Covenants, Conditions, and Restrictions, herein also called CC&R's, recorded on 03/07/1984, in Book Number 1885, as Instrument Number 1844877 and including any and all Amendments and Annexations et. seq., of Official Records of Clark County, Nevada, which have been supplied to and agreed upon by said owner.

Said Association imposes a Lien for Delinquent Assessments on the commonly known property:

34 Innisbrook Ave, Las Vegas, NV 89113

ESTATES AT SPANISH TRAIL #5 PLAT BOOK 40 PAGE 6 LOT 13 BLOCK 1, in the County of Clark

Current Owner(s) of Record:

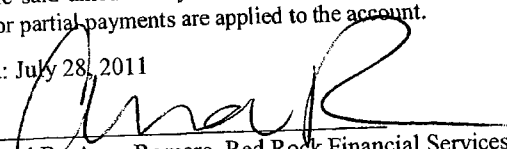
TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

The amount owing as of the date of preparation of this lien is **\$5,543.92.

This amount includes assessments, late fees, interest, fines/violations and collection fees and costs.

** The said amount may increase or decrease as assessments, late fees, interest, fines/violations, collection fees, costs or partial payments are applied to the account.

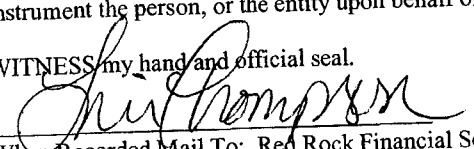
Dated: July 28, 2011

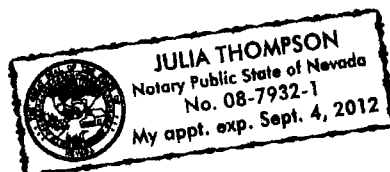

Prepared By Anna Romero, Red Rock Financial Services, on behalf of Spanish Trail Master Association

STATE OF NEVADA)
COUNTY OF CLARK)

On July 28, 2011, before me, personally appeared Anna Romero, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.


When Recorded Mail To: Red Rock Financial Services
7251 Amigo Street, Suite 100
Las Vegas, Nevada 89119
702-932-6887



HOA0055

JA1168



RED ROCK FINANCIAL SERVICES

MAILING AFFIDAVIT

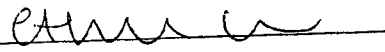
File Number: R 74507

STATE OF NEVADA)
) Ss.
COUNTY OF CLARK)

The declarant, whose signature appears below, and who is an employee of Red Rock Financial Services, states that he/she is now and at all times herein mentioned was, a citizen of the United States and over the age of eighteen (18) years; on the date as set forth below, he/she personally mailed the Notice, of which the annexed is a true copy, upon the addressee attached hereto, by depositing in the United States Mail in the County set forth above, an envelope, certified and first class with postage prepaid thereon, containing a copy of such Notice, addressed to the attached named person(s) at the address herein attached stated.

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

Dated: 8/11/11

Signature 

See Attached 2 Pages

HOA0050

Revised 4/3/08

JA1169

THE
WALZ
CERTIFIED
MAILER™

FROM

WALZ™

FORM #35663 VERSION: 02/11
U.S. PAT. NO. 5,501,393

Label #1

Timpa Trust u/t/d/ March 3, 1999
c/o Frank Anthony Timpa, Trustee
34 Innisbrook Avenue
Las Vegas, NV 89113
R74507

Label #2

Timpa Trust u/t/d/ March 3, 1999
c/o Frank Anthony Timpa, Trustee
34 Innisbrook Avenue
Las Vegas, NV 89113
R74507

Label #3

Timpa Trust u/t/d/ March 3, 1999
c/o Frank Anthony Timpa, Trustee
34 Innisbrook Avenue
Las Vegas, NV 89113
R74507

FOLD AND TEAR THIS WAY → OPTIONAL

Label #5

Timpa Trust u/t/d/ March 3, 1999
c/o Frank Anthony Timpa, Trustee
34 Innisbrook Avenue
Las Vegas, NV 89113
R74507

Charge
Amount:

Charge
To:

FOLD AND TEAR THIS WAY →

2. Article Number



7196 9008 9111 2774 4732

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Timpa Trust u/t/d/ March 3, 1999
c/o Frank Anthony Timpa, Trustee
34 Innisbrook Avenue
Las Vegas, NV 89113
R74507 Spanish Trail Master Association

PS Form 3811, January 2005

Domestic Return Receipt

7196 9008 9111 2774 4732

TO: Timpa Trust u/t/d/ March 3, 1999
c/o Frank Anthony Timpa, Trustee
34 Innisbrook Avenue
Las Vegas, NV 89113

SENDER:

REFERENCE: R74507

PS Form 3800, January 2005

RETURN
RECEIPT
SERVICE

Postage

Certified Fee

Return Receipt Fee

Restricted Delivery

Total Postage & Fees

US Postal Service®

**Receipt for
Certified Mail™**

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

Mailed on 8/11/11 by
Red Rock Financial Services
See Firm Book

Label #6

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL™



7196 9008 9111 2774 4732

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

☐ Agent
☐ Addressee

X
D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes
☐ No

Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED
USPS® MAIL CARRIER
DETACH ALONG PERFORATION

Thank you for using Return Receipt Service

HOA0051

JA1170

THE
WALZ
CERTIFIED
MAILER™

FROM **WALZ TM**

Label #1

Timpa Trust u/t/d/ March 3, 1999
c/o Madelaine Timpa, Trustee
34 Innisbrook Avenue
Las Vegas, NV 89113
R74507

Label #2

Timpa Trust u/t/d/ March 3, 1999
c/o Madelaine Timpa, Trustee
34 Innisbrook Avenue
Las Vegas, NV 89113
R74507

Label #3

Timpa Trust u/t/d/ March 3, 1999
c/o Madelaine Timpa, Trustee
34 Innisbrook Avenue
Las Vegas, NV 89113
R74507

7196 9008 9111 2774 4725

TO: Timpa Trust u/t/d/ March 3, 1999
c/o Madelaine Timpa, Trustee
34 Innisbrook Avenue
Las Vegas, NV 89113

SENDER:

REFERENCE: R74507

PS Form 3800, January 2005

RETURN
RECEIPT
SERVICE

Postage	
Certified Fee	
Return Receipt Fee	
Restricted Delivery	
Total Postage & Fees	

US Postal Service®

**Receipt for
Certified Mail™**

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

Mailed on 8/11/11 by
Red Rock Financial Services
See Firm Book

FOLD AND TEAR THIS WAY → OPTIONAL

Label #5

Timpa Trust u/t/d/ March 3, 1999
c/o Madelaine Timpa, Trustee
34 Innisbrook Avenue
Las Vegas, NV 89113
R74507

Charge
Amount:

Charge
To:

FOLD AND TEAR THIS WAY →

Label #6

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL™



7196 9008 9111 2774 4725

Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED
USPS® MAIL CARRIER
DETACH ALONG PERFORATION

2. Article Number



7196 9008 9111 2774 4725

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Timpa Trust u/t/d/ March 3, 1999
c/o Madelaine Timpa, Trustee
34 Innisbrook Avenue
Las Vegas, NV 89113
R74507 Spanish Trail Master Association

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

☐ Agent
☐ Addressee

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes
☐ No

HOA0052

Thank you for using Return Receipt Service



Red Rock Financial Services

VIA CERTIFIED AND FIRST CLASS MAIL

August 11, 2011

Timpa Trust u/t/d/ March 3, 1999
c/o Frank Anthony Timpa, Trustee
34 Innisbrook Avenue
Las Vegas, NV 89113

Re: 34 Innisbrook Ave Las Vegas, NV 89113
Spanish Trail Master Association / R74507

Dear Timpa Trust u/t/d/ March 3, 1999:

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services initial correspondence to you stated that failure to reinstate the above account would result in the Lien for Delinquent Assessments being prepared and recorded on the above referenced property. Noted in the initial correspondence, additional fees and costs have been added to the account balance. As of the date of this letter, the account balance is \$5,793.92.

Enclosed, please find a copy of the Lien for Delinquent Assessments. The amount noted on this letter and the Lien for Delinquent Assessments may differ. The "Amount Due" on the Lien for Delinquent Assessments is accurate as of the date of preparation. These variations may be due to additional assessments, late fees, interest, fines and collection fees and costs being assessed to the account. Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above.

As of the date of this letter, the "30 Day Period" is still in effect. In the case that Red Rock Financial Services does not receive in written form a dispute of the debt, Red Rock Financial Services will assume the debt is valid. All disputes of the validity of the debt must be submitted in written form to Red Rock Financial Services. When the dispute is received, Red Rock Financial Services will provide verification of the debt and a copy of such verification will be mailed to you. Upon receipt of a written dispute, collection efforts on the part of Red Rock Financial Services will cease. A written response will be provided detailing the result of our findings regarding said dispute.

Allowed by Nevada Revised Statutes, Red Rock Financial Services may record a Notice of Default and Election to Sell no sooner than the 31st day from the mailing of the Lien for Delinquent Assessments. As a courtesy to you, an Intent to Notice of Default courtesy letter will be sent to you via first class mail at an additional charge.

Additional information regarding this account can be obtained at www.rrfs.com. Please contact the office of Red Rock Financial Services at 702-932-6887 with any questions.

Regards,

Red Rock Financial Services
enclosure(s)

Red Rock Financial Services

■ 7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rrfs.com

■ Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702.341.7733

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

HOA0053

JA1172



Red Rock Financial Services

VIA CERTIFIED AND FIRST CLASS MAIL

August 11, 2011

Timpa Trust u/t/d/ March 3, 1999
c/o Madelaine Timpa, Trustee
34 Innisbrook Avenue
Las Vegas, NV 89113

Re: 34 Innisbrook Ave Las Vegas, NV 89113
Spanish Trail Master Association / R74507

Dear Timpa Trust u/t/d/ March 3, 1999:

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services initial correspondence to you stated that failure to reinstate the above account would result in the Lien for Delinquent Assessments being prepared and recorded on the above referenced property. Noted in the initial correspondence, additional fees and costs have been added to the account balance. As of the date of this letter, the account balance is \$5,793.92.

Enclosed, please find a copy of the Lien for Delinquent Assessments. The amount noted on this letter and the Lien for Delinquent Assessments may differ. The "Amount Due" on the Lien for Delinquent Assessments is accurate as of the date of preparation. These variations may be due to additional assessments, late fees, interest, fines and collection fees and costs being assessed to the account. Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above.

As of the date of this letter, the "30 Day Period" is still in effect. In the case that Red Rock Financial Services does not receive in written form a dispute of the debt, Red Rock Financial Services will assume the debt is valid. All disputes of the validity of the debt must be submitted in written form to Red Rock Financial Services. When the dispute is received, Red Rock Financial Services will provide verification of the debt and a copy of such verification will be mailed to you. Upon receipt of a written dispute, collection efforts on the part of Red Rock Financial Services will cease. A written response will be provided detailing the result of our findings regarding said dispute.

Allowed by Nevada Revised Statutes, Red Rock Financial Services may record a Notice of Default and Election to Sell no sooner than the 31st day from the mailing of the Lien for Delinquent Assessments. As a courtesy to you, an Intent to Notice of Default courtesy letter will be sent to you via first class mail at an additional charge.

Additional information regarding this account can be obtained at www.rvfs.com. Please contact the office of Red Rock Financial Services at 702-932-6887 with any questions.

Regards,

Red Rock Financial Services
enclosure(s)

Red Rock Financial Services

■ 7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rvfs.com

■ Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702.341.7733

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

HOA0054

JA1173

Exhibit B

Exhibit B

Exhibit B

Assessor Parcel Number: 163-28-614-007
File Number: R74507
Property Address: 34 Innisbrook Ave
Las Vegas, NV 89113
Title Order Number: 35401

Inst #: 201112060001106
Fees: \$17.00
N/C Fee: \$0.00
12/06/2011 09:17:00 AM
Receipt #: 998591
Requestor:
NORTH AMERICAN TITLE
COMPAN
Recorded By: SOL Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

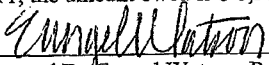
**NOTICE OF DEFAULT AND ELECTION TO SELL PURSUANT TO THE
LIEN FOR DELINQUENT ASSESSMENTS**
◆ IMPORTANT NOTICE ◆

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

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

NOTICE IS HEREBY GIVEN: Red Rock Financial Services officially assigned as agent by the Spanish Trail Master Association, under the Lien for Delinquent Assessments, recorded on 08/04/2011, in Book Number 20110804, as Instrument Number 0002324, reflecting TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN) as the owner(s) of record on said lien, land legally described as ESTATES AT SPANISH TRAIL #5 PLAT BOOK 40 PAGE 6 LOT 13 BLOCK 1, of the Official Records in the Office of the Recorder of Clark County, Nevada, makes known the obligation under the Covenants, Conditions and Restrictions recorded 03/07/1984, in Book Number 1885, as Instrument Number 1844877, has been breached. As of 07/01/2010 forward, all assessments, whether monthly or otherwise, late fees, interest, Association charges, legal fees and collection fees and costs, less any credits, have gone unpaid.

Above stated, the Association has equipped Red Rock Financial Services with verification of the obligation according to the Covenants, Conditions and Restriction in addition to documents proving the debt, therefore declaring any and all amounts secured as well as due and payable, electing the property to be sold to satisfy the obligation. In accordance with Nevada Revised Statutes 116, no sale date may be set until the ninety-first (91) day after the recorded date or the mailing date of the Notice of Default and Election to Sell. As of November 29, 2011, the amount owed is \$ 8,312.52. This amount will continue to increase until paid in full.

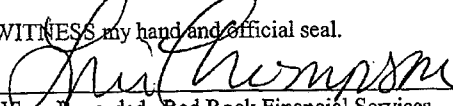

Prepared By: Eungel Watson, Red Rock Financial Services, on behalf of Spanish Trail Master Association

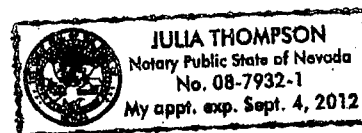
Dated: November 29, 2011

STATE OF NEVADA)
COUNTY OF CLARK)

On November 29, 2011, before me, personally appeared Eungel Watson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.


When Recorded Red Rock Financial Services
Mail To: 7251 Amigo Street, Suite 100
Las Vegas, Nevada 89119
702-932-6887



HOA0828

JA1175



Red Rock Financial Services

December 14, 2011

VIA CERTIFIED AND FIRST CLASS MAIL

THORNBURG MORTGAGE SECURITIES TRUST 2007-3
C/O BAC HOME LOANS SERVICING, LP
400 COUNTRYWIDE WAY SV-35
MIN 1001337-001462185-1
SIMI VALLEY, CA 93065

Re: 34 Innisbrook Ave Las Vegas, NV 89113
Spanish Trail Master Association / R74507

Dear THORNBURG MORTGAGE SECURITIES TRUST 2007-3:

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services correspondence to you stated that failure to reinstate the above account would result in the ***Notice of Default and Election to Sell*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Default and Election to Sell***.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at www.rvfs.com. Please contact Red Rock Financial Services at 702-932-6887 with any questions.

Regards,

Red Rock Financial Services

Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rvfs.com

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702.341.7733

HOA0811

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

JA1176



Red Rock Financial Services

Assessor Parcel Number: 163-28-614-007
File Number: R74507
Property Address: 34 Innisbrook Ave
Las Vegas, NV 89113
Title Order Number: 35401

Inst #: 201112060001106
Fees: \$17.00
N/C Fee: \$0.00
12/06/2011 09:17:00 AM
Receipt #: 998591
Requestor:
NORTH AMERICAN TITLE
COMPAN
Recorded By: SOL Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

**NOTICE OF DEFAULT AND ELECTION TO SELL PURSUANT TO THE
LIEN FOR DELINQUENT ASSESSMENTS**
◆ IMPORTANT NOTICE ◆

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

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

NOTICE IS HEREBY GIVEN: Red Rock Financial Services officially assigned as agent by the Spanish Trail Master Association, under the Lien for Delinquent Assessments, recorded on 08/04/2011, in Book Number 20110804, as Instrument Number 0002324, reflecting TIMPA TRUST U/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN) as the owner(s) of record on said lien, land legally described as ESTATES AT SPANISH TRAIL #5 PLAT BOOK #0 PAGE 6 LOT 13 BLOCK 1, of the Official Records in the Office of the Recorder of Clark County, Nevada, makes known the obligation under the Covenants, Conditions and Restrictions recorded 03/07/1984, in Book Number 1835, as Instrument Number 1844877, has been breached. As of 07/01/2010 forward, all assessments, whether monthly or otherwise, late fees, interest, Association charges, legal fees and collection fees and costs, less any credits, have gone unpaid.

Above stated, the Association has equipped Red Rock Financial Services with verification of the obligation according to the Covenants, Conditions and Restriction in addition to documents proving the debt, therefore declaring any and all amounts secured as well as due and payable, electing the property to be sold to satisfy the obligation. In accordance with Nevada Revised Statutes 116, no sale date may be set until the ninety-first (91) day after the recorded date or the mailing date of the Notice of Default and Election to Sell. As of November 29, 2011, the amount owed is \$ 8,312.52. This amount will continue to increase until paid in full.

Eungel Watson
Prepared By: Eungel Watson, Red Rock Financial Services, on behalf of Spanish Trail Master Association

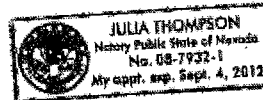
Dated: November 29, 2011

STATE OF NEVADA
COUNTY OF CLARK

On November 29, 2011, before me, personally appeared Eungel Watson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Julia Thompson
When Recorded: Red Rock Financial Services
Mail To: 7251 Amigo Street, Suite 100
Las Vegas, Nevada 89119
702-932-6887



Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rrfs.com

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702.341.7733

HOA0812

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

JA1177



Red Rock Financial Services

VIA CERTIFIED AND FIRST CLASS MAIL

December 14, 2011

COUNTRYWIDE HOME LOANS, INC.
4500 PARK GRANADA
MIN 1001337-001462185-1
CALABASAS, CA 91302-1613

Re: 34 Innisbrook Ave Las Vegas, NV 89113
Spanish Trail Master Association / R74507

Dear COUNTRYWIDE HOME LOANS, INC.:

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services correspondence to you stated that failure to reinstate the above account would result in the ***Notice of Default and Election to Sell*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Default and Election to Sell***.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at www.rrfs.com. Please contact Red Rock Financial Services at 702-932-6887 with any questions.

Regards,

Red Rock Financial Services

Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rrfs.com

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702.341.7733

HOA0805

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

JA1178



Red Rock Financial Services

December 14, 2011

VIA CERTIFIED AND FIRST CLASS MAIL

Timpa Trust u/t/d/ March 3, 1999
c/o Madelaine Timpa, Trustee
34 Innisbrook Avenue
Las Vegas, NV 89113

Re: 34 Innisbrook Ave Las Vegas, NV 89113
Spanish Trail Master Association / R74507

Dear Timpa Trust u/t/d/ March 3, 1999:

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services correspondence to you stated that failure to reinstate the above account would result in the ***Notice of Default and Election to Sell*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Default and Election to Sell***.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at www.rrfs.com. Please contact Red Rock Financial Services at 702-932-6887 with any questions.

Regards,

Red Rock Financial Services

Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rrfs.com

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702.341.7733

HOA0807

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

JA1179



Red Rock Financial Services

December 14, 2011

VIA CERTIFIED AND FIRST CLASS MAIL

MERS
P.O. BOX 2026
MIN 1001337-0001462176-0
FLINT, MI 48501-2026

Re: 34 Innisbrook Ave Las Vegas, NV 89113
Spanish Trail Master Association / R74507

Dear MERS:

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services correspondence to you stated that failure to reinstate the above account would result in the ***Notice of Default and Election to Sell*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Default and Election to Sell***.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at www.rrfs.com. Please contact Red Rock Financial Services at 702-932-6887 with any questions.

Regards,

Red Rock Financial Services

Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rrfs.com

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702.341.7733

HOA0817

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debt from your account at the financial institution indicated on your check. This electronic debt will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

JA1180



Red Rock Financial Services

VIA CERTIFIED AND FIRST CLASS MAIL

December 14, 2011

MADELAINE TIMPA, TRUSTEE
6975 EMERALD SPRINGS LANE
LAS VEGAS, NV 89113

Re: 34 Innisbrook Ave Las Vegas, NV 89113
Spanish Trail Master Association / R74507

Dear MADELAINE TIMPA, TRUSTEE:

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services correspondence to you stated that failure to reinstate the above account would result in the ***Notice of Default and Election to Sell*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Default and Election to Sell***.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at www.rvfs.com. Please contact Red Rock Financial Services at 702-932-6887 with any questions.

Regards,

Red Rock Financial Services

Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rvfs.com

Phone: 702-932-6887 TollFree: 888-319-9460 Fax: 702.341.7733

HOA0821

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

JA1181

Exhibit C

Exhibit C

Exhibit C



September 15, 2014

VIA CERTIFIED AND FIRST CLASS MAIL

Timpa Trust u/t/d/ March 3, 1999
c/o Frank Anthony Timpa, Trustee
34 Innisbrook Avenue
Las Vegas, NV 89113

Re: 34 Innisbrook Ave, Las Vegas, NV 89113
Spanish Trail Master Association / R74507

Dear Timpa Trust u/t/d/ March 3, 1999 ,

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services previous correspondence stated that the failure to reinstate the above account would result in the ***Notice of Sale*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Sale***. This notice is being sent to any parties that may have an interest in the property.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to the account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at www.rrfs.com. Please contact Red Rock Financial Services at 702-483-2996 or 702-215-8130 with any questions.

Regards,

Red Rock Financial Services

702.932.6887 | fax 702.341.7733 | 4775 W. Teco Avenue, Suite 140, Las Vegas, Nevada 89118 | www.rrfs.com HQA0342

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debt from your account at the financial institution indicated on your check. This electronic debt will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

JA1183

Assessor Parcel Number: 163-28-614-007
File Number: R74507
Property Address: 34 Innisbrook Ave
Las Vegas NV 89113

Inst #: 20140915-0001527
Fees: \$18.00
N/C Fee: \$0.00
09/15/2014 01:50:20 PM
Receipt #: 2152614
Requestor:
RED ROCK FINANCIAL SERVICES
Recorded By: JACKSM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

NOTICE OF FORECLOSURE SALE

UNDER THE LIEN FOR DELINQUENT ASSESSMENTS

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

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 RED ROCK FINANCIAL SERVICES AT (702) 932-6887 or (702) 215-8130. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION AT (877) 829-9907 IMMEDIATELY.

Red Rock Financial Services officially assigned as agent by the Spanish Trail Master Association under the Lien for Delinquent Assessments. **YOU ARE IN DEFAULT UNDER THE LIEN FOR DELINQUENT ASSESSMENTS**, recorded on 08/04/2011 in Book Number 20110804 as Instrument Number 0002324 reflecting TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN) as the owner(s) of record. **UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT PUBLIC SALE.** If you need an explanation of the nature of the proceedings against you, you should contact an attorney.

The Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments was recorded on 12/06/2011 in Book Number 20111206 as Instrument Number 0001106 of the Official Records in the Office of the Recorder.

NOTICE IS HEREBY GIVEN: That on **10/08/2014**, at **10:00 a.m.** at the front entrance of the Nevada Legal News located at 930 South Fourth Street, Las Vegas, Nevada 89101, that the property commonly known as 34 Innisbrook Ave, Las Vegas, NV 89113 and land legally described as ESTATES AT SPANISH TRAIL #5 PLAT BOOK 40 PAGE 6 LOT 13 BLOCK 1 of the Official Records in the Office of the County Recorder of Clark County, Nevada, will sell at public auction to the highest bidder, for cash payable at the time of sale in lawful money of the United States, by cash, a cashier's check drawn by a state or national bank, a cashier's check drawn by a state or federal credit union, state

HOA0343

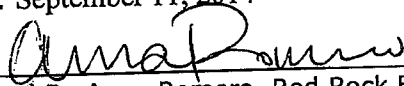
JA1184

Assessor Parcel Number: 163-28-614-007
File Number: R74507
Property Address: 34 Innisbrook Ave
Las Vegas NV 89113

or federal savings and loan association or savings association authorized to do business in the State of Nevada, in the amount of **\$20,309.95** as of 9/15/2014, which includes the total amount of the unpaid balance and reasonably estimated costs, expenses and advances at the time of the initial publication of this notice. Any subsequent Association assessments, late fees interest, expenses or advancements, if any, of the Association or its Agent, under the terms of the Lien for Delinquent Assessments shall continue to accrue until the date of the sale. The property heretofore described is being sold "as is".

The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, encumbrances, obligations to satisfy any secured or unsecured liens or against all right, title and interest of the owner, without equity or right of redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the Declaration of Covenants, Conditions and Restrictions, recorded on 03/07/1984, in Book Number 1885, as Instrument Number 1844877 of the Official Records in the Office of the Recorder and any subsequent amendments or updates that may have been recorded.

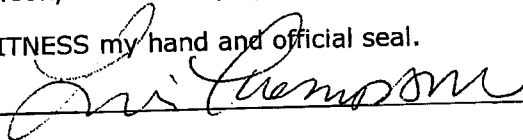
Dated: September 11, 2014


Prepared By Anna Romero, Red Rock Financial Services, on behalf of Spanish Trail Master Association

STATE OF NEVADA)
COUNTY OF CLARK)

On September 11, 2014, before me, personally appeared Anna Romero, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Reinstatement Information: (702) 483-2996 or Sale Information: (714) 573-7777

When Recorded Mail To:
Red Rock Financial Services
4775 W. Teco Avenue, Suite 140
Las Vegas, Nevada 89118
(702) 483-2996 or (702) 932-6887



HOA0344

JA1185



September 15, 2014

VIA CERTIFIED AND FIRST CLASS MAIL

THORNBURG MORTGAGE SECURITIES TRUST 2007-3
C/O BAC HOME LOANS SERVICING, LP
400 COUNTRYWIDE WAY SV-35
MIN 1001337-0001462176-0
SIMI VALLEY, CA 93065

Re: 34 Innisbrook Ave, Las Vegas, NV 89113
Spanish Trail Master Association / R74507

Dear THORNBURG MORTGAGE SECURITIES TRUST 2007-3 ,

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services previous correspondence stated that the failure to reinstate the above account would result in the ***Notice of Sale*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Sale***. This notice is being sent to any parties that may have an interest in the property.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to the account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at www.rrfs.com. Please contact Red Rock Financial Services at 702-483-2996 or 702-215-8130 with any questions.

Regards,

Red Rock Financial Services

702.932.6887 | fax 702.341.7733 | 4775 W. Teco Avenue, Suite 140, Las Vegas, Nevada 89118 | www.rrfs.com | HQA0348

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

JA1186



September 15, 2014

VIA CERTIFIED AND FIRST CLASS MAIL

COUNTRYWIDE HOME LOANS, INC.
4500 PARK GRANADA MSN #SVB-314
MIN 1001337-0001462176-0
CALABASAS, CA 91302-1613

Re: 34 Innisbrook Ave, Las Vegas, NV 89113
Spanish Trail Master Association / R74507

Dear COUNTRYWIDE HOME LOANS, INC. ,

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services previous correspondence stated that the failure to reinstate the above account would result in the ***Notice of Sale*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Sale***. This notice is being sent to any parties that may have an interest in the property.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to the account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at www.rrfs.com. Please contact Red Rock Financial Services at 702-483-2996 or 702-215-8130 with any questions.

Regards,

Red Rock Financial Services

702.932.6887 | fax 702.341.7733 | 4775 W. Teco Avenue, Suite 140, Las Vegas, Nevada 89118 | www.rrfs.com | HQA0351

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

JA1187



September 15, 2014

VIA CERTIFIED AND FIRST CLASS MAIL

MERS
P.O. BOX 2026
MIN 1001337-0001462176-0
FLINT, MI 48501-2026

Re: 34 Innisbrook Ave, Las Vegas, NV 89113
Spanish Trail Master Association / R74507

Dear MERS ,

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services previous correspondence stated that the failure to reinstate the above account would result in the ***Notice of Sale*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Sale***. This notice is being sent to any parties that may have an interest in the property.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to the account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at www.rrfs.com. Please contact Red Rock Financial Services at 702-483-2996 or 702-215-8130 with any questions.

Regards,

Red Rock Financial Services

702.932.6887 | fax 702.341.7733 | 4775 W. Teco Avenue, Suite 140, Las Vegas, Nevada 89118 | www.rrfs.com **HOA0357**

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debt from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

JA1188



September 15, 2014

VIA CERTIFIED AND FIRST CLASS MAIL

COUNTRYWIDE HOME LOANS, INC.
4500 PARK GRANADA
MIN 1001337-0001462185-1
CALABASAS, CA 91302-1613

Re: 34 Innisbrook Ave, Las Vegas, NV 89113
Spanish Trail Master Association / R74507

Dear COUNTRYWIDE HOME LOANS, INC. ,

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services previous correspondence stated that the failure to reinstate the above account would result in the ***Notice of Sale*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Sale***. This notice is being sent to any parties that may have an interest in the property.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to the account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at www.rrfs.com. Please contact Red Rock Financial Services at 702-483-2996 or 702-215-8130 with any questions.

Regards,

Red Rock Financial Services

702.932.6887 | fax 702.341.7733 | 4775 W. Teco Avenue, Suite 140, Las Vegas, Nevada 89118 | www.rrfs.com | HQA0366

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

JA1189



September 15, 2014

VIA CERTIFIED AND FIRST CLASS MAIL

MERS
P.O. BOX 2026
MIN 1001337-0001462185-1
FLINT, MI 48501-2026

Re: 34 Innisbrook Ave, Las Vegas, NV 89113
Spanish Trail Master Association / R74507

Dear MERS ,

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services previous correspondence stated that the failure to reinstate the above account would result in the ***Notice of Sale*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Sale***. This notice is being sent to any parties that may have an interest in the property.

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Additional information regarding this account can be obtained at www.rrfs.com. Please contact Red Rock Financial Services at 702-483-2996 or 702-215-8130 with any questions.

Regards,

Red Rock Financial Services

702.932.6887 | fax 702.341.7733 | 4775 W. Teco Avenue, Suite 140, Las Vegas, Nevada 89118 | www.rrfs.com | HQA0375

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

JA1190

Exhibit D

Exhibit D

Exhibit D

Priority Posting & Publishing
Order # P1112659
TS # R74507

AFFIDAVIT OF SERVICE

State of Nevada)
County of Clark)

I, Kevin Dunn, state:

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

I served **Frank Anthony Timpa and Madelaine Timpa, Trustees** with a copy of the Notice of Sale, on 9/17/2014 at approximately 1:59 PM, by:

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

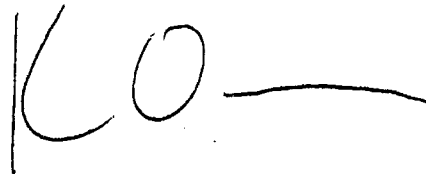
**34 Innisbrook Avenue
Las Vegas NV 89113**

To the best of my knowledge, the property is vacant and unoccupied.

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

Dated 9/17/2014

Nevada Legal Support Services LLC



Kevin Dunn, 1675964
930 S. 4th Street, Suite 200
Las Vegas, NV 89101
(702) 382-2747
NV License #1711

NVLSS ID# 490145 16
COUNTY OF SERVICE: CLARK
SERVER: Kevin Dunn

HOA0336

JA1192

Priority Posting & Publishing
Order # P1112659
TS # R74507

AFFIDAVIT OF POSTING NOTICE OF SALE

State of Nevada)
County of Clark)

I, Jessica Pruett, state:

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

On 9/17/2014, I posted a copy of the Notice of Sale pursuant to NRS 116.311635, concerning Sale R74507, in a public place in the county where the property is situated, to wit:

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

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

Frank Anthony Timpa and Madelaine Timpa, Trustees, 34 Innisbrook Avenue, Las Vegas NV 89113.

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

Dated 9/17/2014

Nevada Legal Support Services LLC

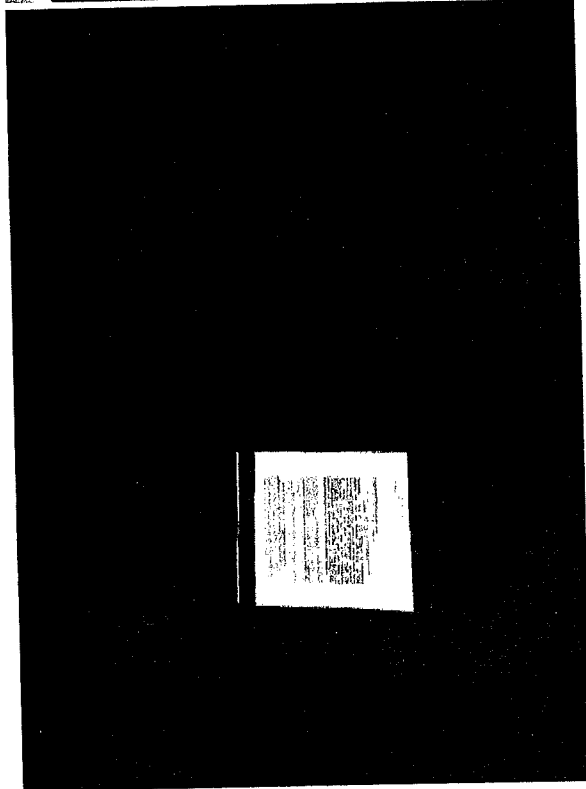
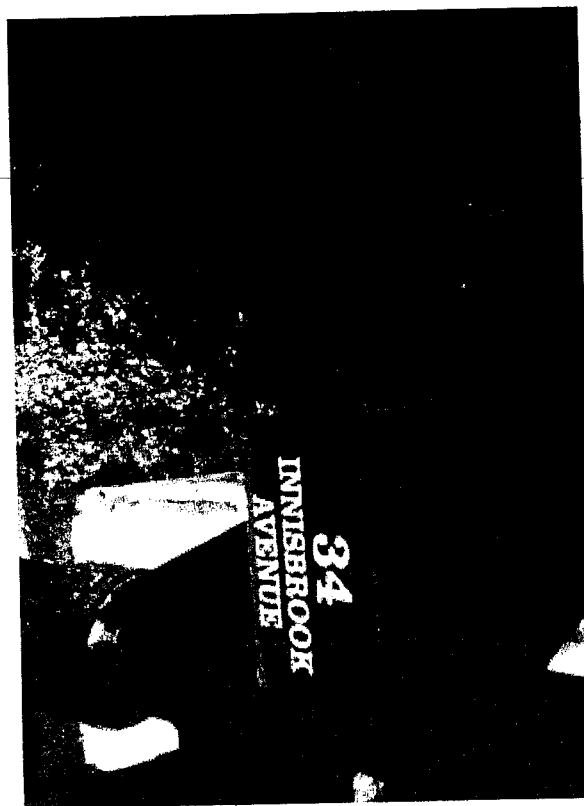
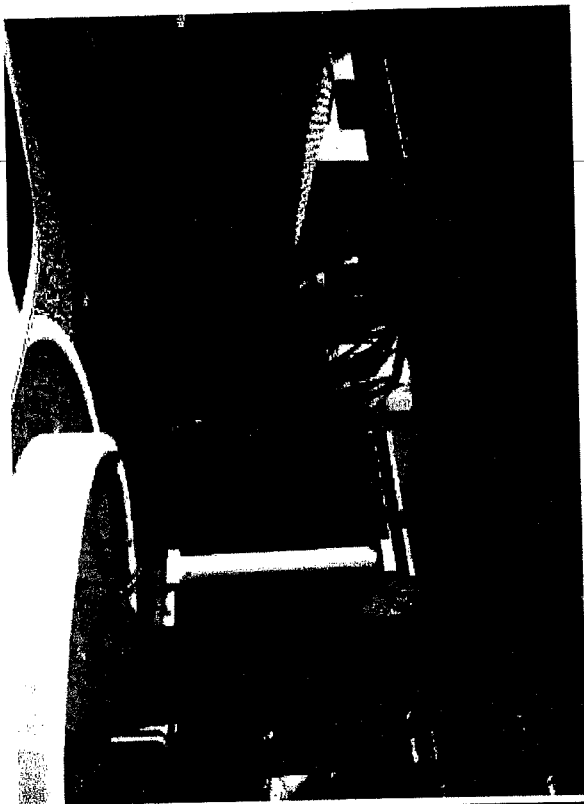


Jessica Pruett
930 S. 4th Street, Suite 200
Las Vegas, NV 89101
(702) 382-2747
NV License #1711

NVLSS ID# 490145 16
COUNTY OF SERVICE: CLARK
SERVER: Jessica Pruett
RED ROCK FINANCIAL SERVICES

HOA0337

JA1193



Photos taken by: Kevin Dunn County: CLARK 133
Photo Date: 9/17/2014 Time: 1:59 PM NLN ID# 490145 Page 1 of 1
Primary Borrower: Frank Anthony Timpa and Madelaine Timpa, Trustees
Property Address: 34 Innisbrook Avenue, Las Vegas NV 89113

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

Priority Posting & Publishing Order # P1112659 TS#R74507

HOA0338

JA1194

Exhibit E

Exhibit E

Exhibit E

Mail Tax statement to:

Saticoy Bay LLC, Series 34 Innisbrook
900 S. Las Vegas Blvd., #810
Las Vegas, NV 89101

APN # 163-28-614-007

FORECLOSURE DEED

The undersigned declares:

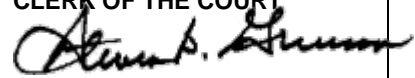
Red Rock Financial Services, herein called agent for (Spanish Trail Master Association), was the duly appointed agent under that certain Lien for Delinquent Assessments, recorded 08/04/2011 as instrument number 0002324 Book 20110804, in Clark County. The previous owner as reflected on said lien is TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN). Red Rock Financial Services as agent for Spanish Trail Master Association does hereby grant and convey, but without warranty expressed or implied to: **Saticoy Bay LLC, Series 34 Innisbrook** (herein called grantee), pursuant to NRS 116.3116 through NRS 116.31168, all its right, title and interest in and to that certain property legally described as: ESTATES AT SPANISH TRAIL #5 PLAT BOOK 40 PAGE 6 LOT 13 BLOCK 1 which is commonly known as **34 Innisbrook Ave Las Vegas, NV 89113**.

AGENT STATES THAT:

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Spanish Trail Master Association governing documents (CC&R's) and that certain Lien for Delinquent Assessments, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 12/06/2011 as instrument number 0001106 Book 20111206 which was recorded in the office of the recorder of said county. Red Rock Financial Services has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Lien for Delinquent Assessments and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Spanish Trail Master Association at public auction on **11/07/2014**, 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 **\$1,201,000.00** in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Lien for Delinquent Assessment.

HOA0168

JA1196



OPP
MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
THERA A. COOPER, ESQ.
Nevada Bar No. 13468
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: melanie.morgan@akerman.com
Email: thera.cooper@akerman.com

*Attorneys for defendant, counterclaimant, and
counter-defendant Thornburg Mortgage Securities
Trust 2007-3*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3, *et al.*,

Defendants.

And All Related Actions.

Case No.: A-14-710161-C

Division: XXVI

**THORNBURG MORTGAGE
SECURITIES TRUST 2007-3'S
REPLY SUPPORTING ITS MOTION
FOR SUMMARY JUDGMENT
AND
OPPOSITION TO SPANISH TRIALS
MASTER ASSOCIATION'S
COUNTERMOTION FOR
SUMMARY JUDGMENT**

Date of Hearing: June 5, 2018
Time of Hearing: 9:30 a.m.

Thornburg Mortgage Securities Trust 2007-3 (**Thornburg**) replies supporting its motion for summary judgment and opposes Spanish Trials Master Association's (the HOA's) counter motion for summary judgment as follows.

...

...

...

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

"[T]he burden of proof rests with the party seeking to quiet title in its favor." *Shadow Wood Homeowners Ass'n, Inc. v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105 (Jan. 28, 2016) (citing *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996)). Plaintiff, as the party seeking a declaration extinguishing the deed of trust, bears burden to prove the HOA foreclosed the superpriority portion of its lien. Plaintiff cannot meet this burden. The court should grant Thornburg's motion for several reasons.

First, there is no material question of fact that the HOA's superpriority lien was extinguished prior to the sale. Thornburg presented admissible evidence demonstrating the superpriority portion of the lien was extinguished either by borrower payments or its tender. Plaintiff's unauthenticated exhibits and arguments are insufficient to defeat summary judgment in Thornburg's favor.

Second, Plaintiff's *bona fide* purchaser status is irrelevant.

Third, The HOA is estopped from enforcing the superpriority lien. The HOA promised to protect the deed of trust and Thornburg relied on that promise.

Finally, The HOA lacks standing to oppose Thornburg's motion against Plaintiff. Thornburg's claims against the HOA are in the alternative. If the court finds the HOA foreclosed on its superpriority lien, despite the borrower's or BANA's payments, and extinguished the deed of trust, the HOA liable to Thornburg for damages.

II. ARGUMENT

A. The Superpriority Lien was Extinguished Before the Sale.

Plaintiff concedes the superpriority amount of the HOA lien was limited to those assessments coming due December 1, 2010 through August 1, 2011 and limited to only \$2,025. Opp., 8:19-22. But, asserts Red Rock applying borrower's \$2,350 in payments to superpriority amount is insufficient because only the deed of trust beneficiary can pay the superpriority amount and Red Rock applied the payments to six of the nine months of applicable assessments. Opp., 4: 17-20 & 8:19-22. Plaintiff asserts BANA's tender was insufficient there is no evidence Red Rock's rejection

1 was wrongful, BANA did not "keep the tender good," and the tender was not recorded. *Id.*, §§ B &
2 C. The Nevada supreme court has rejected these arguments.

3 **1. *Borrower's payments extinguished the superpriority lien.***

4 Plaintiff's unauthenticated exhibits are inadmissible and insufficient to create a question of
5 fact to defeat summary judgment in Thornburg's favor. Plaintiff was party to the *Golden Hill*
6 decision, and is well aware the court confirmed a homeowner can pay the superpriority portion of
7 the HOA's lien. *See Saticoy Bay LLC Series 5141 Golden Hill v. JP Morgan Chase Bank National*
8 *Association*, (table)(2017) (unpublished) (rehearing denied). And, in February the court denied
9 Plaintiff's petition to reconsider that decision. *Id.*

10 Here, Red Rock recorded the Lien in August 2011. Thornburg's MSJ, Ex. E. The
11 superpriority portion of the HOA's lien was limited to only those assessments coming due in "the 9
12 months immediately preceding" the Lien, or December 1, 2010 through August 1, 2011. At the time
13 the Lien was recorded, the HOA's assessments were \$225.00 per month. *Id.*, Ex. F. And, the
14 superpriority amount of the HOA's lien was \$2,025.00. *Id.* From July 9, 2013 through December 13,
15 2013, borrower made payments totaling \$2,350, \$325 more than the superpriority amount. *Id.*, at
16 RRFS000384, 394, 400, 407, 414, & 422. Red Rock accepted the payments, and applied them to the
17 delinquent assessments coming due December 1, 2010 through August 1, 2011. *Id.* Because the
18 payments were applied to the superpriority portion of the lien, that piece of the lien was
19 extinguished. And, Plaintiff's interest in the property is subject to the deed of trust. *See Golden Hill.*

20 **2. *BANA's tender extinguished the superpriority lien.***

21 BANA's check for the superpriority amount constituted valid tender. *SFR Investments*
22 instructs tender of the superpriority lien will "avert loss of [the lender's] security." *SFR Invs. Pool 1*
23 *v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 414 (2014). "When rejection of a valid tender is
24 unjustified, the tender effectively discharges the lien." *Ferrell Street*, at *2. Thornburg did all the
25 law required to protect the deed of trust. Prior to the sale, BANA, its servicer, sent a check to Red
26 Rock for the superpriority amount. Thornburg's MSJ, Ex. H-4 & 5.

27 ...

28 ...

1 ***i. There is no requirement to "keep good" a tender.***

2 *Ferrell Street Trust* rejects Plaintiff's argument BANA's needed to take some action to "keep
3 good" its tender. *Bank of America, N.A, et. al., v. Ferrell Street Trust*, 2018 WL 202156 at *2 (April
4 27, 2018) (unpublished); Thornburg's Opp., Ex. M. The court explained that "[t]o sufficiently satisfy
5 the lien, the tender must be valid, an unconditional offer of payment in full or with conditions for
6 which the tendering party has a right to insist." *Id.* at *2. The only action required of the tendering
7 party is to make a valid offer. *Id.* at *3. "Bank of America was not required to pay its tender into the
8 court or keep the tender good by any other means than being willing to pay upon demand". *Id.*
9 *Ferrell Street* confirms BANA's offer to pay the superpriority amount, standing alone, extinguished
10 the superpriority lien. Here, BANA even provided a check demonstrating it ready, willing, and able
11 to pay the superpriority amount upon demand.

12 ***ii. BANA tendered the proper amount.***

13 Red Rock recorded the Lien in August 2011. Thornburg's MSJ, Ex. E. The superpriority
14 portion of the HOA's lien was limited to only those assessments coming due in "the 9 months
15 immediately preceding" the Lien, or December 1, 2010 through August 1, 2011. At the time the Lien
16 was recorded, the HOA's assessments were \$225.00 per month. *Id.*, Ex. F. And, the superpriority
17 amount of the HOA's lien was \$2,025.00. *Id.* On February 10, 2012 BANA sent correspondence to
18 Red Rock enclosing a check for \$2,025.00. *Id.*, Ex. H-4. Red Rock received the check the same day.
19 *Id.*, Ex. F at RRFS000533-536. Red Rock rejected the payment without explanation. *Id.*, Ex. H-4.
20 And, on February 12, 2012, Red Rock send correspondence to Thornburg confirming the HOA's lien
21 was junior to the deed of trust. *Id.*, Ex. F at RRFS000540.

22 ***iii. Red Rock provided no explanation for its rejection at the time of the rejection.***

23 Plaintiff offers no evidence Red Rock provided any explanation for rejecting BANA's tender-
24 at the time. See Opp. § B. And, Red Rock, also a party to this action did not file its own motion, or
25 opposition, to assert its "at the time reasoning". Plaintiff's assertion Red Rock had "a good faith
26 reason to believe that the HOA's superpriority lien was not limited to 9 months of assessments..." is
27 unsupported by the evidence. "[T]he nonmoving party, that party has the burden to 'do more than
28 simply show that there is some metaphysical doubt' as to the operative facts to defeat a motion for

1 summary judgment." *Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1031 (2005). The
2 evidence before the court demonstrates Red Rock rejected BANA's payment based on its belief the
3 deed of trust was senior to the deed of trust. *Id.*, Ex. F, at RRFS000540.

4 BANA's offer was unconditional, i.e. "not depending on an uncertain event or contingency;
5 absolute." UNCONDITIONAL, Black's Law Dictionary (10th ed. 2014). As an initial matter a check
6 is an unconditional offer. *See* NRS 10.3104(1) and (3). The check "was an unconditional order to
7 pay money" extinguishing the HOA's superpriority lien portion." *US Bank, N.A v. SFR Investment*
8 *Pool 1, LLC*, 2016 WL 4473427, at *6 (D. Nev. Aug. 24, 2016); see also *Ferrell Street Trust*, *Supra.*
9 (citing *Power Transmission Equip. Corp. v. Beliot Corp.*, 201 N.W.2d 13,16 (Wis. 1972) for the
10 proposition that "[a] tender of payment operates to discharge a lien."). BANA's payment was not
11 contingent on uncertain events or reciprocal actions from Red Rock, the HOA, or any other party.
12 BANA did not require Red Rock or the HOA to relinquish any right—the only obligation Thornburg
13 owed to the HOA was to pay the superpriority amount. Miles Bauer's letter explaining BANA was
14 paying in order to discharge the only obligation Thornburg owed does not render it "conditional."

15 ***iv. BANA was not required to record its tender.***

16 Plaintiff's attempts to call BANA's payment an equitable subrogation that must be recorded
17 fail. BANA's superpriority payment was a tender that extinguished the superpriority portion of the
18 HOA's lien. *Cladianos*, 240 P.2d at 210. Nowhere in NRS § 116 or the resultant case law does a
19 first deed of trust holder's payment of the superpriority lien constitute an assignment of the HOA's
20 interest such that the bank is obligated, or even entitled, to record a release of a lien originally
21 recorded by the HOA trustee. And, the Nevada supreme court agrees. *See Golden Hill* at *1.

22 The recording statutes do not support the argument that BANA's tender is a conveyance in
23 real property. Nevada's recording act provides: "[e]very conveyance of real property within this state
24 hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any
25 subsequent purchaser, in good faith and for a valuable consideration" NRS § 111.325.
26 "[C]onveyance shall be construed to embrace every instrument in writing, except a last will and
27 testament, whatever may be its form, and by whatever name it may be known in law, by which any
28 estate or interest in lands is created, aliened, assigned or surrendered." NRS § 111.010(a). BANA's

1 check to satisfy the superpriority portion of the HOA's lien did not create, alienate, assign or
2 surrender Thornburg's security interest in the property.

3 **3. Thornburg's affirmative defenses are adequate.**

4 Thornburg's first, second, third, fourteenth and sixteenth affirmative defenses are sufficient to
5 provide plaintiff notice of BANA's and borrower payments. Thornburg averred it tendered the
6 superpriority portion of the HOA's lien, Plaintiff took title to the property subject to the deed of trust,
7 and reserved the right to assert addition defenses discovered through discovery. Each of these
8 defenses was sufficient to provide notice to Plaintiff.

9 To the extent the court deems Thornburg's defenses are inadequate, it should be allowed to
10 amend its pleadings to conform to the evidence. NRCP 15(b) permits a party to move to amend "at
11 any time." Courts should "do so freely when the presentation of the merits of the action will be
12 subserved thereby and the objecting party fails to satisfy the court that the admission of such
13 evidence would prejudice the party in maintaining the party's action or defense upon the merits."
14 NRCP 15(b). Allowing Thornburg to amend pleading to include borrower's payments does not
15 prejudice to Plaintiff because it had equal access to the evidence through discovery.

16 **B. Plaintiff's Purported Bona Fide Purchaser Status is Irrelevant.**

17 **1. Plaintiff lacks evidence it is a bona fide purchaser.**

18 The burden of establishing *bona fide* purchaser status rests with the party claiming that
19 status—here, Plaintiff. *Berge v. Fredericks*, 591 P.2d 246, 248 (Nev. 1979); *see also RLP-Ampus*
20 *Place, LLC v. US Bank, NA*, Supreme Court Case No. 71883, Slip Op. at 3 (Dec. 22, 2017)
21 (Affirming district court finding the plaintiff was not a *bona fide* purchaser where plaintiff failed to
22 produce evidence supporting its purported *bona fide* purchaser status). Plaintiff produced no
23 evidence establishing it is a *bona fide* purchaser. And, even if it had, Plaintiff's *bona fide* purchaser
24 status is irrelevant.

25 The HOA's superpriority lien was extinguished as a result of BANA's payment. Thornburg's
26 MSJ, Exs. F & H; *Bank of America, N.A, et. al., v. Ferrell Street Trust*, 2018 WL 202156 at 2 (April
27 27, 2018) (unpublished). Plaintiff's putative status as a *bona fide* purchaser cannot "revive the
28 already satisfied superpriority component of the HOA's lien." *Golden Hill*, n. 1 (discussing the

1 inapplicability of plaintiff's putative *bona fide* purchaser status where the superpriority lien was
2 extinguished prior to the sale).

3 **2. Plaintiff may not rely on the deed recitals**

4 Plaintiff asserts the minimal recitations in the foreclosure deed are "conclusive proof" proper
5 notice was provided and proper procedure was followed and it is entitled to quiet title solely on that
6 basis. *Shadow Wood* soundly rejected that argument. *See also RLP-Ampus Place, LLC*, Supreme
7 Court Case No. 71883, Slip Op. at 3 (Dec. 22, 2017) (unpublished).

8 Failure of "conclusive deed recitals" argument means Plaintiff failed to meet its burden of
9 proving that it is a *bona fide* purchaser. Plaintiff has no evidence to show it qualifies as a *bona fide*
10 purchaser. To qualify as a *bona fide* purchaser, a purchaser must show that it purchased the property
11 "(i) for value; and (ii) without notice of a competing or superior interest in the same property." *Berge*
12 *v. Fredericks*, 95 Nev. 183, 185, 591 P.2d 246, 247 (1979) (emphasis added). As recently astutely
13 noted by Justice Stiglich "argument is not evidence." *Nationstar v. SFR Investments Pool 1, LLC*,
14 133 Nev. Ad. Op. 34 (2017) (concurring).

15 **3. A finding that Plaintiff is a bona fide purchaser is not dispositive**

16 Even if Plaintiff was a *bona fide* purchaser, Plaintiff's title to the property is, at best, subject
17 to the deed of trust. *Shadow Wood* admonished courts to consider the "totality of the
18 circumstances," purchaser's status as a *bona fide* purchaser is only one "circumstance" the court
19 should consider.

20 When weighing the totality of the circumstances it is clear equity weighs in Thornburg's
21 favor- regardless of Plaintiff's purported *bona fide* purchaser status. Thornburg's predecessor
22 provided borrower with a \$3,780,000 mortgage loan, allowing borrower to buy a house within the
23 HOA. Thornburg's MSJ, Ex. A. Borrower later failed to pay the HOA assessments, so BANA,
24 then servicer, sent a check to Red Rock for a portion of those assessments. Thornburg's MSJ, Ex.
25 H. Red Rock rejected the payment, and then sent correspondence to BANA and Thornburg
26 asserting the HOA's lien was junior to the deed of trust. *Id.*, and Ex. F.

27 On the other hand, Plaintiff purchased that property, worth \$2,000,000 the time of the HOA
28 sale for 60% of its value. Thornburg's MSJ, Exs. J & K. Plaintiff has had unrestricted use of the

1 Property, including the ability to obtain rents, since 2014. Thornburg's MSJ, Ex. L. In sum,
2 Thornburg tried to pay the HOA prior to the foreclosure sale. But, Red Rock prevented the
3 payment. Plaintiff, on the other hand, purchased the property at a 40% discount and seeks to
4 obtain a windfall. To the extent equitable balancing is necessary to resolve the quiet title and
5 declaratory relief claims in this case, the d facts show that equity weighs in Thornburg's favor.

6 **C. HOA is Estopped from Enforcing a Superpriority Lien**

7 To the extent the court finds neither borrower's payments nor was BANA's tender sufficient
8 to protect the deed of trust, the HOA is estopped from enforcing a superpriority lien. The CC&Rs
9 and Red Rock's correspondence promised to protect the deed of trust. And, Thornburg relied on
10 those promises to its detriment.

11 "To establish promissory estoppel four elements must exist: (1) the party to be estopped must
12 be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act
13 that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the
14 estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the
15 conduct of the party to be estopped." *Pink v. Busch*, 100 Nev. 684, 691 P.2d 456, 459-60 (1984).

16 **1. CC&Rs are an enforceable promise**

17 The CC&Rs were recorded in 1984, long before the enactment of NRS § 116.1104 in 1991.
18 Thornburg's MSJ, Ex. D. "Statutes are presumably intended to operate prospectively, and words
19 should not have a retrospective operation unless they are so clear, strong, and imperative that no
20 other meaning can be annexed to them or the Legislature's intention." *Virden v. Smith*, 210 P. 129,
21 130 (Nev. 1922). The non-waiver provision of NRS § 116.1104 does not apply to these CC&Rs.
22 The *SFR Investments*' court contemplated this outcome:

23
24 *Coral Lakes Community Ass'n v. Busey Bank, N.A.*, 30 So.3d 579 (Fla.Dist.Ct.App.2010), on
25 which U.S. Bank relies, does not suggest a different result. The CC&Rs that contained the
26 subordination clause in *Coral Lakes* were in place before the statute that limited the ability to
27 subrogate association liens took effect. *Id.* at 581–84 & 582 n. 3. The court refused to enforce
28 the statute because disturbing the prior, contractual relationship "would implicate
constitutional concerns about impairment of vested contractual rights." *Id.* at 584. Here,
however, the Southern Highlands CC&Rs were recorded after the Legislature adopted and

1 enacted Chapter 116, so no similar concerns about impairment of any party's vested
2 contractual rights arise."

3 *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 419, ft. nt. 7 (2014)
4 holding modified by *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg., a Div.*
5 *of Wells Fargo Bank, N.A.*, 388 P.3d 970 (Nev. 2017).

6 Nevada's supreme court defines CC&Rs in both contractual and real property terms. *Boulder*
7 *Oaks Cmty. Ass'n v. B & J Andrews*, 169 P.3d 1155, 1160–61 (Nev. 2007) (CC&Rs are a source of
8 contractual rights, run with the land, and provide a burden and a benefit of rights to the property
9 owner). California defines CC&Rs as both an equitable servitude¹ and as a source of contract rights.²
10 However CC&Rs are classified, HOAs must conform their conduct to their CC&Rs:

11 [A]n association must exercise its property rights and its right of management over the affairs
12 of a development in a manner consistent with the covenants, conditions, and restrictions of
13 the declaration. That a declaration operates to bind an association is both logical and sound,
14 for the success of a development would be gravely undermined if the association were
15 allowed to disregard the intent, expectations, and wishes of those whose collective interests
16 the association represents.

17 *Pinnacle Museum Tower Ass'n*, 282 P.3d at 1227.

18 Red Rock reinforced that promise when it sent correspondence to Thornburg, AFTER
19 rejecting its servicer's superpriority check, echoing the CC&Rs representation that the HOA's lien
20 was junior to the deed of trust. Thornburg's MSJ, Ex. F, at RRFS000540. Through the CC&Rs and
21 Red Rock's representations, the HOA lulled Thornburg into believing the deed of trust was
22 protected. Neither Red Rock nor the HOA advised Thornburg their representations were not true.

23 **2. *Thornburg relied on the HOA's promise***

24 Plaintiff may look to the unpublished opinion in *US Bank v. Nevada New Builds*, Case No.
25 69421, Slip Op _ (Nov. 2017) to support the proposition that NRS § 116.1104 applies to the CC&Rs
26 in this case, however *US Bank* is distinguishable. First, as an unpublished opinion it is not binding
27 on this court. Second, in that case there was no evidence of any "vested contractual right" that would

28 ¹ See *Nahrstedt v. Lakeside Village Condominium Association, Inc.*, 8 Cal.4th 361, 368 (Cal. 1994).

² *Pinnacle Museum Tower Ass'n v. Pinnacle Mkt. Dev. (US), LLC*, 282 P.3d 1217 (Cal. 2012).

1 be disturbed by applying NRS § 116.1104's antiwaiver provision. *Id.*, at 3. Third parties may rely
2 upon promises made for their intended benefit where their reliance is foreseeable. *Lipshie v. Tracy*
3 *Inv. Co.*, 93 Nev. 370, 379, 566 P.2d 819, 825 (1977).

4 There is evidence Thornburg relied on the HOA representations and applying NRS §
5 116.1104 disturbs Thornburg's vested contractual rights. In exchange for mortgagees providing
6 home loans to buyers, the HOA, through the CC&Rs, promised to protect the mortgagees' deeds of
7 trust by subordinating its relatively small lien. Thornburg is a third-party beneficiary of the HOA's
8 CC&Rs. Restatement (First) of Property § 528 (1944). And as a third party beneficiary may enforce
9 them. *See* Restatement (First) of Property §541 (1944) ("The persons initially entitled to enforce the
10 obligation of a promise respecting the use of land are the promisee and such third persons as are also
11 beneficiaries of the promise.").

12 The Lender relied on the HOA's promise when it originated the loan. And, Lender obtained
13 title insurance excluding losses resulting from a breach in the CC&Rs based on the HOA's
14 representations. *See* Thornburg's MSJ, Ex. B, Exhibit 1. Unlike the Southern Highlands CC&Rs in
15 *SFR Investments*, the HOA's duty to protect the deed of trust is enforceable because the evidence
16 shows Thornburg relied on the HOA's promises to protect the deed of trust.

17 **D. The HOA May Not Oppose Judgment in Thornburg's Favor Against Plaintiff**

18 The HOA correctly notes Thornburg did not move for summary judgment against the HOA.
19 Countermotion, 3:4-7. This is because Thornburg's claims against the HOA are in the alternative. If,
20 and only if, the court finds the HOA's sale extinguished the deed of trust, is the HOA liable to
21 Thornburg for damages.

22 The HOA has no standing to oppose judgment in Thornburg's favor as against Plaintiff. And,
23 to the extent the court disagrees, nothing in the HOA's countermotion contradicts the facts
24 established in Thornburg's motion. The HOA does not dispute Red Rock's acceptance of borrower's
25 payments or BANA's tender. Thornburg's MSJ, Exs. F & H. The HOA does not deny the contents of
26 its CC&Rs, or that Red Rock, its foreclosure agent sent a correspondence to Thornburg- after
27 rejecting its tender- confirming the seniority of the deed of trust. Thornburg's MSJ, Ex. F.

28 ...

1 **E. The HOA Is Liable to the Extent its Rejection Jeopardized the Deed of Trust.**

2 To protect the priority of the deed of trust, Thornburg needed only satisfy the portion of the
3 homeowners' association lien which was prior to the deed of trust. The Nevada supreme court
4 acknowledged a lender may preserve its interest by determining “the precise super priority amount”
5 and tendering it "in advance of the sale." *Id.* at 418. That is what happened here.

6 There can be no dispute the HOA's superpriority lien was limited to nine months of common
7 assessments. *Ikon Holdings* settled this issue. *Horizon at Seven Hills Homeowners Ass'n v. Ikon*
8 *Holdings, LLC*, 373 P.3d 66, 72 (Nev. 2016).

9 If the court concludes Thornburg's tender, or the borrower's payments were insufficient to
10 preserve the priority of the deed of trust, the HOA's rejection renders it liable to Thornburg for
11 damages. The HOA's refusal to accept payment was the only thing which "stopped" Thornburg from
12 paying the superpriority portion of the lien.

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1 **VI. CONCLUSION**

2 Foreclosure sales are *caveat emptor*. See *Allison Steel*, 86 Nev. at 499 (in the absence of a
3 statute,³ a purchaser acquires no better title than the debtor could have conveyed at the time the lien
4 attached). Plaintiff is a sophisticated entity and was well aware of the risks of purchasing properties
5 at HOA foreclosure sale. The superpriority portion of the HOA's lien was extinguished before the
6 sale through borrower's payments or BANA's tender. Thornburg did all the law required to protect
7 the priority of the deed of trust. There is no unfairness to Plaintiff, neither the deed nor NRS 116
8 promise Plaintiff title unencumbered by the deed of trust. The court should deny Plaintiff's motion
9 and enter an order declaring Plaintiff's interest in the property, if any, is subject to the deed of trust.

10 DATED this 29th day of May 2018.

11 **AKERMAN LLP**

12 /s/ Thera A. Cooper

13 MELANIE D. MORGAN, ESQ.

14 NEVADA BAR NO. 8215

15 THERA A. COOPER, ESQ.

16 Nevada Bar No. 13468

17 1635 Village Center Circle, Suite 200

18 Las Vegas, Nevada 89134

19 *Attorneys Thornburg Mortgage*
20 *Securities Trust 2007-3*

21
22
23
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27
28 ³ NRS 116.3116 does not change the *caveat emptor* rule; it merely changes the order of lien priority. Most importantly, it does not give the buyer any additional rights if the superpriority amount is paid before the foreclosure sale or the association chooses to foreclose on its sub-priority lien.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 29th day of May, 2018, I caused to be served a true and correct copy of the foregoing **THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S REPLY SUPPORTING ITS MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO SPANISH TRIALS MASTER ASSOCIATION'S COUNTERMOTION FOR SUMMARY JUDGMENT**, in the following manner:

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

LEACH JOHNSON SONG & GRUCHOW

Robin Callaway	rcallaway@leachjohnson.com
Patty Gutierrez	pgutierrez@leachjohnson.com
Ryan Hastings	rhastings@leachjohnson.com
Gina LaCascia	glacascia@leachjohnson.com
Sean Anderson	sanderson@leachjohnson.com

OLYMPIA LAW, P.C.

Bryan Naddafi, Esq.	bryan@olympialawpc.com
---------------------	------------------------

LAW OFFICES OF DONALD WILLIAMS

Donald H. Williams, Esq.	dwilliams@dhwlawlv.com
Robin Gullo	rgullo@dhwlawlv.com

KOCH & SCOW LLC

David R. Koch	dkoch@kochscow.com
Staff	aeshenbaugh@kochscow.com
Steven B. Scow	sscow@kochscow.com

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

Eserve Contact	office@bohnlawfirm.com
Michael F. Bohn Esq	mbohn@bohnlawfirm.com

LEGAL AID CENTER OF SOUTHERN NEVADA

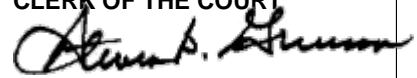
Venicia Considine	vconsidine@lacs.org
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LAW OFFICES OF GREGORY J. WALCH

Gregory Walch	greg.walch@lvvwd.com
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/s/ Erin Surguy

An Employee of Akerman LLP



JMOT
DAVID R. KOCH
Nevada Bar No. 8830
STEVEN B. SCOW
Nevada Bar No. 9906
ROBERT L. ENGLISH
Nevada Bar No. 3504
KOCH & SCOW LLC
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
dkoch@kochscow.com
sscow@kochscow.com
renglish@kochscow.com
Telephone: (702) 318-5040
Facsimile: (702) 318-5039

Attorneys for Counter-Defendant / Counterclaimant
Red Rock Financial Services

EIGHTH DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34 INNISBROOK,
Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3; RECONSTRUCT COMPANY,
N.A. a division of BANK OF AMERICA;
FRANK TIMPA and MADELAINE TIMPA,
individually and as trustees of the TIMPA
TRUST,

Defendants.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3,

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 34 INNISBROOK,
a Nevada Limited-liability company; SPANISH

TRAIL MASTER ASSOCIATION, a Nevada
Non-Profit Corporation; RED ROCK

Case No.: A-14-710161-C
Dept.: XXXI

RED ROCK FINANCIAL SERVICES'
JOINDER TO COUNTER-
DEFENDANT SPANISH TRAIL
MASTER ASSOCIATION'S
COUNTERMOTION FOR
SUMMARY JUDGMENT

JA1210

1 FINANCIAL SERVICES, LLC, an unknown
2 entity; FRANK TIMPA, an individual; DOES I
3 through X; and ROE CORPORATIONS I
4 through X, inclusive,

Counter-Defendants.

5 RED ROCK FINANCIAL SERVICES,

6 Counterclaimant,

7 vs.

8 THORNBURG MORTGAGE SECURITIES
9 TRUST 2007-3; COUNTRYWIDE HOME
10 LOANS, INC.; ESTATES WEST AT SPANISH
11 TRAILS; MORTGAGE ELECTRONIC
12 REGISTRATION SYSTEM, INC.; REPUBLIC
13 SERVICES; LAS VEGAS VALLEY WATER
DISTRICT; FRANK TIMPA and MADELAINE
TIMPA, individually and as trustees of the
TIMPA TRUST U/T/D March 3, 1999; and
DOES 1-100, inclusive,

14 Counter-Defendants.

15
16 Red Rock Financial Services ("Red Rock") hereby joins in Spanish Trail Master
17 Association's (the "Association") Countermotion for Summary Judgment, filed on
18 May 22, 2018, and Red Rock joins in each of the arguments made therein.

19 For the avoidance of doubt, Red Rock did not file an opposition to Thornburg
20 Mortgage's motion for summary judgment.
21

22 Dated: May 30, 2018

KOCH & SCOW, LLC

23
24 By: /s/Steven B. Scow
Steven B. Scow
25 *Attorneys for Red Rock Financial Services*
26
27
28

CERTIFICATE OF SERVICE

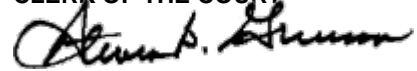
I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on May 30, 2018, I caused the foregoing document entitled: **RED ROCK FINANCIAL SERVICES' JOINDER TO COUNTER-DEFENDANT SPANISH TRAIL MASTER ASSOCIATION'S COUNTERMOTION FOR SUMMARY JUDGMENT** to be served by as follows:

- ☒ Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and / or;
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Henderson, Nevada; and / or
- ☐ Pursuant to EDCR 7.26, to be sent via facsimile; and / or
- ☐ hand-delivered to the attorney(s) listed below at the address indicated below;
- ☐ to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee (s); and or:
- ☐ by electronic mailing to:

Melanie Morgan (melanie.morgan@akerman.com)
Thera Cooper (thera.cooper@akerman.com)
Akerman LLP (AkermanLAS@akerman.com)
Ryan Hastings (rhastings@leachjohnson.com)
Robin Callaway (rcallaway@leachjohnson.com)
Patty Gutierrez (pgutierrez@leachjohnson.com)
Gina LaCascia (glacascia@leachjohnson.com)
Sean Anderson (sanderson@leachjohnson.com)
Bryan Naddafi, Esq. (bryan@olympialawpc.com)
Donald H. Williams, Esq. (dwilliams@dhwlawlv.com)
Eserve Contact . (office@bohnlawfirm.com)
Michael F Bohn Esq . (mbohn@bohnlawfirm.com)
Robin Gullo (rgullo@dhwlawlv.com)
Gregory Walch (greg.walch@lvvwd.com)
Sean Anderson (sanderson@leachjohnson.com)
Venicia Considine (vconsidine@lacs.org)

Executed on May 30, 2018 at Henderson, Nevada.

/s/ Andrea W. Eshenbaugh
An Employee of Koch & Scow LLC



OPPS
DONALD H. WILLIAMS, ESQ.
Nevada Bar No. 5548
Dwilliams@dhwlawlv.com
DREW STARBUCK, ESQ.
Nevada Bar No. 13964
Dstarbuck@dhwlawlv.com
WILLIAMS ❖ STARBUCK
612 So. Tenth Street
Las Vegas, Nevada 89101
(702) 320-7755 (Phone)
(702) 320-7760 (Facsimile)
Attorneys for Republic Services, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

THORNBOK MORTGAGE
SECURITIES TRUST 2007-3;
RECONSTRUCT COMPANY, N.A. a
division of BANK OF AMERICA; FRANK
TIMPA AND MADELAINE TIMPA,
Individually and as trustees of the TIMPA
TRUST,

Defendants.

ALL RELATED CLAIMS.

CASE NO.: A-14-710161-C

DEPT. NO.: XXVI

REPUBLIC SERVICES, INC.'S
PARTIAL OPPOSITION TO
COUNTERDEFENDANT, SPANISH
TRAIL MASTER ASSOCIATION 'S
COUNTERMOTION FOR SUMMARY
JUDGMENT

COMES NOW Defendant, REPUBLIC SERVICES, INC. (hereinafter "Republic"), by
and through its attorney, Drew J. Starbuck, Esq. of The Law Offices of WILLIAMS ❖
STARBUCK, and hereby submits this Partial Opposition to Counter-Defendant, SPANISH
TRAIL MASTER ASSOCIATION (i.e. "STMA")'s Countermotion for Summary Judgment.

...

...

1 This Partial Opposition is based on the following arguments and the arguments of counsel at
2 the time of hearing on this matter.

3 DATED this 30th day of May, 2018.

4 WILLIAMS ❖ STARBUCK

5 /s/ Drew J. Starbuck
6 DONALD H. WILLIAMS, ESQ.

7 Nevada Bar no. 5548

8 DREW J. STARBUCK, ESQ.

9 Nevada Bar No. 13964

612 So. Tenth Street

Las Vegas, NV 89101

Attorneys for Republic Services, Inc.

10
11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. PARTIAL OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

13 **a. LEGAL STANDARD**

14 NRS 444.520(3) affords special properties to Republic's liens: "*Until paid, any fee or*
15 *charge levied pursuant to subsection 1 constitutes a perpetual lien against the property*
16 *served, superior to all liens, claims and titles other than liens for general taxes and special*
17 *assessments. The lien is not extinguished by the sale of any property on account of*
18 *nonpayment of any other lien, claim or title*, except liens for general taxes and special
19 assessments. The lien may be foreclosed in the same manner as provided for the foreclosure of
20 mechanics' liens." (See NRS 444.520(3)). (Emphasis added).

21 **b. ARGUMENT**

22 Pursuant to NRS 444.520(3), Republic's liens are not extinguished by the sale of the
23 property, and given the super-priority status of Republic's liens, none of the parties in this
24 matter are above Republic. Thus, Republic is simply asking the Court to stay consistent with
25 Nevada law, and formally order that Republic maintains the priority position it would be in
26 regardless of the outcome of this lawsuit.

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DATED this 30th day of May, 2018.

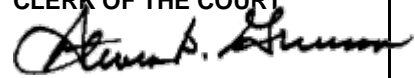
/s/ Drew J. Starbuck
DONALD H. WILLIAMS, ESQ.
Nevada Bar No. 5548
DREW J. STARBUCK, ESQ.
Nevada Bar No. 13964
612 So. Tenth Street
Las Vegas, Nevada 89101
Attorneys for Republic Services, Inc.

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of Williams ❖ Starbuck, and pursuant to
3 NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct
4 copy of the foregoing **REPUBLIC SERVICES, INC.'S PARTIAL OPPOSITION TO**
5 **COUNTERDEFENDANT, SPANISH TRAIL MASTER ASSOCIATION 'S**
6 **COUNTERMOTION FOR SUMMARY JUDGMENT** to be submitted via electronic mail
7 and electronically for filing and service with the Eighth Judicial District Court via the Court's
8 Electronic Filing System on the 30th day of May, 2018.

9 /s/ Robin Gullo

10 Employee of Williams ❖ Starbuck
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1 **RIS**
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 2260 Corporate Circle, Ste. 480
8 Henderson, Nevada 89074
9 (702) 642-3113/ (702) 642-9766 FAX
10 Attorney for plaintiff/counterdefendant
11 Satcoy Bay LLC Series 34 Innisbrook
12

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 SATICOY BAY LLC SERIES 34
11 INNISBROOK,

12 Plaintiff,

13 vs.

14 THORNBURG MORTGAGE SECURITIES
15 TRUST 2007-3; FRANK TIMPA and
16 MADELAINE TIMPA, individually and as
17 trustees of the TIMPA TRUST,

18 Defendants.

19 THORNBURG MORTGAGE SECURITIES
20 TRUST 2007-3,

21 Counterclaimant,

22 vs.

23 SATICOY BAY LLC SERIES 34 INNISBROOK,
24 a Nevada Limited-liability company; SPANISH
25 TRAIL MASTER ASSOCIATION, a Nevada
26 Non-Profit Corporation; RED ROCK
27 FINANCIAL SERVICES, LLC, an unknown
28 entity; FRANK TIMPA, an individual; DOES I
through X; and ROE CORPORATIONS I through
X, inclusive,

Counter-defendants.

And All related claims

CASE NO.: A-14-710161-C
DEPT NO.: XXVI

**REPLY IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

1 Plaintiff/Counterdefendant Saticoy Bay LLC Series 34 Innisbrook (hereinafter “plaintiff”), by and
2 through its attorneys, the Law Offices of Michael F. Bohn, Esq. , Ltd., submits the following points and
3 authorities in support of its motion for summary judgment, filed on May 4, 2018, and in response to the
4 arguments raised by Thornburg Mortgage Securities Trust 2007-1 (hereinafter “defendant”) in its
5 opposition to plaintiff’s motion for summary judgment, filed on May 21, 2018.

6 **POINTS AND AUTHORITIES**

7 **A. The HOA lien included a super priority amount that was foreclosed by the HOA
8 and that extinguished defendant’s subordinate deed of trust.**

9 NRS 116.3116(2) provides in part that an association’s assessment lien “is also prior to all
10 security interests described in paragraph (b) . . . to the extent of the assessments for common expenses
11 based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have
12 become due in the absence of acceleration during the 9 months immediately preceding institution of an
13 action to enforce the lien”

14 The first deed of trust, recorded on June 12 , 2006, falls squarely within the language of NRS
15 116.3116(2)(b).

16 In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408, 419
17 (2014), the Nevada Supreme Court stated that “NRS 116.3116(2) gives an HOA a true superpriority lien,
18 proper foreclosure of which will extinguish a first deed of trust.”

19 At page 6 of its opposition, defendant cites the unpublished order in Saticoy Bay LLC Series 2141
20 Golden Hill v. JPMorgan Chase Bank, 408 P.3d 558 (Table), 2017 WL 6597154 (Nev. Dec. 22,
21 2017)(unpublished disposition), as authority that “[o]nly delinquent assessments occurring within the 9
22 months before the recording of the notice of delinquent assessment lien are entitled to superpriority
23 status.” The words “delinquent assessments” do not appear in NRS 116.3116(2). As quoted above, the
24 language used by the Nevada Legislature refers to assessments “which would have become due in the
25 absence of acceleration” and not to unpaid assessments that are actually past due.

26 As recognized by the Nevada Supreme Court in Horizons at Seven Hills v. Ikon Holdings, 132
27 Nev., Adv. Op. 35, 373 P.3d 66, 73 (2016), the phrase “to the extent of” means “amount equal to.” In
28

1 other words, the superpriority portion of the lien is not a line-item on a given Association's account
2 ledger. It is a sum equal to nine months of common expenses that must be paid by the first security
3 interest holder in order for the first security interest to remain in place and not be subject to
4 extinguishment.

5 NRS 116.3116(2) is simply a calculus; it is a method by which a lender can determine the
6 superpriority amount that it must pay to protect its lien interest. In relation to a first deed of trust holder,
7 the superpriority lien is the dollar amount of the assessments "which would have become due" in the nine
8 months preceding an action to foreclose the lien and not the actual amount owed by the unit owner at the
9 time the Association institutes "an action to enforce the lien." Thus, defendant was required to pay nine
10 months of monthly assessments in order to prevent the extinguishment of its deed of trust.

11 It does not matter that a unit owner might make payments toward a delinquent account even where
12 the homeowner's payments match the calculus found in NRS 116.3116(2). The unit owner's payments
13 are not relevant and cannot have any legal effect on the superpriority amount because only the holder of
14 a first security interest can make these payments.

15 The superpriority lien does not matter to the unit owner because even a sub-priority lien sale will
16 divest the unit owner of his or her interest in the property. Because the superpriority lien only affects the
17 holder of a first deed of trust, the argument that payments made by a unit owner can pay the superpriority
18 portion of a lien is not logical. Unless the unit owner pays the full amount of the lien and prevents any
19 sale from taking place, the unit owner will lose its interest regardless of the priority of the assessment lien.

20 As long as there is money owed to the Association, and the first security interest holder has not
21 paid the superpriority amount to the Association, the superpriority portion of the lien will exist.

22 In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408, 413
23 (2016), the Nevada Supreme Court stated:

24 "An official comment written by the drafters of a statute and available to a legislature
25 before the statute is enacted has considerable weight as an aid to statutory construction."
26 Acierno v. Worthy Bros. Pipeline Corp., 656 A.2d 1085, 1090 (Del. 1995). The
27 comments to the 1982 UCIOA were available to the 1991 Legislature when it enacted
28 NRS Chapter 116.

The Nevada Supreme Court also quoted the following language from the official comments to the

1 UCIOA:

2 But the official comments to UCIOA § 3-116 forthrightly acknowledge that the split-lien
3 approach represents a “significant departure from existing practice.” 1982 UCIOA § 3-
4 116 cmt. 1; 1994 & 2008 UCIOA § 3-116 cmt. 2. **It is a specially devised mechanism**
5 **designed to “strike [] an equitable balance** between the need to enforce collection of
6 unpaid assessments and the obvious necessity for protecting the priority of the security
7 interests of lenders.” *Id.* The comments continue: “As a practical matter, secured lenders
8 will most likely pay the 6 [in Nevada, nine, *see supra* note 1] months' assessments
9 demanded by the association *rather than having the association foreclose on the unit.*”
10 *Id.* (emphasis added). **If the superpriority piece of the HOA lien just established a**
11 **payment priority, the reference to a first security holder paying off the superpriority**
12 **piece of the lien to stave off foreclosure would make no sense.**

13 If payments made by a unit owner can be applied to satisfy the HOA’s superpriority lien, then “the
14 reference to a first security holder paying off the superpriority piece of the lien” would make no sense.

15 The Report of the Joint Editorial Board for Uniform Real Property Acts, The Six-Month Limited
16 Priority Lien for Association Fees Under the Uniform Common Interest Ownership Act, dated June 1,
17 2013, also discusses the policy behind NRS 116.3116 which is to ensure that associations have a
18 mechanism to enforce their assessments without bearing the full costs of maintaining the community prior
19 to the sale. As stated in the JEB report, the six months of super-priority (later amended to nine months
20 in Nevada) is based on the amount of time that it typically takes a bank to foreclose and strikes “a
21 workable and functional balance between the need to protect the financial integrity of the association and
22 the legitimate expectations of the first mortgage lenders.” *Id.* at pp. 3-4.

23 The JEB report recognizes that the drafters of the UCIOA contemplated that the lender’s
24 foreclosure would take six months to complete. The language in the statute can only be understood in the
25 context in which it was supposed to function. The drafters of the UCIOA anticipated that the lender
26 would pay an amount equal to six months of periodic assessments (nine months in Nevada) within 60
27 days of the unit owner becoming delinquent and then proceed to foreclose on the deed of trust. While the
28 lender’s foreclosure was proceeding, the association would draw from the amount paid by the lender until
the end of the foreclosure when a new unit owner would be put in place.

Comment 2 to Section 3-116 of the UCIOA, as amended in 2014, further illuminates the intent
of the drafters in creating the “specially devised mechanism” and the “equitable balance” in Section 3-
116. In particular, the drafters were concerned with the inequity that is created when a lender takes no

1 action to prevent an HOA foreclosure sale and instead forces the HOA or the other unit owners in the
2 community to pay the costs of maintaining the community for the lender's benefit. Comment 2 provides
3 in part:

4 The six-month limited priority for association liens constituted a significant departure
5 from pre-existing practice, and was viewed as striking an equitable balance between the
6 need to enforce collection of unpaid assessments and the need to protect the priority of the
7 security interests of lenders in order to facilitate the availability of first mortgage credit
8 to unit owners in common interest communities. **This equitable balance was premised
9 on the assumption that, if an association took action to enforce its lien and the unit
10 owner failed to cure its assessment default, the first mortgage lender would promptly
11 institute foreclosure proceedings and pay the unpaid assessment (up to six months'
12 worth) to the association to satisfy the association's limited priority lien.** This was
13 expected to permit the mortgage lender to preserve its first lien and deliver clear title in
14 its foreclosure sale - **a sale that was expected to be completed within six months** (in
15 jurisdictions with non-judicial foreclosure) **or a reasonable period of time thereafter,**
16 thus minimizing the period during which unpaid assessment would accrue for which the
17 association would not have first priority. Likewise, it was expected that in the typical
18 situation a unit would have a value sufficient to produce a sale price high enough for the
19 foreclosing lender to recover both the unpaid mortgage balance and six months
20 assessments.

21

22 In many situations, however, mortgage lenders strategically delayed the institution or
23 completion of foreclosure proceedings on units affected by common interest assessments.
24 When a lender acquires a unit at a foreclosure sale by way of credit bid, it becomes legally
25 obligated to pay assessments arising during the lenders' period of ownership. Some
26 lenders have chosen to delay scheduling or completing a foreclosure sale, fearful that they
27 may be unable to resell the unit quickly for an appropriate return in a depressed market.
28 During this period of delay, neither the unit owner nor the mortgage lender is paying the
common expense assessments – the unit owner is often unable or unwilling to do so, and
the mortgagee is not legally obligated to do so prior to acquiring title. In the meantime,
the association (and the remaining unit owners) bear the full financial consequences of
this situation, because the association must either force the remaining owners to bear
increased assessments to meet budgeted expenses or reduce expenditures for (or the level
of) community maintenance, insurance and services.

29 If other unit owners have to pay the burden of increased assessments to preserve
30 community services or amenities, **the delaying lender receives a benefit in that the
31 value of its collateral is preserved while the lender waits to foreclose.** Yet this
32 preservation comes through the community's imposition of assessments that the lender
33 does not have to pay or reimburse. **This benefit constitutes unjust enrichment of the
34 mortgage lender,** particularly to the extent that the lender enjoys this benefit by virtue of
35 conscious decision to delay completing a foreclosure sale.

36

37 By allowing the association to extend its priority for six months per year throughout any
38 period of delay by a foreclosing lender, subsection (c)(1) strikes a more appropriate and
equitable sharing of the costs of preserving the value of the mortgagee's security.

39 Comment 2 to UCIOA § 3-116 at 189-191 (2014).

1 The same “unjust enrichment” occurs when a lender claims that payments made by a unit owner
2 after the HOA commences foreclosure of its assessment lien must be applied to pay the superpriority
3 assessments even though the lender “does not have to pay or reimburse” the unit owner for making those
4 payments.

5 The comments to the UCIOA - from which NRS 116.3116 was derived - prove that the
6 superpriority lien was created to require that lenders pay the superpriority lien and not rely on the unit
7 owner to do so. The clear intent is that the lender must be active by pay its share of the assessment lien
8 and beginning its own foreclosure. Instead, lenders sat on distressed properties and did nothing, which
9 allowed thousands of properties to end up in HOA foreclosures while lenders gambled that housing prices
10 would rebound.

11 In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., the Nevada Supreme Court also stated:

12 But as a junior lienholder, U.S. Bank could have paid off the SHHOA lien to avert loss
13 of its security; it also could have established an escrow for SHHOA assessments to avoid
14 having to use its own funds to pay delinquent dues. 1982 UCIOA § 3116 cmt. 1; 1994 &
15 2008 UCIOA § 3-116 cmt. 2.

16 334 P.3d at 414.

17 In the present case, the evidence proves that neither the former owners nor defendant paid the full
18 amount owed to the HOA in order to prevent the public auction held on November 7, 2014 from taking
19 place.

20 At page 7 of its opposition, defendant states that “Red Rock accepted the payments, and applied
21 the payments to the delinquent assessments coming due December 1, 2010 through August 1, 2011.” The
22 documents cited by defendant (RRFS000384, 394, 400, 407, 414 & 422) do not support defendant’s
23 argument.

24 NRCP 8 (c) provides that “payment” is an affirmative defense that must be “set forth
25 affirmatively” in a party’s answer. Defendant’s answer to plaintiff’s third amended complaint, filed on
26 March 19, 2017, does not allege that the superpriority portion of the lien was paid prior to the foreclosure
27 sale held on November 7, 2014.

28 Moreover, under Nevada law, when “payment” is asserted as a defense, “each element of the

1 defense must be affirmatively proved,” and “[t]he burden of proof clearly rests with the defendant.”
2 Schwartz v. Schwartz, 95 Nev. 202, 206, n. 2, 591 P.2d 1137, 1140, n. 2 (1979); United States v.
3 Truckee-Carson Irrigation District, 71 F.R.D. 10, 13 (D. Nev. 1975); Rosenbaum v. Rosenbaum, 86 Nev.
4 550, 552, 471 P.2d 254, 255 (1970).

5 In Nguyen v. Calhoun, 105 Cal. App. 4th 428, 129 Cal. Rptr. 2d 436 (2003), the court of appeals
6 stated:

7 “The trustor-mortgagor or the person who alleges that a debt has been paid has the burden
8 of proving payment.” (4 Miller & Starr, Cal. Real Estate, supra, Deeds of Trusts and
Mortgages, § 10:71, p. 217, fn. omitted.)

9 The documents identified by defendant at page 7 of its opposition show that the partial payments
10 made by the former owners were allocated to only six (and not nine) monthly assessments. Exhibit F to
11 defendant’s opposition shows that the payments were applied only to the amounts owed to the HOA on
12 March 1, 2011, April 1, 2011, May 1, 2011, June 1, 2011 July 1, 2011 and August 1, 2011.

13 Exhibit F to defendant’s opposition includes only a portion of the records produced by the
14 foreclosure agent.

15 Exhibit 1 to this reply is an account statement, dated December 18, 2013, produced by the
16 foreclosure agent (RRFS000380-RRFS000383). Exhibit 1 shows that the former owners brought their
17 account current as of June 15, 2010, but additional unpaid assessments, late fees, and other charges
18 totaling \$3,850.00 accrued as of March 11, 2011.

19 Reviewing the documents included in Exhibit F to defendant’s opposition, the page marked as
20 RRFS000384 shows that \$196.84 was applied to the assessment due on June 1, 2011, and \$225.00 was
21 applied to the assessment due on August 1, 2011. The page marked as RRFS000394 shows that \$225.00
22 was applied to the assessment due on July 1, 2011. The page marked as RRFS000400 shows that \$128.92
23 was applied to the assessment due on May 1, 2011, and \$28.16 was applied to the assessment due on June
24 1, 2011. The page marked as RRFS000407 shows that \$133.92 was applied to the assessment due on
25 April 1, 2011, and \$96.08 was applied to the assessment due on May 1, 2011. The page marked as
26 RRFS000414 shows that \$475.00 was applied to the assessments due on March 1, 2011. The page
27
28

1 marked as RRFS000422 shows that \$350.00 was applied to the assessments due on March 1, 2011.

2 Exhibit F to defendant's opposition proves that only partial payments of \$133.92 and \$128.92
3 were allocated to the assessments that fell due on April 1, 2011 and May 1, 2011, and no payments were
4 allocated to the assessments that became due on December 1, 2010, January 1, 2011 and February 1,
5 2011.

6 Defendant cannot satisfy its burden of proof regarding payment because Exhibit F to defendant's
7 motion and Exhibit 1 to this reply prove that even if this court measures the HOA's superpriority lien by
8 the assessments that fell due during the nine (9) months prior to the mailing of the lien for delinquent
9 assessments on August 11, 2011, the payments made by the former owners were not applied to pay in full
10 all of the assessments that became due during that time period.

11 **B. Even if accepted by the HOA, a tender by the holder of a subordinate deed
12 of trust could never discharge the HOA's superpriority lien.**

13 At page 7 of its opposition, defendant states that SFR Investments Pool 1, LLC v. U.S. Bank,
14 N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408, 414 (2014), "instructs tender of the superpriority lien will
15 'avert loss of [the lender's] security.'" The quoted language is taken out of context because the Nevada
16 Supreme Court instead stated:

17 U.S. Bank's final objection is that it makes little sense and is unfair to allow a relatively
18 nominal lien — nine months of HOA dues — to extinguish a first deed of trust securing
19 hundreds of thousands of dollars of debt. But as a junior lienholder, **U.S. Bank could
20 have paid off the SHHOA lien to avert loss of its security**; it also could have
21 established an escrow for SHHOA assessments to avoid having to use its own funds to
22 pay delinquent dues. 1982 UCIOA § 3-116 cmt. 1; 1994 & 2008 UCIOA § 3-116 cmt. 2.
23 (emphasis added)

24 In the present case, BANA did not pay off the HOA's assessment lien prior to the sale. The pages
25 marked as RRFS000533-RRFS000536 in Exhibit F to defendant's opposition prove that Miles Bauer
26 instead made a conditional offer to pay only \$2,025.00 of the \$9,255.44 demanded by the foreclosure
27 agent on January 26, 2012. (See page marked as RRFS000569 in Exhibit F)

28 At the bottom of page 7 of its opposition, defendant cites the unpublished order in Bank of
America, N.A. v. Ferrell Street Trust, 416 P.3d 208 (Table), 2018 WL 2021560 (Nev. Apr. 27,
2018)(unpublished disposition), as authority that "BANA's offer to pay the superpriority amount,

1 standing alone, extinguished the superpriority lien.”

2
3 On the other hand, the cases cited in the unpublished order did not discuss the established
4 principles of real property law that govern performance or tender by a subordinate lienholder. Those
5 established principles of real property law appear in Sections 6.4 (e), (f), and (g) of Restatement (Third)
6 of Prop.: Mortgages (1997), and are set out at page 17 of plaintiff’s motion for summary judgment. A
7 copy of Section 6.4 of the Restatement is Exhibit 12 to plaintiff’s motion.

8 NRS 116.1108 expressly provides that these established principles of real property law
9 “supplement the provisions” of NRS Chapter 116 “except to the extent inconsistent with the chapter.”
10 No language in NRS Chapter 116 supersedes or modifies the established principles of real property law
11 relating to a tender made by “one who holds an interest in the real estate subordinate to the mortgage but
12 is not primarily responsible for performance.”

13 As quoted at page 18 of plaintiff’s motion, comment a to Restatement (Third) of Prop.:
14 Mortgages, §6.4 (1997) explains the distinction between payment or tender by someone primarily liable
15 for the debt, and payment or tender by a party seeking to protect its subordinate interest in the property.

16 Comment g to Restatement (Third) of Prop.: Mortgages, §6.4 (1997) also explains the effect of
17 a payment made by a subordinate lienholder:

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

29 Subrogation is broadly defined as when one person is substituted in place of another with
30 reference to a lawful claim, demand or right, so that he who is substituted succeeds to the rights of the
31 other in relation to a debt or claim, and its rights, remedies or securities. See Arguello v. Sunset Station,

1 Inc., 127 Nev. 365, 252 P.3d 206, 208 (2011).

2 If BANA had paid the superpriority portion of the lien, subsection (f) of Restatement (Third) of
3 Prop.: Mortgages, §6.4 (1997) contemplates that BANA would record “an appropriate assignment” or
4 “obtain judicial relief ordering the mortgage assigned.” Defendant has not produced any evidence
5 proving that BANA satisfied these requirements.

6 In the unpublished order in Bank of America, N.A. v. Ferrell Street Trust, the Nevada Supreme
7 Court also stated

8 Additionally, **it does not appear that either party raised the subrogation issue at the**
9 **district court.** See *Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 436,
10 245 P.3d 542, 544 (2010) (“a de novo standard of review does not trump the general rule
11 that ‘[a] point not urged in the trial court, unless it goes to the jurisdiction of that court,
12 is deemed to have been waived and will not be considered on appeal’ ”). We therefore
decline to address these issues on appeal but **note they may warrant the district court's**
consideration in light of whether Bank of America sufficiently tendered the
superpriority portion of the HOA's lien. (emphasis added)

12 Id. at *2.

13 The Nevada Supreme Court remanded the case and directed the district court consider the same
14 subrogation issue that plaintiff raised at pages 16 to 18 of its motion.

15
16 **C. Defendant has not proved that the HOA or its foreclosure agent wrongfully rejected**
the conditional tender of only \$2,025.00 made by Miles Bauer on February 10, 2012.

17 At page 8 of defendant’s opposition, defendant states that on February 10, 20112, BANA sent a
18 check for \$2,025.00 to the foreclosure agent and that “Red Rock rejected the payment without
19 explanation. **Ex. H-4.**” Although the entry for 2/23/2012 on page TMST1354 in Exhibit H states “2/23
20 CHECK RETURNED,” the document does not state that the foreclosure agent rejected the payment
21 “without explanation.” Paragraph 9 at page 3 of the affidavit by Douglas E. Miles also does not state that
22 the check was rejected “without explanation.”

23 Furthermore, the page marked as RRFS0006911 in Exhibit F is a letter to Miles Bauer, dated
24 April 7, 2010, which states: “Please note that as of October 1, 2009, it is a nine month super-priority lien
25 amount.” The next paragraph in this letter also advised Miles Bauer that:

26 Anyone who has a vested interest may pay the debt at any time prior to the Homeowners
27 Association proceeding with the non-judicial foreclosure process however **the debt must**

1 **be paid in full.** (emphasis added)

2 The last paragraph in this letter also stated:

3 We feel we have expressed our position in this matter clearly on numerous occasions; as
4 such we will no longer be addressing these notices.

5 This statement directly contradicts defendant's argument that the foreclosure agent rejected the
6 conditional tender of only \$2,025.00 "without explanation."

7 Defendant also states that the page marked as RRFS000540 in Exhibit F proves that "Red Rock
8 rejected the payment because it believed the deed of trust was entirely senior to the HOA's lien." The
9 letter, dated February 17, 2012, instead stated: "This Lien may affect your position."

10 Because the check was tendered on February 10, 2012, the opinion in Horizons at Seven Hills v.
11 Ikon Holdings, LLC, 132 Nev. Adv. Op. 35, 373 P.3d 66 (2016), did not exist to guide the HOA in
12 evaluating the conditional tender made by Miles Bauer. The interpretation adopted by the Nevada Real
13 Estate Division in Advisory Opinion No. 13-01 issued on December 12, 2012 also did not exist on
14 February 10, 2012.

15 On December 8, 2010, the Commission for Common Interest Communities and Condominium
16 Hotels (hereinafter "CCICCH") issued its Advisory Opinion 2010-01 that stated:

17 An association may collect as a part of the super priority lien (a) interest permitted by
18 NRS 116.3115, (b) late fees or charges authorized by the declaration, (c) charges for
19 preparing any statements of unpaid assessments and (d) the "costs of collecting"
20 authorized by NRS 116.310313.

21 Id. at 1.

22 Furthermore, effective on May 5, 2011, the CCICCH adopted NAC 116.470 in order to set limits
23 on the costs assessed in connection with a notice of delinquent assessment. NAC 116.470(4)(b) allowed
24 the HOA to include "[r]easonable attorney's fees and actual costs, without any increase or markup,
25 incurred by the association for any legal services which do not include an activity described in subsection
26 2."

27 The HOA and the foreclosure agent therefore had a good faith reason to believe that the HOA's
28 superpriority lien included more than the "nine months of assessments for common expenses" offered
29 by Miles Bauer on February 10, 2012.

1 Even in cases where the person primarily responsible for payment made a tender, courts have
2 recognized that a lien is not affected by rejection of the tender if the person rejecting the tender has a good
3 faith belief that more was owed.

4 In Hohn v. Morrison, 870 P.2d 513, 517-518 (Colo. App. 1993), the court stated:

5 Although this is an issue of first impression in Colorado, other jurisdictions which have
6 adopted the lien theory of real estate mortgages have also adopted the rule that an
7 **unconditional tender of the amount due by the debtor** releases the lien of the mortgage
8 unless the creditor establishes **a justifiable and good faith reason for the rejection** of
9 the tender. Moore v. Norman, 43 Minn. 428, 45 N.W. 857 (1890); Renard v. Clink, 91
10 Mich. 1, 51 N.W. 692 (1892); Easton v. Littooy, 91 Wash. 648, 158 P.531 (1916) (tender
11 of the full amount due operates to discharge the lien of the mortgage **if the tender is
12 refused without adequate excuse.**) Under this rule, although the underlying debt
13 remains enforceable, the lien of the mortgage is discharged. See Easton v. Littooy, *supra*;
14 Security State Bank v. Waterloo Lodge No. 102, 85 Neb. 255, 122 N.W. 992 (1909)
15 (emphasis added)

16 In First Nat. Bank of Davis v. Britton, 94 P.2d 896, 898 (Okla. 1939), the Oklahoma Supreme
17 Court stated:

18 “To constitute a sufficient tender, it must be unconditional. *Where a larger sum than that*
19 *tendered is in good faith claimed to be due*, the tender is ineffectual as such if its
20 acceptance involves the admission that no more is due.” (Emphasis ours.) A number of
21 other authorities were cited in the Bly case establishing the general recognition of the rule.
22 More recently this rule was reiterated with specific allusion to attorneys’ fees in the
23 annotation in 93 A.L.R. 73, where it is stated: “And refusal by the mortgagee to accept
24 a tender upon the ground that it does not include attorneys’ fees may prevent the tender
25 from operating as a discharge of the mortgage lien when made in good faith, even though,
26 as a matter of law, the mortgagee was not entitled to the fees.”

27 In the unpublished order in Bank of America, N.A. v. Ferrell Street Trust, the Nevada Supreme
28 Court cited Power Transmission Equip. Corp. v. Beloit Corp., 201 N.W.2d 13 (Wis. 1972), and Lanier
29 v. Mandeville Mills, 189 S.E. 532 (Ga. 1937), which both recognized that a lien is not discharged where
30 the lien holder has a good faith reason to believe that more is owed. The Court also cited Heath v. L.E.
31 Schwartz & Sons, Inc., 416 S.E.2d 113 (Ga. App. 1992), which did not involve a tender made by a
32 subordinate lienholder, but only considered whether a tender made by a judgment debtor stopped the
33 running of interest on the judgment.

34 Because Advisory Opinion 2010-01 and NAC 116.470 gave the HOA a good faith reason to
35 believe that the HOA’s superpriority lien was not limited to 9 months of assessments for common
36 expenses, defendant has not proved that the HOA wrongfully rejected Miles Bauer’s conditional offer

1 to pay only \$2,025.00.

2 At the bottom of page 8 of its opposition, defendant states that the check by Miles Bauer was an
3 unconditional offer to pay money, but as stated above, “[w]here a larger sum than that tendered is in good
4 faith claimed to be due, the tender is ineffectual as such if its acceptance involves the admission that no
5 more is due.” First Nat. Bank of Davis v. Britton, 94 P.2d at 898. The page marked as RRFS000534 in
6 Exhibit F to defendant’s opposition proves that Miles Bauer placed this unacceptable condition on its
7 tender by stating:

8 Our client has authorized us to make payment to you in the amount of \$2,025.00 to satisfy
9 its obligations to the HOA as a holder of the first deed of trust against the property. Thus,
10 enclosed you will find **a cashier’s check** made out to Red Rock Financial Services in the
11 sum of \$2,025.00, which represents the maximum 9 months worth of delinquent
12 assessments recoverable by an HOA. **This is a non-negotiable amount** and any
13 endorsement of said cashier’s check on your part, whether express or implied, will be
14 strictly construed as an **unconditional acceptance on your part** of the facts stated herein
15 and express agreement that **BANA’s financial obligations towards the HOA in regards**
16 **to the real property located at 34 Innisbrook Avenue have now been “paid in full”**.
(emphasis added).

17 The page marked as RRFS000535 in Exhibit F to defendant’s opposition proves that Miles Bauer
18 did not tender a cashier’s check, but only a check drawn on Miles Bauer’s trust account.

19 At page 9 of its opposition, defendant cites the unpublished order in Bank of America, N.A. v.
20 Ferrell Street Trust, 416 P.3d 208 (Table), 2018 WL 2021560 (Nev. Apr. 27, 2018)(unpublished
21 disposition), as authority that “BANA was entitled to insist on the condition.” In that case, on the other
22 hand, the Court stated that “[a] genuine issue of material fact exists regarding whether Bank of America’s
23 tender satisfied the superpriority portion of the lien such that the foreclosure sale is void,” and the court
24 did not address the subrogation issue. Id. at *2.

25 Defendant also cites Fresk v. Kramer, 99 P.3d 282, 286-287 (Or. 2004), where the court
26 considered whether the defendant had made a “tender” that precluded an award of attorney’s fees under
27 ORS 20.080(1) when the defendant made a “prelitigation payment offer” that was conditioned upon
28 “plaintiff releasing defendant from further liability for plaintiff’s negligence claim.” 99 P.3d at 283. The
case did not involve a junior lien holder offering to pay, or paying, any part of a senior lien. In Dull v.
Dull, 674 P.2d 911, 913 (Ariz. Ct. App. 1983), the court held that the husband’s tender of \$28,000.00 was

1 not conditional because “[t]he requirement that the wife execute the deed and vacate the premises was
2 part and parcel of the court’s decree.” In McGehee v. Mata, 330 So. 2d 248 (Fla. App. 1976), the
3 defendant tendered a settlement check for \$3,000.00 subject to four conditions, and the plaintiff endorsed
4 and cashed the settlement check. In the present case, the foreclosure agent returned Miles Bauer’s check
5 because the HOA had a good faith reason to believe that the superpriority lien was more than \$2,025.00.

6 **D. Defendant’s claim of tender is void because it was not recorded before the foreclosure
deed was recorded.**

7 At page 9 of its opposition, defendant cites Cladianos v. Friedhoff, 69 Nev. 41, 240 P.2d 208
8 (1952), but that case did not involve a junior lien holder offering to pay, or paying, any part of a senior
9 lien. That case instead involved a contractor who sued to recover the full amount of his contract fee for
10 supervising the construction of a 20-unit addition to a motel after the owner of the motel was forced to
11 stop construction and failed to notify the contractor when construction resumed. 240 P.2d at 210.

12 Defendant also states that “[n]owhere in NRS § 1116 or the resultant case law does a first deed
13 of trust holder’s payment of the superpriority lien constitute an assignment of the HOA’s interest,” but
14 as discussed above, comments a and g to Restatement (Third) of Prop.: Mortgages, §6.4 (1997) explain
15 the distinction between payment or tender by someone primarily liable for the debt, and payment or
16 tender by a party seeking to protect its subordinate interest in the property.

17 If defendant had paid the superpriority portion of the lien, subsection (f) of Restatement (Third)
18 of Prop.: Mortgages, §6.4 (1997) contemplates that defendant would record “an appropriate assignment”
19 or “obtain judicial relief ordering the mortgage assigned.” Defendant has not produced any evidence
20 proving that defendant satisfied these requirements.

21 NRS 116.1108 expressly incorporated these fundamental principles of the law of real property.

22 Defendant again cites the unpublished order in Saticoy Bay LLC Series 2141 Golden Hill v.
23 JPMorgan Chase Bank, 408 P.3d 558 (Table), 2017 WL 6597154 (Nev. Dec. 22, 2017)(unpublished
24 disposition), but that case did not involve a tender made by a subordinate lien holder that was rejected
25 by the foreclosure agent. The unpublished order discussed the application of payments made by the unit
26 owner that were applied to pay the assessments comprising the HOA’s superpriority lien.

1 At page 10 of its opposition, defendant cites In re Fontainebleau Las Vegas Holdings, LLC, 128
2 Nev. Adv. Op. 53, 289 P.3d 1199 (2012), as authority that “[e]quitable subrogation has no application
3 where the lien at issue is a creation of statute.” That case, however, did not discuss general principles that
4 apply to all statutory liens, but focused only on mechanic’s liens and specific language found in NRS
5 Chapter 108. The Nevada Supreme Court instead answered a certified question from the United States
6 Bankruptcy Court of “whether the doctrine of equitable subrogation can apply to allow a subsequent
7 lender to claim the senior priority status of an original loan that the subsequent lender satisfied when
8 contractors and suppliers hold intervening mechanics’ liens.” 289 P.3d at 1209. The court held “that the
9 plain and unambiguous language of NRS 108.225 precludes application of the doctrine of equitable
10 subrogation, as it unequivocally places mechanic’s lien claimants in an unassailable priority position.”
11 289 P.3d at 1212.

12 The Fontainebleau case did not discuss in any way the effect of an unrecorded conditional offer
13 of payment made to a senior lien claimant by a subordinate lien holder, so the case does not support
14 defendant’s argument that the unrecorded conditional offer made by Miles Bauer affected the HOA’s
15 super priority lien in any way.

16 At page 10 of its opposition, defendant states that “BANA’s check to satisfy the superpriority
17 portion of the HOA’s lien did not create, alienate, assign or surrender Thornburg’s security interest in the
18 property.” On the other hand, because a tender made by a subordinate lienholder acts as an assignment
19 of the HOA’s lien rights, such a tender falls squarely within the definition of the word “conveyance” in
20 NRS 111.010(1). Because the alleged tender is a “conveyance,” NRS 111.315 requires that an
21 “instrument in writing” be recorded, and NRS 111.325 makes that claim of tender “void” against plaintiff
22 because the foreclosure deed was first recorded.

23 **E. As a bona fide purchaser, plaintiff is protected from defendant’s unrecorded claim**
24 **that the superpriority lien was discharged by the HOA’s rejection of Miles Bauer’s**
conditional tender.

25 At page 10 of its opposition, defendant states that the Nevada Supreme Court’s discussion in
26 Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc., 132 Nev. Adv.
27 Op. 5, 366 P.3d 1105 (2016), of the rights afforded to a bona fide purchaser are not relevant to the present
28

1 case because the lender in Shadow Wood foreclosed its deed of trust and was attempting to set aside the
2 subsequent HOA sale in its position as owner of the property. The language used in Shadow Wood is
3 not so limited because it analyzes the rights of every purchaser under common-law principles:

4 A subsequent purchaser is bona fide under common-law principles if it takes the property
5 “for a valuable consideration and without notice of the prior equity, and **without notice**
6 **of facts which upon diligent inquiry would be indicated and from which notice**
7 **would be imputed to him**, if he failed to make such inquiry.” Bailey v. Butner, 64 Nev.
8 1, 19, 176 P.2d 226, 234 (1947) (emphasis omitted); *see also* Moore v. De Bernardi, 47
9 Nev. 33, 54, 220 P. 544, 547 (1923) (“The decisions are uniform that **the bona fide**
10 **purchaser of a legal title is not affected by any latent equity** founded either on a trust,
11 [e]ncumbrance, or otherwise, **of which he has no notice, actual or constructive.**”).
12 (emphasis added)

13 366 P.3d at 1115.

14 The Nevada Supreme Court also stated that the purchaser at an HOA sale is entitled to rely on the
15 recorded notices as proof that the HOA foreclosed a superpriority lien:

16 And if the association forecloses on its superpriority lien portion, the sale also would
17 extinguish other subordinate interests in the property. SFR Invs., 334 P.3d at 412–13. So,
18 when an association's foreclosure sale complies with the statutory foreclosure rules, **as**
19 **evidenced by the recorded notices, such as is the case here, and without any facts to**
20 **indicate the contrary**, the purchaser would have only “notice” that the former owner had
21 the ability to raise an equitably based post-sale challenge, the basis of which is unknown
22 to that purchaser. (emphasis added)

23 366 P.3d at 1116.

24 In the present case, Exhibits 5, 6 and 7 to this plaintiff’s motion prove that each notice recorded
25 by the foreclosure agent stated “the total amount of the lien” as approved by the Court in SFR Investments
26 Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408, 418 (2014). None of the notices
27 indicated that the superpriority lien had been paid.

28 As discussed at pages 11 and 12 of plaintiff’s motion for summary judgment, Section 7:21 in 1
29 Grant S. Nelson, Dale A. Whitman, Ann M. Burkhart & R. Wilson Freyermuth, *Real Estate Finance Law*
30 (6th ed. 2014) is titled “defective power of sale foreclosure-‘void-voidable’ distinction” and explains that
31 there are three types of defects which may affect the validity of foreclosure sales: void, voidable, or
32 inconsequential. The affidavit in support of motion for summary judgment filed in support of plaintiff’s
33 motion proves that Iyad Haddad had no notice of defendant’s unrecorded claim that the foreclosure agent
34 wrongfully rejected the conditional tender made by Miles Bauer. Paragraph 6 at page 2 of the affidavit

1 states that “[p]rior to and at the time of the foreclosure sale, there was nothing recorded in the public
2 record to put me on notice of any claims or notices that any portion of the lien had been paid.” Paragraph
3 9 at page 2 of the affidavit states that “[a]t no time prior to the foreclosure sale did I receive any
4 information from the HOA or the foreclosure agent about the property or the foreclosure sale.”
5 Defendant’s opposition is not supported by any evidence that contradicts these statements.

6 At page 11 of its opposition, defendant repeats its claim that “the HOA’s superpriority lien was
7 extinguished as a result of borrower’s payments or BANA’s tender.” As discussed above, only the holder
8 of a first security interest can pay the superpriority lien, and even if such a payment was made and
9 accepted, it acts as an assignment that must be recorded before the foreclosure deed in order to affect
10 plaintiff’s rights. In the present case, not only was the conditional tender not accepted, defendant did not
11 make its claim of tender known to plaintiff or any of the other persons who bid at the HOA foreclosure
12 sale held on November 7, 2014.

13 **F. The exhibits to plaintiff’s motion proves that the conclusive recitals in the
14 foreclosure deed are true.**

15 At page 11 of its opposition, defendant states that in Shadow Wood, the Nevada Supreme Court
16 “soundly rejected” the argument that the recitals in a foreclosure deed “are ‘conclusive proof’ proper
17 notice was provided and proper procedure was followed,” but the Court expressly stated that the recitals
18 in the foreclosure deed are conclusive “*in the absence of grounds for equitable relief.*” 366 P.3d at 1112.
19 (emphasis in original) The Court also cited Bechtel v. Wilson, 18 Cal. App. 2d 331, 63 P.2d 1170, 1172
20 (Cal. Ct. App. 1936), as “distinguishing between a challenge to the sufficiency of pre-sale notice, **which**
21 **was precluded by the conclusive recitals in the deed**, and an equity-based challenge based upon the
22 alleged unfairness of the sale.” 366 P.3d at 1112. (emphasis added)

23 Defendant cites the unpublished order in RLP-Ampus Place, LLC v. U.S. Bank, N.A., 408 P.3d
24 557 (Table0, 2017 WL 6597148 (Nev. Dec. 22, 2017) (unpublished disposition), but the Court discussed
25 specific evidence proving that both the notice of default and the notice of sale were not properly served.
26 Defendant has not produced any such evidence in the present case. The exhibits to plaintiff’s motion
27 instead prove that every notice required by NRS 116.31162 to NRS 116.31168, and by incorporation,
28

1 NRS 107.090, was timely recorded, mailed, posted and published. Exhibits 6 and 8 prove that copies of
2 both the notice of default and the notice of foreclosure sale were timely mailed to defendant c/o BAC
3 Home Loans Servicing, LP at the address stated in the corporate assignment of deed of trust Nevada
4 recorded on June 9, 2010. (Exhibit 3 to plaintiff's motion)

5 **G. Language in the CC&Rs cannot alter or impair the HOA's superpriority lien rights.**

6 At page 12 of its opposition, defendant states that Exhibit D to its opposition proves that the
7 CC&Rs for the HOA were recorded on March 7, 1984, and that because NRS 116.1104 was not adopted
8 until 1991, "[t]he non-waiver provision of NRS § 116.1104 does not apply to these CC&Rs."

9 On the other hand, the same Act that adopted the language in NRS 116.3116(2) and NRS
10 116.1104 on June 5, 1991 adopted the following language found in NRS 116.1206(1):

11 1. Any provision contained in a declaration, bylaw or other governing document of a
common-interest community that violates the provisions of this chapter:

12 (a) **Shall be deemed to conform with those provisions by operation of law**, and any
13 such declaration, bylaw or other governing document is **not required to be amended to**
conform to those provisions.

14 (b) Is superseded by the provisions of this chapter, regardless of whether the provision
15 contained in the declaration, bylaw or other governing document became effective before
the enactment of the provision of this chapter that is being violated. (emphasis added)

16 Because the CC&Rs in the present case were recorded on March 7, 1984, the enactment of NRS
17 Chapter 116 amended the CC&Rs "by operation of law" to conform to the provisions of NRS 116.3116,
18 including the superpriority lien rights granted to the HOA by NRS 116.3116(2).

19 At the bottom of page 12 of its opposition, defendant quotes from footnote 7 in SFR Investments
20 Pool 1, LLC v. U.S. Bank, N.A., where the Nevada Supreme Court distinguished that case from the
21 holding in Coral Lakes Community Ass'n v. Busey Bank, N.A., 30 So. 3d 579 (Fla. Dist. Ct. App. 2010),
22 by stating that the Southern Highland CC&Rs were recorded after NRS Chapter 116 was enacted. The
23 court, however, did not limit its holding to CC&Rs recorded only after NRS Chapter 116 was enacted.

24 In Coral Lakes Community Ass'n v. Busey Bank, N.A., 30 So. 3d 579 (Fla. Dist. Ct. App. 2010),
25 the note and mortgage were recorded in May of 2006 at a time when the existing CC&Rs contained a
26 provision stating that the purchaser at a foreclosure of first mortgage of record would not be liable for
27

1 assessments “which became due prior to acquisition of title as a result of the foreclosure or deed in lieu
2 thereof. . . .” Id. at 581. The HOA argued that Section 720.3085, Florida Statutes, that was adopted on
3 July 1, 2007, made the bank’s mortgage subordinate to the “unpaid common expenses which accrued or
4 came due during the time period preceding the Bank’s acquisition of title at foreclosure sale of by deed
5 in lieu of foreclosure.” Id. at 582. The bank responded that “applying the new statutory language would
6 impair the Bank’s contractual right, i.e., its vested lien priority.” Id. at 583. The court held that “[t]he
7 statutory change in section 720.3085 cannot disturb that prior, established contractual relationship.” Id.
8 at 584.

9 In the present case, neither defendant nor its predecessor had any “prior, established contractual
10 relationship” with the unit owner or the HOA when the Nevada Legislature adopted the UCIOA in 1991.
11 Exhibit 2 to plaintiff’s motion proves that the deed of trust was not recorded until June 12, 2006, which
12 is more than fourteen (14) years after the enactment of NRS Chapter 116. Exhibit 3 to plaintiff’s motion
13 proves that the deed of trust was not assigned to defendant until June 9, 2010, with is more than eighteen
14 (18) years after the enactment of NRS Chapter 116. As a result, neither defendant nor its predecessor
15 held any “vested contractual rights” that were impaired by the enactment of the UCIOA in 1991.

16 NRS 116.1206(1)(a) expressly provides that “any” provision in “declaration, bylaw or other
17 governing document” that “violates” the provisions of NRS Chapter 116 “[s]hall be **deemed to conform**
18 with those provisions by operation of law, and any such declaration, bylaw or other governing document
19 **is not required to be amended to conform to those provisions.**” (emphasis added) The CC&Rs in the
20 present case are therefore deemed to conform to the provisions of NRS 116.3116(2) granting superpriority
21 lien rights to the HOA’s assessment lien. NRS 116.1104 prevents any language in Article IV, Section 6,
22 Article IX, Section 1, or Article X, Section 3 of the CC&Rs recorded on March 7, 1984 from varying or
23 waiving the superpriority lien rights granted to the HOA by NRS 116.3116(2).

24 At the middle of page 13 of its opposition, defendant states that Exhibit F to its opposition proves
25 that the foreclosure agent sent correspondence to defendant “echoing the CC&Rs representation that the
26 HOA’s lien was junior to the deed of trust.” On the other hand, the letter, dated February 17, 2012, in
27 Exhibit F (Bates No. RRFS000540) expressly states in the fourth paragraph: “This Lien may affect your
28

1 position.” The letter, dated April 7, 2010, in Exhibit F (Bates No. RRFS000691) also explains the
2 foreclosure agent’s interpretation of the statute that because the first mortgage is “Senior” to the HOA’s
3 lien, “the First Mortgage is responsible to pay six months of past due assessments from the time the First
4 Mortgage foreclosed” and that “as of October 1, 2009, it is a nine month super-priority lien amount.”

5 At page 14 of defendant’s opposition, defendant cites an affidavit by Crystal Clopton stating that
6 based on her review of “Nationstar’s systems and databases containing loan information” (§2 of affidavit),
7 Exhibit 1 to her declaration is a “Loan Policy of Title Insurance from Fidelity National Title Insurance
8 Company obtained by Countrywide in connection to funding the loan.”

9 NRS 50.025(1)(a) states that “[a] witness may not testify to a matter unless . . . [e]vidence is
10 introduced sufficient to support a finding that the witness has personal knowledge of the matter”
11 NRCp 56(e) similarly requires that “[s]upporting and opposing affidavits shall be made on personal
12 knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively
13 that the affiant is competent to testify to the matters stated therein.” EDCR 2.21(c) requires that
14 “[a]ffidavits/declarations must contain only factual, evidentiary matter, conform to the requirements of
15 N.R.C.P. 56(e), and avoid mere general conclusions or argument.”

16 Defendant states that “[t]he Lender relied on the HOA’s promise when it originated the loan” and
17 that “Lender obtained title insurance excluding losses resulting from a breach in the CC&Rs based on the
18 HOA’s representations.” First, because Crystal Clopton does not state that she was employed by
19 Countrywide Home Loans, Inc. on June 12, 2006 when the loan policy of title insurance was issued, she
20 does not have personal knowledge upon which to testify regarding what Countrywide Home Loans, Inc.
21 believed about any language in the CC&Rs. Second, because the title policy was not issued until fourteen
22 (14) years after the enactment of NRS Chapter 116, Countrywide Home Loans, Inc. acquired its interest
23 in the Property with notice that the CC&Rs had been amended by operation of law pursuant to NRS
24 116.1206(1)(a).

25 Because Countrywide had notice that the superpriority lien rights granted to the HOA by NRS
26 116.3116(2) had been added to the CC&Rs by operation of law on January 1, 1992, defendant cannot
27 prove that “Thornburg relied on the HOA’s promises to protect the deed of trust.”

1 In footnote 3 in the unpublished order in Wilmington Trust, N.A. v Las Vegas Rental & Repair,
2 LLC Series 69, Case No. 71885, 408 P.3d 557, *1, n. 3 (Table) (Nev. Dec. 22, 2011)(unpublished
3 disposition),the Nevada Supreme Court stated:

4 In this respect, we conclude that the facts in *ZYZZX2 v. Dizon*, No. 2:13-cv-1307, 2016
5 WL 1181666, at *5 (D. Nev. Mar. 25, 2016), are distinguishable and that *In re Worcester*,
6 811 F.2d 1224, 1231 (9 th Cir. 1987), does not dictate a different result to the extent that
7 it is on point. **We further note that to the extent that Wilmington Trust seeks to**
8 **charge prospective bidders with record notice of the CC&Rs’ mortgage savings**
9 **clause, those bidders would likewise have been charged with notice of NRS 116.1104.**
10 *See SFR Invs.*, 130 Nev., Adv. Op. 75, 334 P.3d at 419 (recognizing that NRS 116.1104
11 invalidates such clauses). (emphasis added)

12 In the present case, NRS 116.1104 charged defendant with notice that any language in the CC&Rs
13 could not vary or waive the superpriority lien rights granted to the HOA by NRS 116.3116(2).

14 **H. Defendant is not entitled to equitable relief against plaintiff altering the legal effect**
15 **of the HOA foreclosure sale.**

16 At page 14 of its opposition, defendant states that “Plaintiff has no evidence to show it qualifies
17 as a *bona fide* purchaser.” Defendant, however, has not produced any evidence that contradicts the
18 affidavit by Iyad Haddad proving that plaintiff purchased the Property without notice of defendant’s
19 unrecorded claims that the former owners paid the superpriority portion of the lien and that the
20 foreclosure agent wrongfully rejected the conditional tender made by Miles Bauer.

21 At page 15 of its opposition, defendant states that “Plaintiff is not entitled to the protection of the
22 recording act because it had actual or constructive knowledge of the senior deed of trust, **and therefore**
23 **BANA’s payment**, when it purchased the Property.” (emphasis added)

24 First, knowledge of the recorded deed of trust does not matter because the deed of trust was
25 subordinate to the HOA’s superpriority lien, and “NRS 116.3116(2) gives an HOA a true superpriority
26 lien, proper foreclosure of which will extinguish a first deed of trust.” SFR Investments Pool 1, LLC v.
27 U.S. Bank, N.A., 334 P.3d at 419.

28 Second, in footnote 7 at page 14 of its opposition, defendant states that NRS Chapter 116 does
not state that “the bank is obligated, or even entitled, to record a release of a lien originally recorded by
the HOA Trustee.” As set forth at page 14 above, the law of real property set out in Restatement (Third)
of Prop.: Mortgages, § 6.4(f) (1997), expressly provides that “the mortgagee has a duty to provide to the

1 person performing, within a reasonable time, an appropriate assignment of the mortgage in recordable
2 form” or that “the person performing may obtain judicial relief ordering the mortgage assigned.”
3 Defendant also cites the unpublished order in Saticoy Bay LLC Series 2141 Golden Hill v. JPMorgan
4 Chase Bank, 408 P.3d 558 (Table), 2017 WL 6597154 (Nev. Dec. 22, 2017)(unpublished disposition),
5 even though the statute provides that the former owners cannot pay the HOA’s superpriority lien, and the
6 evidence proves that the payments made by the former owners were not applied to pay all of the
7 assessments for common expenses that fell due during the nine months before the HOA initiated
8 foreclosure of its assessment lien.

9 At page 15 of its opposition, defendant states that plaintiff cannot be a bona fide purchaser
10 because it is charged with “constructive notice of any recorded interest in the real property records –
11 regardless of whether the party searched the real property records.” Defendant, however, does not
12 identify any recorded interest in the Property that was superior to the superpriority lien rights foreclosed
13 by the HOA.

14 At page 16 of its opposition, defendant states that Section 9 in the deed of trust and the PUD Rider
15 provided plaintiff with notice that defendant could pay HOA dues and assessments, but defendant’s claim
16 of tender is not based on these recorded documents. Defendant’s claim is instead based upon the
17 unrecorded letter and check drawn by Miles Bauer that was not accepted by the foreclosure agent or the
18 HOA. In addition, defendant did take any action to keep the rejected tender “good” or to record any
19 document stating that the HOA’s rejection of the conditional tender in any way affected the HOA’s
20 superpriority lien rights.

21 The United States Supreme Court has recognized that equitable relief is not available when the
22 moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable
23 relief. Morales v. Trans World Airlines, Inc., 504 U.S. 374, 381 (1992).

24 This same limitation on the availability of equitable relief has consistently been applied by the
25 Nevada Supreme Court since 1868. Las Vegas Valley Water District v. Curtis Park Manor Water Users
26 Ass’n, 98 Nev. 275, 278, 646 P.2d 549, 551 (1982); County of Washoe v. City of Reno, 77 Nev. 152,
27 360 P.2d 602, 604 (1961); State v. Second Judicial District Court, 49 Nev. 145, 241 P. 317, 321-322

1 (1925); Turley v. Thomas, 31 Nev. 181, 101 P. 568, 574 (1909); Conley v. Chedic, 6 Nev. 222, 224
2 (1870); Sherman v. Clark, 4 Nev. 138 (1868).

3 In County of Washoe v. City of Reno, the Nevada Supreme Court stated that “our concern is with
4 the existence of a remedy and not whether it will be unproductive in this particular case, Hughes v.
5 Newcastle Mutual Insurance Co., 13 U.C.Q.B. (Ont.) 153, or inconvenient, Gulf Research &
6 Development Co. v. Harrison, 9 Cir., 185 F.2d 457, or ineffectual, United States ex rel. Crawford v.
7 Addison, 22 How. 174, 63 U.S. 174, 16 L. Ed. 304.” 360 P.2d at 604.

8 This established limit on the availability of equitable relief is consistent with the Nevada Supreme
9 Court’s statement in Shadow Wood that:

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

19 366 P.3d at 1115, n. 7.

20 In Shadow Wood, the Court also stated that Gogo Way’s “putative status as a bona fide purchaser”
21 had a bearing on the bank’s request for equitable relief and that “[e]quitable relief will not be granted to
22 the possible detriment of innocent third parties.” 366 P.3d at 1115 (quoting Smith v. United States, 373
23 F.2d 419, 424 (4th Cir. 1966)).

24 Even if defendant could prove that the HOA wrongfully prevented Miles Bauer from paying the
25 superpriority lien, defendant’s remedy is to assert a claim for damages against the HOA and its
26 foreclosure agent and not a claim for equitable relief against the innocent purchaser. Moeller v. Lien, 25
27 Cal. App. 4th 822, 831-832, 30 Cal. Rptr. 777 (1994).

28 **I. Defendant has not produced admissible evidence that satisfies the requirements of
the California rule adopted in Shadow Wood and Shadow Canyon.**

At page 16 of its opposition, defendant states that Exhibit F proves that “Red Rock . . . sent
correspondence to BANA and Thornburg asserting the HOA’s lien was junior to the deed of trust.” On

1 the other hand, the letter, dated February 17, 2012 (*See* pg. RRFS000540 in Exhibit F to defendant's
2 opposition), did not state that the HOA's "superpriority lien" was junior to the deed of trust. The letter
3 instead stated: "This Lien may affect your position."

4 Defendant has not produced admissible evidence proving that any person relied on this letter as
5 a statement that the HOA was not foreclosing its superpriority lien.

6 Defendant also states that Exhibits J and K to its opposition prove that plaintiff purchased the
7 Property for "60% of its value." Defendant thereby admits that the purchase price was not "grossly
8 inadequate" as required by the California rule applied by the Nevada Supreme Court in Shadow Wood
9 and Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon, 133 Nev., Adv. Op.
10 91, *2, 405 P.3d 641, 643 (2017).

11 In Shadow Wood, the Nevada Supreme Court stated:

12 Although, as mentioned, NYCB might believe that Gogo Way purchased the property for
13 an amount lower than the property's actual worth, that Gogo Way paid "valuable
14 consideration" cannot be contested. Fair v. Howard, 6 Nev. 304, 308 (1871) ("The
15 question is not whether the consideration is adequate, but whether it is valuable."); see
16 *also* Poole v. Watts, 139 Wash.App. 1018 (2007) (unpublished disposition) (stating that
17 **the fact that the foreclosure sale purchaser purchased the property for a "low price"**
18 **did not in itself put the purchaser on notice that anything was amiss with the**
19 **sale**).(emphasis added)

20 366 P.3d at 1115.

21 The high bid of \$1,201,000.00 paid by plaintiff satisfies this standard.

22 The California rule requires that "there must be in addition proof of some element of fraud,
23 unfairness, or oppression **as accounts for and brings about** the inadequacy of price." (emphasis added)
24 Because defendant has not proved that its unrecorded claim that the HOA wrongfully rejected the
25 conditional tender made by Miles Bauer was made know to plaintiff or any other bidders attending the
26 HOA foreclosure sale, it is impossible for that unrecorded claim to account for or have brought about the
27 high bid of \$1,201,000.00 paid by plaintiff.

28 In the conclusion at page 17 of its opposition, defendant cites Allison Steel Manufacturing Co.
v. Bentonite, Inc., 86 Nev. 494, 471 P.2d 666 (1970), as authority that "[f]oreclosure sales are *caveat*
emptor."

1 In Allison Steel Manufacturing Co. v. Bentonite, Inc., the Nevada Supreme Court instead held that
2 something must appear in the public record to trigger a duty of inquiry. In particular, the Court stated that
3 a duty of inquiry arose because “[a]t the time appellant’s judgment lien attached on May 26, 1964, the
4 two IRS liens were already of record giving it constructive notice.” 86 Nev. at 499, 471 P.2d at 699.
5 Because notice was provided by the tax liens “of record,” the Court held that the certificate from the tax
6 sale held on September 15, 1964 had priority over the sheriff’s certificate of sale issued on July 6, 1965
7 even though the tax deed was not recorded until March 25, 1966 (after the period of redemption had
8 expired).

9 The Court also stated:

10 Had appellant purchased the Henderson land at the Sheriff’s sale after instead of before
11 the IRS tax liens were released, a different result would prevail.

12 86 Nev. at 500, 471 P.2d at 670.

13 Furthermore, in Adaven Management, Inc. v. Mountain Falls Acquisition Corp., 124 Nev. 770,
14 778-779, 191 P.3d 1189, 1195 (2008), the Nevada Supreme Court described the scope of the inquiry
15 notice with which a purchaser is charged as follows:

16 The county recorder maintains recorded deeds, including those transferring water rights.
17 By statute, a county recorder is required to keep indices of all deeds arranged by the names
18 of the grantors and grantees. A prospective purchaser of land may search those indices to
19 ensure that the person attempting to sell the property has clear title to it. To search the
20 indices, the prospective purchaser would first search the grantee index for the purported
21 owner’s name to ascertain when and from whom the purported owner received the
22 property. Using that name, the purchaser would check the grantee index for the names of
23 each previous owner, thus establishing the “chain of title.” The purchaser must then search
24 the grantor index, starting with the first owner in the chain of title, to see whether he or
25 she transferred or encumbered the property during the time between his or her acquisition
26 of the property and its transfer to the next person in the chain of title. Whether or not a
27 purchaser of real property performs this search, **he or she is charged with constructive
28 notice of, and takes ownership of the property subject to, any interest such a title
search would reveal.** (emphasis added)

23 In the present case, defendant has not produced any evidence proving that any document affecting
24 the HOA’s superpriority lien was recorded prior to the HOA foreclosure sale. Every recorded document
25 instead reflected that the HOA was foreclosing its entire assessment lien, including the superpriority
26 portion provided by NRS 116.3116(2).

27 In the conclusion at page 17 of its opposition, defendant also states that “a purchaser acquires no
28

1 better title than the debtor could have conveyed at the time the lien attached.” On the other hand, the
2 extinguishment of defendant’s subordinate deed of trust is not based on the quality of the title held by the
3 former owner, but upon the “fundamental principle of mortgage law” that “[a] valid foreclosure of a
4 mortgage terminates all interests in the foreclosed real estate that are junior to the mortgage being
5 foreclosed and whose holders are properly joined or notified under applicable law.” Restatement (Third)
6 of Prop.: Mortgages, § 7.1 (1997).

7
8 **CONCLUSION**

9 The HOA’s foreclosure sale extinguished both the defendant’s deed of trust and its interest in the
10 Property. The foreclosure sale is presumed to be valid by statute, and the recitals in the foreclosure deed
11 are conclusive proof the HOA’s foreclosure sale complied with all requirements of Nevada law. The
12 exhibits to plaintiff’s motion prove that the recitals are true.

13 Defendant permitted the HOA foreclosure sale to be completed without objection and without
14 providing notice to plaintiff of defendant’s unrecorded claim that the HOA wrongfully prevented Miles
15 Bauer from paying the superpriority portion of the lien. Plaintiff was entitled to rely on the recorded
16 documents as proof that a superpriority lien was being foreclosed.

17 Accordingly, plaintiff respectfully requests that this Court enter an order granting plaintiff’s
18 motion for summary judgment.

19 DATED this 4th day of June, 2018

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

22 By: / s / Michael F. Bohn, Esq. /
23 Michael F. Bohn, Esq.
24 2260 Corporate Circle, Ste. 480
25 Henderson, Nevada 89074
26 Attorney for Plaintiff
27 Saticoy Bay LLC Series 34 Innisbrook
28

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 4th day of June, 2018, an electronic copy of the REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT was served on opposing counsel via the Court's electronic service system to the following counsel of record:

Melanie D. Morgan, Esq.
Thera A. Cooper, Esq.
AKERMAN LLP
1635 Village Center Circle Suite 200
Las Vegas, Nevada 89134
Attorneys for Thornburg Mortgage Securities
Trust 2007-3

David R. Koch, Esq.
Steven B. Scow, Esq.
Daniel H. Stewart, Esq.
KOCH & SCOW LLC
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
Attorneys for
counterdefendant/counterclaimant
Red Rock Financial Services

Donald H. Williams, Esq.
Drew Starbuck, Esq.
WILLIAMS & ASSOCIATES
612 South Tenth Street
Las Vegas, NV 89101
Attorney for counterdefendant,
Republic Services, Inc.

Bryan Naddafi, Esq.
OLYMPIC LAW P.C.
292 Francisco St.
Henderson, NV 89014
Attorney for defendants,
Frank and Madeline Timpa

/s/ Marc Sameroff /
An employee of the LAW OFFICES
OF MICHAEL F. BOHN, ESQ., LTD.

EXHIBIT 1

EXHIBIT 1

Spanish Trail Master Association

7495 Mission Hills Drive

Las Vegas, NV 89113

Frank Timpa
34 Innisbrook Avenue
Las Vegas, NV 89113

Property Address: 34 Innisbrook Avenue

Account #: 18432

Code	Date	Amount	Balance	Check#	Memo
PP	12/31/2007	-210.00	-210.00	INIT	INIT CREDIT BAL
A1	1/2/2008	220.00	10.00		APPLY CHARGES
PP	1/11/2008	-220.00	-210.00	10158	10158 080111
A1	2/1/2008	220.00	10.00		APPLY CHARGES
PP	2/14/2008	-220.00	-210.00	10188	10188 080214
A1	3/1/2008	220.00	10.00		APPLY CHARGES
PP	3/12/2008	-220.00	-210.00	10214	10214 080312
A1	4/1/2008	220.00	10.00		APPLY CHARGES
PP	4/15/2008	-220.00	-210.00	10245	10245 080415
A1	5/1/2008	220.00	10.00		APPLY CHARGES
PP	5/7/2008	-220.00	-210.00	10278	10278 080507
PP	5/30/2008	210.00	0.00		EXPENSE ADJ
A1	6/1/2008	220.00	220.00		APPLY CHARGES
PP	6/3/2008	-220.00	0.00	10303	10303 080603
A1	7/1/2008	220.00	220.00		APPLY CHARGES
PP	7/12/2008	-220.00	0.00	10329	10329 080712
A1	8/1/2008	220.00	220.00		APPLY CHARGES
PP	8/14/2008	-220.00	0.00	10365	10365 080814
A1	9/1/2008	220.00	220.00		APPLY CHARGES
PP	9/12/2008	-220.00	0.00	10390	10390 080912
A1	10/1/2008	220.00	220.00		APPLY CHARGES
PP	10/15/2008	-220.00	0.00	10417	10417 081015
A1	11/1/2008	220.00	220.00		APPLY CHARGES
A1	12/1/2008	220.00	440.00		APPLY CHARGES
A1	1/1/2009	225.00	665.00		APPLY CHARGES
A1	2/1/2009	225.00	890.00		APPLY CHARGES
01	2/16/2009	25.00	915.00		APPLY LATE FEE
A1	3/1/2009	225.00	1,140.00		APPLY CHARGES
01	3/16/2009	25.00	1,165.00		APPLY LATE FEE
A1	4/1/2009	225.00	1,390.00		APPLY CHARGES
01	4/16/2009	25.00	1,415.00		APPLY LATE FEE
A1	5/1/2009	225.00	1,640.00		APPLY CHARGES
01	5/16/2009	25.00	1,665.00		APPLY LATE FEE
A1	6/1/2009	225.00	1,890.00		APPLY CHARGES

Spanish Trail Master Association | 7495 Mission Hills Drive | Las Vegas, NV 89113 | 702-367-8747

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12/18/2013

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RRFS000380
JA1245

Spanish Trail Master Association

7495 Mission Hills Drive

Las Vegas, NV 89113

Code	Date	Amount	Balance	Check#	Memo
01	6/16/2009	25.00	1,915.00		APPLY LATE FEE
A1	7/1/2009	225.00	2,140.00		APPLY CHARGES
01	7/16/2009	25.00	2,165.00		APPLY LATE FEE
A1	8/1/2009	225.00	2,390.00		APPLY CHARGES
01	8/16/2009	25.00	2,415.00		APPLY LATE FEE
A1	9/1/2009	225.00	2,640.00		APPLY CHARGES
01	9/16/2009	25.00	2,665.00		APPLY LATE FEE
A1	10/1/2009	225.00	2,890.00		APPLY CHARGES
01	10/16/2009	25.00	2,915.00		APPLY LATE FEE
A1	11/1/2009	225.00	3,140.00		APPLY CHARGES
01	11/16/2009	25.00	3,165.00		APPLY LATE FEE
A1	12/1/2009	225.00	3,390.00		APPLY CHARGES
A1	1/1/2010	225.00	3,615.00		APPLY CHARGES
A1	2/1/2010	225.00	3,840.00		APPLY CHARGES
01	2/16/2010	25.00	3,865.00		APPLY LATE FEE
A1	3/1/2010	225.00	4,090.00		APPLY CHARGES
C1	3/15/2010	825.00	4,915.00		APPLY CHARGES
01	3/16/2010	25.00	4,940.00		APPLY LATE FEE
01	3/30/2010	25.00	4,965.00		APPLY LATE FEE
A1	4/1/2010	225.00	5,190.00		APPLY CHARGES
A1	5/1/2010	225.00	5,415.00		APPLY CHARGES
01	5/16/2010	25.00	5,440.00		APPLY LATE FEE
PP	5/28/2010	-1,075.00	4,365.00	174281	174281 100607
PP	5/31/2010	-225.00	4,140.00		EXPENSE ADJ
A1	6/1/2010	225.00	4,365.00		APPLY CHARGES
PP	6/15/2010	-4,365.00	0.00	175819	175819 100622
A1	7/1/2010	225.00	225.00		APPLY CHARGES
A1	8/1/2010	225.00	450.00		APPLY CHARGES
01	8/16/2010	25.00	475.00		APPLY LATE FEE
A1	9/1/2010	225.00	700.00		APPLY CHARGES
C1	9/15/2010	825.00	1,525.00		APPLY CHARGES
01	9/16/2010	25.00	1,550.00		APPLY LATE FEE
A1	10/1/2010	225.00	1,775.00		APPLY CHARGES
01	10/16/2010	25.00	1,800.00		APPLY LATE FEE
A1	11/1/2010	225.00	2,025.00		APPLY CHARGES
01	11/16/2010	25.00	2,050.00		APPLY LATE FEE
A1	12/1/2010	225.00	2,275.00		APPLY CHARGES
01	12/16/2010	25.00	2,300.00		APPLY LATE FEE
A1	1/1/2011	225.00	2,525.00		APPLY CHARGES
01	1/16/2011	25.00	2,550.00		APPLY LATE FEE
A1	2/1/2011	225.00	2,775.00		APPLY CHARGES
01	2/16/2011	25.00	2,800.00		APPLY LATE FEE
A1	3/1/2011	225.00	3,025.00		APPLY CHARGES

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RRFS000381
JA1246

Spanish Trail Master Association

7495 Mission Hills Drive

Las Vegas, NV 89113

Code	Date	Amount	Balance	Check#	Memo
C1	3/1/2011	825.00	3,850.00		0
01	3/16/2011	25.00	3,875.00		APPLY LATE FEE
A1	4/1/2011	225.00	4,100.00		APPLY CHARGES
01	4/16/2011	25.00	4,125.00		APPLY LATE FEE
A1	5/1/2011	225.00	4,350.00		APPLY CHARGES
01	5/16/2011	25.00	4,375.00		APPLY LATE FEE
A1	6/1/2011	225.00	4,600.00		APPLY CHARGES
01	6/16/2011	25.00	4,625.00		APPLY LATE FEE
A1	7/1/2011	225.00	4,850.00		APPLY CHARGES
01	7/16/2011	25.00	4,875.00		APPLY LATE FEE
A1	8/1/2011	225.00	5,100.00		APPLY CHARGES
01	8/16/2011	25.00	5,125.00		APPLY LATE FEE
A1	9/1/2011	225.00	5,350.00		APPLY CHARGES
C1	9/15/2011	825.00	6,175.00		APPLY CHARGES
01	9/16/2011	25.00	6,200.00		APPLY LATE FEE
A1	10/1/2011	225.00	6,425.00		APPLY CHARGES
01	10/16/2011	25.00	6,450.00		APPLY LATE FEE
A1	11/1/2011	225.00	6,675.00		APPLY CHARGES
01	11/16/2011	25.00	6,700.00		APPLY LATE FEE
A1	12/1/2011	225.00	6,925.00		APPLY CHARGES
01-Late Fees	12/15/2011	25.00	6,950.00		30 Day Notice
A1-Assessment	1/1/2012	225.00	7,175.00		Assessment 2012
A1-Assessment	2/1/2012	225.00	7,400.00		Assessment 2012
01-Late Fees	2/16/2012	25.00	7,425.00		60 Day Notice
A1-Assessment	3/1/2012	225.00	7,650.00		Assessment 2012
01-Late Fees	3/16/2012	25.00	7,675.00		Collections
PP-Prepaid	3/30/2012	-113.00	7,562.00	44307	Partial pay fr RRFS
A1-Assessment	4/1/2012	225.00	7,787.00		Assessment 2012
01-Late Fees	4/16/2012	25.00	7,812.00		Collections
A1-Assessment	5/1/2012	225.00	8,037.00		Assessment 2012
PP-Prepaid	5/3/2012	-213.00	7,824.00	44571	Partial payment from Red Rock
01-Late Fees	5/16/2012	25.00	7,849.00		Collections
A1-Assessment	6/1/2012	225.00	8,074.00		Assessment 2012
01-Late Fees	6/16/2012	25.00	8,099.00		Collections
A1-Assessment	7/1/2012	225.00	8,324.00		Assessment 2012
01-Late Fees	7/16/2012	25.00	8,349.00		Collections
A1-Assessment	8/1/2012	225.00	8,574.00		Assessment 2012
01-Late Fees	8/16/2012	25.00	8,599.00		Collections
A1-Assessment	9/1/2012	225.00	8,824.00		Assessment 2012
01-Late Fees	9/16/2012	25.00	8,849.00		Collections
A1-Assessment	10/1/2012	225.00	9,074.00		Assessment 2012
01-Late Fees	10/16/2012	25.00	9,099.00		Collections
A1-Assessment	11/1/2012	225.00	9,324.00		Assessment 2012

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RRFS000382
JA1247

Spanish Trail Master Association

7495 Mission Hills Drive

Las Vegas, NV 89113

Code	Date	Amount	Balance	Check#	Memo
PP-Prepaid	11/15/2012	-462.00	8,862.00	45741	Partial payment from RRFS
01-Late Fees	11/16/2012	25.00	8,887.00		Collections
A1-Assessment	12/1/2012	225.00	9,112.00		Assessment 2012
01-Late Fees	12/16/2012	25.00	9,137.00		Collections
A1-Assessment	1/1/2013	235.00	9,372.00		Assessment 2013
01-Late Fees	1/16/2013	25.00	9,397.00		Collections
A1-Assessment	2/1/2013	235.00	9,632.00		Assessment 2013
01-Late Fees	2/16/2013	25.00	9,657.00		Collections
A1-Assessment	3/1/2013	235.00	9,892.00		Assessment 2013
PP-Prepaid	3/6/2013	-786.08	9,105.92	46398	Partial payment from RRFS
01-Late Fees	3/16/2013	25.00	9,130.92		Collections
A1-Assessment	4/1/2013	235.00	9,365.92		Assessment 2013
01-Late Fees	4/16/2013	25.00	9,390.92		Collections
PP-Prepaid	4/19/2013	-442.00	8,948.92	46652	Installment payment from RRFS
A1-Assessment	5/1/2013	235.00	9,183.92		Assessment 2013
01-Late Fees	5/16/2013	25.00	9,208.92		Collections
PP-Prepaid	5/17/2013	-500.00	8,708.92	46887	Installment payment from RRFS
A1-Assessment	6/1/2013	235.00	8,943.92		Assessment 2013
01-Late Fees	6/16/2013	25.00	8,968.92		Collections
PP-Prepaid	6/28/2013	-500.00	8,468.92	47182	Partial payment from RRFS
A1-Assessment	7/1/2013	235.00	8,703.92		Assessment 2013
PP-Prepaid	7/15/2013	-450.00	8,253.92	47347	Partial payment from RRFS
01-Late Fees	7/16/2013	25.00	8,278.92		Collections
A1-Assessment	8/1/2013	235.00	8,513.92		Assessment 2013
01-Late Fees	8/16/2013	25.00	8,538.92		Collections
PP-Prepaid	8/21/2013	-475.00	8,063.92	47590	Partial payment from RRFS
A1-Assessment	9/1/2013	235.00	8,298.92		Assessment 2013
01-Late Fees	9/16/2013	25.00	8,323.92		Collections
PP-Prepaid	9/27/2013	-430.00	7,893.92	47813	HOA dues payment
A1-Assessment	10/1/2013	235.00	8,128.92		Assessment 2013
01-Late Fees	10/16/2013	25.00	8,153.92		Collections
PP-Prepaid	10/31/2013	-232.08	7,921.84	48056	Partial payment from RRFS
A1-Assessment	11/1/2013	235.00	8,156.84		Assessment 2013
01-Late Fees	11/16/2013	25.00	8,181.84		Collections
PP-Prepaid	11/20/2013	-250.00	7,931.84	48183	Partial payment from RRFS
A1-Assessment	12/1/2013	235.00	8,166.84		Assessment 2013

Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance.	8,166.84
235.00	260.00	260.00	7,411.84		

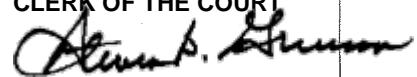
Spanish Trail Master Association | 7495 Mission Hills Drive | Las Vegas, NV 89113 | 702-367-8747

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RRFS000383
JA1248



RPLY
LEACH JOHNSON SONG & GRUCHOW
SEAN L. ANDERSON
Nevada Bar No. 7259
RYAN D. HASTINGS
Nevada Bar No. 12394
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148
Telephone: (702) 538-9074
Facsimile: (702) 538-9113
Attorneys for Counter-Defendant
Spanish Trail Master Association

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLS SERIES 34
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE
SECURITIES TRUST 2007-3;
RECONSTRUST COMPANY, N.A. a
division of BANK OF AMERICA; FRANK
TIMPA and MADELAINE TIMPA,
individually and as trustees of the TIMPA
TRUST,

Defendants.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3,

Counterclaimant

vs.

SATICOY BAY LLC SERIES 34
INNISBROOK, a Nevada limited-liability
company; SPANISH TRAIL MASTER
ASSOCIATION, a Nevada Non-Profit
Corporation; RED ROCK FINANCIAL
SERVICES, an unknown entity; FRANK
TIMPA, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Counter-Defendants.

Case No.: A-14-710161-C
Dept. No.: XXVI

**COUNTER-DEFENDANT SPANISH
TRAIL MASTER ASSOCIATION'S
REPLY IN SUPPORT OF ITS
COUNTERMOTION FOR SUMMARY
JUDGMENT**

Hearing Date: July 3, 2018

Hearing Time: 9:30 a.m.

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

JA1249

RED ROCK FINANCIAL SERVICES,

Counterclaimant

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3; COUNTRYWIDE HOME
LOANS, INC.; ESTATES WEST AT
SPANISH TRAILS; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; REPUBLIC SERVICES;
LAS VEGAS VALLEY WATER
DISTRICT; FRANK TIMPA and
MADELAINE TIMPA, individually and as
trustees of the TIMPA TRUS U/T/D March
3, 1999; and DOES 1-100, inclusive,

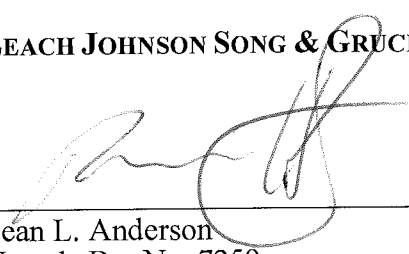
Counter-Defendants.

Defendant Spanish Trail Master Association (the “Association”), by and through its attorneys, Leach Johnson Song & Gruchow, respectfully submits its Reply in Support of its Countermotion for Summary Judgment (“Reply”).

This Reply is based upon the attached Memorandum of Points and Authorities, together with such other and further evidence and argument as may be presented and considered by this Court at any hearing of this Motion.

Dated this 26th day of June, 2018.

LEACH JOHNSON SONG & GRUCHOW



Sean L. Anderson
Nevada Bar No. 7259
RYAN D. HASTINGS
Nevada Bar No. 1239
8945 W. Russell Road, Suite 330
Las Vegas, Nevada 89148
*Attorney for Defendant Spanish Trails
Master Association*

I. ARGUMENTS

The Association's countermotion for summary judgment demonstrates that the Association's foreclosure sale was done in compliance with the strict statutory requirements of NRS 116.31162-31168. Because the Association acted in a manner specifically authorized by Nevada law, it is entitled to judgment on the Bank's remaining tort-based claims. Importantly, the Bank does not oppose the Association on this central point. The Bank's failure to oppose the Association's countermotion in this regard is an admission of the countermotion's merit and this Court must grant the Association's countermotion pursuant to EDCR 2.20.

Additionally, even if the Bank's request to find the Association liable were in its original motion, the Bank's analysis mischaracterizes Nevada law and must be rejected. For these reasons, as more fully set forth below, the court should grant the Association's countermotion for summary judgment.

///

JA1251

1 **A. The Association's Undisputed Compliance with Nevada Law in Foreclosing on the**
2 **Property Demonstrates It is Entitled to Summary Judgment.**

3 In its counter-motion for summary judgment, the Association demonstrated through
4 admissible evidence its strict compliance with the statutory framework governing the foreclosure
5 process of an NRS Chapter 116 lien. *See* Association's Counter-motion for Summary Judgment
6 at 6-9. The Bank ignored this dispositive analysis in its opposition. The Bank's failure to
7 respond to or oppose the Association's arguments regarding compliance with NRS Chapter 116
8 as set forth in the Motion serves as an admission of merit and as a consent to the granting of the
9 counter-motion in this regard pursuant to EDCR 2.20(e). *See Walls v. Brewster*, 112 Nev. 175,
10 178, 912 P.2d 261, 263 (1996). The Association is entitled to summary judgment on the Bank's
11 claims for negligence, wrongful foreclosure, misrepresentation and unjust enrichment because
12 the Association cannot be liable to the Bank when it acted in strict accordance with Nevada law.

13 **B. The Bank's Request to Find the Association Liable Must be Rejected.**

14 The Bank does not argue for summary judgment on any of its remaining tort based claims
15 against the Association in its motion for summary judgment. However, in its reply in support of
16 its motion, the Bank argues that "[i]f the court concludes [the Bank's] tender, or the borrower's
17 payment were insufficient to preserve the priority of the deed of trust, the HOA's rejection
18 renders it liable to Thornburg for damages." *See* Bank's Reply at 11: 9-11. The Bank's
19 argument must be rejected for multiple reasons.

20 As an initial matter, the Bank cannot argue for the first time in its reply brief that the
21 Association should be found liable to the Bank. *See Phillips v. Mercer*, 94 Nev. 279, 283, 579
22 P.2d 174, 176 (1978) (holding that an issue raised for the first time in the reply brief need not be
23 considered.). Because the Bank did not ask the Court to find the Association liable for damages
24 in its motion, its request for damages in its reply brief must be rejected.

25 More importantly, even had the Bank properly moved the Court for damages in this case,
26 the Bank has completely failed to provide any legal analysis as to how or why the Association
27 should be liable to the Bank. The Bank simply concludes that the Association's rejection of an
28 alleged tender makes it liable to the Bank. *See* Bank's Reply at 11: 10-11. However, the Bank

1 fails to cite any binding or persuasive authority that would support the Bank's position.² The
2 fact remains that neither statute nor case law requires an HOA to accept a non-negotiable offer to
3 pay less than what is owed prior to a foreclosure sale. Without such a statute or case law, the
4 Association simply cannot be liable to the Bank for damages.

5 **C. The CC&Rs Do Not Show a Promissory Intent to Protect the Bank's Deed of Trust.**

6 The Bank also argues that the Association's CC&Rs are an enforceable promise which
7 was relied upon by the Bank in this case. *See* Bank's Reply in Support of Motion for Summary
8 Judgment at 8-10. While it is not clear from the Bank's reply brief, to the extent the Bank argues
9 that it is entitled to damages because of the alleged breach of promises in the CC&Rs, the
10 Association offers the following analysis which demonstrates that the Bank's arguments must be
11 rejected.

12 In *U.S. Bank, N.A. v. SFR Investments Pool 1, LLC*, 2018 WL 1448248 (Mar. 15, 2018),
13 the Court addressed issues with the Bank relying on CC&R provisions when asserting claims in
14 HOA foreclosure cases. There the Court found:

15 U.S. Bank also contends that the HOA's CC&Rs contain a
16 "restrictive covenant" wherein the HOA elected not to foreclose on
17 the superpriority component of its lien, thereby rendering U.S.
18 Bank's deed of trust unaffected by the foreclosure sale. In relevant
19 part, the restrictive covenant provides that "no...enforcement of
20 any provision of this Declaration shall defeat or render invalid the
21 rights of the beneficiary under any Recorded first deed of trust."
22 Assuming U.S. Bank's argument in this respect is not foreclosed
23 by this court's conclusion in *SFR Investments Pool 1, LLC v. U.S.
24 Bank, N.A.*, 130Nev. 742, 757, 334 P.3d 408, 419 (2014), that NRS
116.1104 prohibits an HOA from waiving its superpriority lien
right, we are not persuaded by U.S. Bank's proffered interpretation
of the restrictive covenant. That is, U.S. Bank's only "right[]" that
was arguably "defeat[ed] or render[ed] invalid" was its deed of
trust being extinguished by virtue of the foreclosure sale.
However, **it was NRS 116.3116(2) (2012) that authorized the
extinguishment of U.S. Bank's deed of trust, not the
enforcement of any provision in the CC&Rs.**

25 ² The Bank argues that the Nevada Supreme Court acknowledged that a lender may preserve its
26 interest by paying the superpriority portion of a lien prior to a sale. *See* Bank's Reply at 11: 3-4.
27 However, the Nevada Supreme Court's decision in *SFR*, where the Court was determining
28 competing quiet title claims is irrelevant to whether a Bank can assert damage claim against an
HOA for an alleged rejection of a super priority tender. Simply put, *SFR* does not stand for the
proposition that an HOA's rejection of a super priority tender makes the Association liable to a
holder of a first deed of trust.

1 *Id.* at 2. (Emphasis added).

2 As set forth above, the Bank cannot based its damages claims on allegations that the
3 Association breached “promises” made in CC&Rs because it is not the enforcement of the
4 CC&Rs that authorized the extinguishment of [the Bank’s] deed of trust, but the operation of
5 Nevada law, namely NRS 116.3116(2). Because the enforcement of the CC&Rs does not
6 extinguish the Bank’s interest, the Bank cannot be damaged by an alleged breach of the CC&Rs
7 and the Association’s Motion for summary judgment should be granted.

8 **D. The Bank’s Discovery Responses Demonstrate that the Bank did not Rely on Any**
9 **Provision of the CC&Rs.**

10 Even if the Bank could demonstrate that the Association’s CC&Rs demonstrated a
11 promise to protect the Bank’s deed, the Association is still entitled to summary judgment as the
12 evidence in this case demonstrates that the Bank never relied on the Association’s CC&Rs.

13 The Association served the Bank with written discovery on March 6, 2018. Interrogatory
14 No. 7 asked the Bank to “[i]dentify the individual and/or department within the Bank that read,
15 reviewed, confirmed, and/or evaluated the Association governing documents (as defined in NRS
16 116.049) before issuing the loan on the Property. If the Bank did not issue the original loan,
17 identify the individual and/or department within the Bank that read, reviewed, confirmed, and/or
18 evaluated the Association’s governing documents before the Bank obtained an interest in the
19 Property.”

20 On May 14, 2018 the Bank responded to the Association’s First Set of Interrogatories.
21 The Bank responded to Interrogatory No. 7 in the following manner:

22 Objection. This interrogatory seeks information that is not
23 calculated to lead to the production of admissible evidence in that
24 there is no nexus between the requested information and the claims
25 at issue in this litigation. This interrogatory also seeks information
26 contained in internal business records. Courts routinely hold that
27 internal corporate documents are confidential and therefore
28 protected. *See, e.g., Bank of New York v. Meridian Biao Bank*
Tanzania Ltd., 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting
cases); *see also America Standard Inc. v. Pfizer Inc.*, 828 F.2d 734,
737, 740-41 (Fed. Cir. 1987) (finding marketing materials and
pricing information confidential and proprietary); *Tonnemacher v.*
Sasak, 155 F.R.D. 193, 195 (D. Ariz. 1994) (finding internal
manuals highly confidential and proprietary); *Sullivan Marketing,*
Inc. v. Callassis Communications, Inc., No. 93 Civ. 6350, 1994

1 WL 177795, at *2 (S.D.N.Y. May 5, 1994) (citing *Reliance Ins.*
2 *Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y. 1977)). Subject
3 to the above objections, on June 12, 2006, Fidelity National Title
4 Insurance Company issued a policy withholding coverage for
5 losses arising from "any charges or assessments against said land
6 which shall become a lien if not paid as set forth in [the
7 CC&Rs]..., including any unpaid delinquent assessments." See
8 U.S. Bank's Responses to Spanish Trail Master Association's First
9 Set of Interrogatories, Exhibit A.

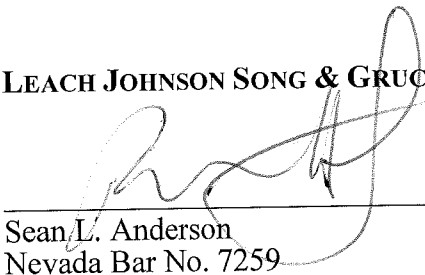
10 As set forth above, the Bank's arguments are belied by its own response when asked to
11 identify the person or department who reviewed the CC&Rs prior to lending in the HOA.
12 Because the Bank did not identify a person or department that reviewed the CC&Rs prior to
13 lending in the HOA, it has not demonstrated through evidence that it relied upon the CC&Rs.
14 Because there was no reliance, the Bank has not demonstrated that it is entitled to judgment on
15 any damage claim based on alleged violations of the Association's CC&Rs.

12 II. CONCLUSION

13 For the foregoing reasons, the Court should grant the Association's Motion for Summary
14 Judgment as to the Bank's claims for negligence, wrongful foreclosure, misrepresentation and
15 unjust enrichment.

16 Dated this 26th day of June, 2018.

17 LEACH JOHNSON SONG & GRUCHOW

18 
19 Sean L. Anderson
20 Nevada Bar No. 7259
21 Ryan D. Hastings
22 Nevada Bar No. 12394
23 8945 W. Russell Road, Suite 330
24 Las Vegas, Nevada 89148
25 Attorneys for Counter-Defendant Spanish Trail
26 Master Association
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the undersigned, an employee of LEACH JOHNSON SONG & GRUCHOW, hereby certifies that on this 26th day of June, 2018, service of the foregoing, *Counter-Defendant Spanish Trail Master Association's Reply in Support of Its Counter-motion For Summary Judgment*, was made on all parties via the Court's CM/ECF System, as follows:

Koch & Scow LLC		
	Contact	Email
	David R. Koch	dkoch@kochscow.com
	Staff	aeshenbaugh@kochscow.com
	Steven B. Scow	sscow@kochscow.com
Law Offices of Michael F. Bohn, Esq.		
	Contact	Email
	Eserve Contact	office@bohnlawfirm.com
	Michael F Bohn Esq	mbohn@bohnlawfirm.com
Olympia Law PC		
	Contact	Email
	Bryan Naddafi, Esq.	bryan@olympialawpc.com
Williams & Associates		
	Contact	Email
	Donald H. Williams, Esq.	dwilliams@dhwlawlv.com
	Robin Gullo	rgullo@dhwlawlv.com
Wright, Finlay & Zak, LLP		
	Contact	Email
	Faith Harris	fharris@wrightlegal.net
	Sarah Greenberg Davis	sgreenberg@wrightlegal.net

/s/ Gina M. LaCascia

An Employee of LEACH JOHNSON
SONG & GRUCHOW

Exhibit A

Exhibit A

Exhibit A

AKERMAN LLP

1635 Village Center Circle, Suite 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 -- FAX: (702) 380-8572

RSPN

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

THERA A. COOPER, ESQ.

Nevada Bar No. 13468

AKERMAN LLP

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: melanie.morgan@akerman.com

Email: thera.cooper@akerman.com

*Attorneys for defendant, counterclaimant, and
counter-defendant Thornburg Mortgage Securities
Trust 2007-3*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3, *et al.*,

Defendants.

Case No.: A-14-710161-C

Division: XXVI

**THORNBURG MORTGAGE
SECURITIES TRUST 2007-3'S
RESPONSE TO SPANISH TRAIL
MASTER ASSOCIATION'S FIRST
INTERROGATORIES**

And All Related Actions.

Thornburg Mortgage Securities Trust 2007-3 (**Thornburg**) responds to Spanish Trail Master Association's (the **HOA**) first set of interrogatories as follows:

GENERAL OBJECTIONS

1. Thornburg's responses are made to the best of Thornburg's present knowledge, information and belief. These responses are at all times subject to such additional or different information, knowledge or facts which discovery or further information may disclose. Thornburg reserves the right to supplement these responses in accordance with NEV. R. CIV. P. 26(e).

45125966;1

1 2. Thornburg reserves the right to make any use of, or to introduce at any hearing or
2 trial, documents or other information responsive to these interrogatories but discovered by
3 Thornburg subsequent to the date of these responses.

4 3. Thornburg objects to the interrogatories to the extent they request information
5 protected by the attorney-client privilege, the work product doctrine, or any other applicable
6 privilege against disclosure.

7 4. Thornburg objects to the interrogatories to the extent they request information not
8 currently in Thornburg's possession, custody or control.

9 5. In addition to these general objections, Thornburg may set forth other and further
10 objections in its specific responses. Thornburg does not limit or restrict these general objections by
11 its specific objections.

12 6. Thornburg incorporates all of the foregoing general objections into each response to
13 the HOA's interrogatories below.

14 **RESPONSES TO FIRST SET OF INTERROGATORIES**

15 **INTERROGATORY NO. 1:**

16 Please identify every assignment and/or transfer under the Deed of Trust for the Property
17 from the date of the original loan to the specific date that the Bank claims to have acquired an
18 interest in the Deed of Trust.

19 **RESPONSE:** Objection. This interrogatory calls for information equally available to the HOA by
20 reference to the recorded document or documents produced in this litigation. Subject to the above
21 objection, on June 9, 2010, a corporate assignment of deed of trust was recorded against the property
22 assigning the beneficial interest in the deed of trust to Thornburg.

23 **INTERROGATORY NO. 2:**

24 Please identify the amount the Bank paid for the assignment or transfer of the Deed of
25 Trust.

26 **RESPONSE:** Objection. This interrogatory seeks information that is not calculated to lead to the
27 production of admissible evidence in that there is no nexus between the requested information and the
28 claims at issue in this litigation. This interrogatory also seeks information contained in internal

business records. Courts routinely hold that internal corporate documents are confidential and therefore protected. *See, e.g., Bank of New York v. Meridian Biao Bank Tanzania Ltd.*, 171 F.R.D. 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also America Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing materials and pricing information confidential and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D. 193, 195 (D. Ariz. 1994) (finding internal manuals highly confidential and proprietary); *Sullivan Marketing, Inc. v. Callassis Communications, Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at *2 (S.D.N.Y. May 5, 1994) (citing *Reliance Ins. Co. v. Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y. 1977)).

INTERROGATORY NO. 3:

Please state whether the Bank assigned or transferred the Deed of Trust to any entity or agency.

RESPONSE: Thornburg is the record beneficiary of the deed of trust.

INTERROGATORY NO. 4:

If the Bank's response to Interrogatory No. 3 was in the affirmative, please explain the Bank's present interest in the Property, if any.

RESPONSE: N/A.

INTERROGATORY NO. 5:

Explain the process, policies, and procedures the Bank employed in issuing the loan on the Property. If the Bank did not issue the original loan, explain the process, policies and procedures by which the Bank obtained its interest in the Property. In answering this Interrogatory, state with specificity:

1. The specific process, policy, and/or procedure
2. The specific individual or department who conducted the evaluation; and
3. The date or dates on which this evaluation took place.

RESPONSE: Objection. This interrogatory seeks information that is not calculated to lead to the production of admissible evidence in that there is no nexus between the requested information and the claims at issue in this litigation. This interrogatory also seeks information contained in internal business records. Courts routinely hold that internal corporate documents are confidential and

1 therefore protected. *See, e.g., Bank of New York v. Meridian Biao Bank Tanzania Ltd.*, 171 F.R.D.
2 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also America Standard Inc. v. Pfizer Inc.*, 828 F.2d
3 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing materials and pricing information confidential
4 and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D. 193, 195 (D. Ariz. 1994) (finding internal
5 manuals highly confidential and proprietary); *Sullivan Marketing, Inc. v. Callassis Communications,*
6 *Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at *2 (S.D.N.Y. May 5, 1994) (citing *Reliance Ins. Co. v.*
7 *Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y. 1977)). Subject to the above objection, on June 9, 2010, a
8 corporate assignment of deed of trust was recorded against the property assigning the beneficial
9 interest in the deed of trust to Thornburg.

10 **INTERROGATORY NO. 6:**

11 If the Bank contends the Association wrongfully foreclosed on the Property, please state each
12 and every fact that supports this contention.

13 **RESPONSE:** Objection. This interrogatory se calls for a legal conclusion. It also calls for
14 information protected by attorney client privilege and/or attorney work product. Subject to the above
15 objections, to the extent the HOA purported to foreclose on the superpriority portion of the lien, after
16 Thornburg's tender and despite applying the homeowner's payments to that portion of the lien, the
17 HOA's foreclosure was wrongful.

18 **INTERROGATORY NO. 7:**

19 Identify the individual and/or department within the Bank that read, reviewed, confirmed,
20 and/or evaluated the Association governing documents (as defined in NRS 116.049) before issuing
21 the loan on the Property. If the Bank did not issue the original loan, identify the individual and/or
22 department within the Bank that read, reviewed, confirmed, and/or evaluated the Association's
23 governing documents before the Bank obtained an interest in the Property.

24 **RESPONSE:** Objection. This interrogatory seeks information that is not calculated to lead to the
25 production of admissible evidence in that there is no nexus between the requested information and the
26 claims at issue in this litigation. This interrogatory also seeks information contained in internal
27 business records. Courts routinely hold that internal corporate documents are confidential and
28 therefore protected. *See, e.g., Bank of New York v. Meridian Biao Bank Tanzania Ltd.*, 171 F.R.D.

1 135, 144 (S.D.N.Y. 1997) (collecting cases); *see also America Standard Inc. v. Pfizer Inc.*, 828 F.2d
2 734, 737, 740-41 (Fed. Cir. 1987) (finding marketing materials and pricing information confidential
3 and proprietary); *Tonnemacher v. Sasak*, 155 F.R.D. 193, 195 (D. Ariz. 1994) (finding internal
4 manuals highly confidential and proprietary); *Sullivan Marketing, Inc. v. Callassis Communications,*
5 *Inc.*, No. 93 Civ. 6350, 1994 WL 177795, at *2 (S.D.N.Y. May 5, 1994) (citing *Reliance Ins. Co. v.*
6 *Barrons*, 428 F. Supp. 200, 203 (S.D.N.Y. 1977)). Subject to the above objections, on June 12, 2006,
7 Fidelity National Title Insurance Company issued a policy withholding coverage for losses arising
8 from "any charges or assessments against said land which shall become a lien if not paid as set forth
9 in [the CC&Rs]..., including any unpaid delinquent assessments."

10 **INTERROGATORY NO. 8:**

11 State and describe the reason(s) the Bank did not attend the Foreclosure Sale.

12 **RESPONSE:** Objection. This interrogatory calls for a legal conclusion. It also calls for information
13 protected by attorney client privilege and/or attorney work product. This interrogatory seeks to
14 impose duties on Thornburg in excess of those imposed by the applicable statutes or case law.
15 Subject to the above objection, on February 10, 2012, Miles Bauer, on behalf of Thornburg's
16 servicer, sent correspondence to Red Rock enclosing a \$2,025 check. Red Rock received the check
17 on February 10, 2012. Red Rock rejected the payment without explanation. On February 12, 2012,
18 after rejecting the payment Red Rock sent correspondence to Thornburg asserting the HOA's lien
19 was junior to the deed of trust.

20 **INTERROGATORY NO. 9:**

21 State and describe the reason(s) why the Bank did not pay the amount set forth in the notices
22 related to the Foreclosure Sale.

23 **RESPONSE:** Objection. This interrogatory seeks to impose duties on Thornburg in excess of those
24 imposed by the applicable statutes or case law. The obligation to pay delinquent assessments
25 remained the borrowers. It also calls for information protected by attorney client privilege and/or
26 attorney work product doctrine. Subject to the above objections, on December 23, 2011, BANA sent
27 correspondence to Red Rock seeking to determine the superpriority amount and offered to "pay that
28 sum upon adequate proof." Red Rock received the letter on December 27, 2011. On January 26,

2012, Red Rock responded with a ledger indicating the total amount due was \$9,255.44. On February 10, 2012, Miles Bauer, sent correspondence to Red Rock enclosing a \$2,025 check. Red Rock received the check on February 10, 2012. Red Rock rejected the payment without explanation. On February 12, 2012, after rejecting BANA's payment Red Rock sent correspondence to Thornburg asserting the HOA's lien was junior to the deed of trust.

INTERROGATORY NO. 10:

State and describe the reason(s) why the Bank did not pay the amount set forth in the notice of lien, recorded as Instrument No. 201108040002324, related to the Foreclosure Sale.

RESPONSE: Objection. This interrogatory seeks to impose duties on Thornburg in excess of those imposed by the applicable statutes or case law. The obligation to pay delinquent assessments remained the borrowers. It also calls for information protected by attorney client privilege and/or attorney work product. Subject to the above objections, on December 23, 2011 BANA, through its counsel Miles Bauer sent correspondence to Red Rock seeking to determine the superpriority amount and offered to "pay that sum upon adequate proof." Red Rock received the letter on December 27, 2011. On January 26, 2012, Red Rock responded with a ledger indicating the total amount due was \$9,255.44. On February 10, 2012, Miles Bauer, sent correspondence to Red Rock enclosing a \$2,025 check. Red Rock received the check on February 10, 2012. Red Rock rejected the payment without explanation. On February 12, 2012, after rejecting BANA's payment Red Rock sent correspondence to Thornburg asserting the HOA's lien was junior to the deed of trust.

INTERROGATORY NO. 11:

State and describe the reason(s) why the Bank did not pay the amount set forth in the notice of default, recorded as Instrument No. 201112060001106, related to the Foreclosure Sale.

RESPONSE: Objection. This interrogatory seeks to impose duties on Thornburg in excess of those imposed by the applicable statutes or case law. The obligation to pay delinquent assessments remained the borrowers. It also calls for information protected by attorney client privilege and/or attorney work product doctrine. Subject to the above objections, on December 23, 2011 BANA, through its counsel Miles Bauer sent correspondence to Red Rock seeking to determine the superpriority amount and offered to "pay that sum upon adequate proof." Red Rock received the

1 letter on December 27, 2011. On January 26, 2012, Red Rock responded with a ledger indicating
2 the total amount due was \$9,255.44. On February 10, 2012, Miles Bauer, sent correspondence to
3 Red Rock enclosing a \$2,025 check. Red Rock received the check on February 10, 2012. Red Rock
4 rejected the payment without explanation. On February 12, 2012, after rejecting BANA's payment
5 Red Rock sent correspondence to Thornburg asserting the HOA's lien was junior to the deed of trust.

6 **INTERROGATORY NO. 12:**

7 State and describe the reason(s) why the Bank did not pay the amount set forth in the notice
8 of sale, recorded as Instrument No. 201409150001527, related to the Foreclosure Sale.

9 **RESPONSE:** Objection. This interrogatory seeks to impose duties on Thornburg in excess of those
10 imposed by the applicable statutes or case law. The obligation to pay delinquent assessments
11 remained the borrowers. It also calls for information protected by attorney client privilege and/or
12 attorney work product. Subject to the above objections, on December 23, 2011 BANA, through its
13 counsel Miles Bauer, sent correspondence to Red Rock seeking to determine the superpriority
14 amount and offered to "pay that sum upon adequate proof." Red Rock received the letter on
15 December 27, 2011. On January 26, 2012, Red Rock responded with a ledger indicating the total
16 amount due was \$9,255.44. On February 10, 2012, Miles Bauer sent correspondence to Red Rock
17 enclosing a \$2,025 check. Red Rock received the check on February 10, 2012. Red Rock rejected the
18 payment without explanation. Then on February 12, 2012, after rejecting BANA's payment Red
19 Rock sent correspondence to Thornburg asserting the HOA's lien was junior to the deed of trust.

20 **INTERROGATORY NO. 13:**

21 State and describe the reason(s) why the Bank did not use the legal remedies available to it to
22 prevent the Property from being sold at the Foreclosure Sale.

23 **RESPONSE:** Objection. This interrogatory seeks to impose duties on Thornburg in excess of those
24 imposed by the applicable statutes or case law. The obligation to pay delinquent assessments
25 remained the borrowers. It also calls for information protected by attorney client privilege and/or
26 attorney work product. doctrine Subject to the above objections, on December 23, 2011 BANA,
27 through its counsel Miles Bauer, sent correspondence to Red Rock seeking to determine the
28 superpriority amount and offered to "pay that sum upon adequate proof." Red Rock received the

1 letter on December 27, 2011. On January 26, 2012, Red Rock responded with a ledger indicating
2 the total amount due was \$9,255.44. On February 10, 2012, Miles Bauer sent correspondence to
3 Red Rock enclosing a \$2,025 check. Red Rock received the check on February 10, 2012. Red Rock
4 rejected the payment without explanation. On February 12, 2012, after rejecting BANA's payment
5 Red Rock sent correspondence to Thornburg asserting the HOA's lien was junior to the deed of trust.

6 **INTERROGATORY NO. 14:**

7 State and describe the reason(s) why the Bank did not seek a temporary restraining order and
8 preliminary injunction against the Association to prevent the Property from being sold at the
9 Foreclosure Sale.

10 **RESPONSE:** Objection. This interrogatory seeks to impose duties on Thornburg in excess of those
11 imposed by the applicable statutes or case law. The obligation to pay delinquent assessments
12 remained the borrowers. It also calls for information protected by attorney client privilege and/or
13 attorney work product doctrine. Subject to the above objections, on December 23, 2011 BANA, ,
14 through its counsel Miles Bauer, sent correspondence to Red Rock seeking to determine the
15 superpriority amount and offered to "pay that sum upon adequate proof." Red Rock received the
16 letter on December 27, 2011. On January 26, 2012, Red Rock responded with a ledger indicating
17 the total amount due was \$9,255.44. On February 10, 2012, Miles Bauer sent correspondence to
18 Red Rock enclosing a \$2,025 check. Red Rock received the check on February 10, 2012. Red Rock
19 rejected the payment without explanation. On February 12, 2012, after rejecting BANA's payment
20 Red Rock sent correspondence to Thornburg asserting the HOA's lien was junior to the deed of trust.

21 **INTERROGATORY NO. 15:**

22 If the Bank contends that the Association breached duties owed to the Bank in conducting the
23 Foreclosure Sale, identify and describe with particularity each and every act or omission on which
24 you base that contention and the specific provision in NRS Chapter 116 in which that duty is located.

25 **RESPONSE:** Objection. This interrogatory seeks to impose duties on Thornburg in excess of those
26 imposed by the applicable statutes or case law. The obligation to pay delinquent assessments
27 remained the borrowers. It also calls for information protected by attorney client privilege and/or
28 attorney work product. Subject to the above objections, Thornburg asserts on December 23, 2011

1 BANA, then the loan servicer, through its counsel Miles Bauer sent correspondence to Red Rock
2 seeking to determine the superpriority amount and offered to "pay that sum upon adequate proof."
3 Red Rock received the letter on December 27, 2011. On January 26, 2012, Red Rock responded
4 with a ledger indicating the total amount due was \$9,255.44. On February 10, 2012, Miles Bauer
5 sent correspondence to Red Rock enclosing a \$2,025 check. Red Rock received the check on
6 February 10, 2012. Red Rock rejected the payment without explanation. On February 12, 2012, after
7 rejecting BANA's payment Red Rock sent correspondence to Thornburg asserting the HOA's lien
8 was junior to the deed of trust.

9 **INTERROGATORY NO. 16:**

10 State and describe the reason(s) why the Bank has not foreclosed on the Property.

11 **RESPONSE:** Objection. This interrogatory seeks to impose duties on Thornburg in excess of those
12 imposed by the applicable statutes or case law. This interrogatory is not calculated to lead to the
13 discovery of admissible evidence in that there is no nexus between the interrogatory and the claims
14 at issue in the litigation. This interrogatory calls for information protected by attorney client
15 privilege and/or attorney work product doctrine. Thornburg objects to this Interrogatory because it
16 seeks personal and confidential information for a borrower. Thornburg is prohibited from disclosing
17 this type of information without a court order or the borrower's consent. *See, e.g.*, 15 U.S.C. § 6801;
18 16 C.F.R. § 313.3(n)(1).

19 **INTERROGATORY NO. 17:**

20 Please describe with particularity any and all actions taken by the Bank against Frank Timpa
21 under its promissory note related to the Property. In answering this Interrogatory, state with
22 specificity:

- 23 1. The date of the action(s);
- 24 2. The substance and general description of the action(s); and
- 25 3. The names and contact information for the individuals that would have knowledge
26 concerning such action(s).

27 **RESPONSE:** Objection. This interrogatory seeks to impose duties on Thornburg in excess of those
28 imposed by the applicable statutes or case law. This interrogatory is not calculated to lead to the

1 discovery of admissible evidence in that there is no nexus between the interrogatory and the claims
2 at issue in the litigation. This interrogatory calls for information protected by attorney client
3 privilege and/or attorney work product doctrine. Thornburg objects to this interrogatory because it
4 seeks personal and confidential information for a borrower. Thornburg is prohibited from disclosing
5 this type of information without a court order or the borrower's consent. *See, e.g.*, 15 U.S.C. § 6801;
6 16 C.F.R. § 313.3(n)(1).

7 **INTERROGATORY NO. 18:**

8 If the Bank contends that the Foreclosure Sale was not done in accordance with the Nevada
9 statutes, identify and describe with particularity each and every act or omission on which you base
10 that contention.

11 **RESPONSE:** Objection. This response calls for a legal conclusion. It also calls for information
12 protected by attorney client privilege and/or attorney work product doctrine. Subject to the above
13 objections, to the extent the HOA purported to foreclose on the superpriority portion of the lien, after
14 Thornburg's tender and despite applying the homeowner's payments to that portion of the lien, the
15 HOA's foreclosure was wrongful.

16 **INTERROGATORY NO. 19:**

17 For each response to the Association First Set of Requests for Admissions, propounded
18 concurrently with these Interrogatories, that in not an unqualified admission, state all facts upon
19 which you based your response.

20 **RESPONSE:** Where appropriate Thornburg provided the basis for its responses.

21 **INTERROGATORY NO. 20:**

22 If the Bank contends the Association engaged in conduct which was designed to disrupt the
23 contractual relationship between the Bank and Frank Timpa, please identify and describe with
24 specificity:

- 25 1. Each and every act or omission on which you base that contention;
- 26 2. The contract giving rise to this contention;
- 27 3. Any and all facts evidencing that the Association was aware of a contractual
- 28 relationship between the Bank and Frank Timpa;

- 1 4. Whether the contract between the Bank and Frank Timpa remains in full force and
2 effect;
3 5. Any and all actions taken by the Bank against Frank Timpa under its contract; and
4 6. The precise manner by which the Association allegedly caused Frank Timpa to
5 breach her contract with the Bank.

6 **RESPONSE:** Objection. This interrogatory calls for a legal conclusion. It also calls for information
7 protected by attorney client privilege and/or attorney work product doctrine. Subject to the above
8 objections, to the extent the HOA purported to foreclose on the superpriority portion of the lien, after
9 Thornburg's tender and despite applying the homeowner's payments to that portion of the lien, the
10 HOA's foreclosure was wrongful.

11 DATED this 11th day of May 2018.

12 **AKERMAN LLP**

13 /s/ Thera A. Cooper

14 MELANIE D. MORGAN, ESQ.

15 Nevada Bar No. 8215

16 THERA A. COOPER, ESQ.

17 Nevada Bar No. 13468

18 1635 Village Center Circle, Suite 200

19 Las Vegas, Nevada 89134

20 Attorneys Thornburg Mortgage
21 Securities Trust 2007-3
22
23
24
25
26
27
28

VERIFICATION

STATE of Texas :
COUNTY of Dallas :

CRYSTAL CLOPTON, being first duly sworn upon oath, deposes and says:

I have read the foregoing **THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S RESPONSE TO SPANISH TRAIL MASTER ASSOCIATION'S FIRST INTERROGATORIES** and know the contents thereof; that the same is true of my own knowledge except for those matters therein stated on information and belief, and as for those matters I believe it to be true.

Nationstar Mortgage LLC dba Mr. Cooper as attorney in fact for Thornburg Mortgage Securities Trust 2007-3

BY 

ACKNOWLEDGMENT

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

State of Texas

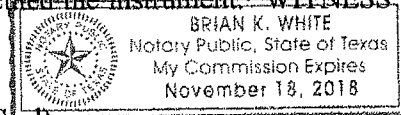
County of Dallas

On May 10, 2018, before me, Brian White, personally appeared Crystal Clopton, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. ~~WITNESS~~ my hand and official seal.

Signature



(Seal)



Brian K. White
#12845019-3
Exp. 11-18-18

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 11th day of May, 2018, I caused to be served a true and correct copy of the foregoing **THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S RESPONSE TO SPANISH TRAIL MASTER ASSOCIATION'S FIRST INTERROGATORIES**, in the following manner:

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

LEACH JOHNSON SONG & GRUCHOW

Robin Callaway	rcallaway@leachjohnson.com
Patty Gutierrez	pgutierrez@leachjohnson.com
Ryan Hastings	rhastings@leachjohnson.com
Gina LaCascia	glacascia@leachjohnson.com
Sean Anderson	sanderson@leachjohnson.com

OLYMPIA LAW, P.C.

Bryan Naddafi, Esq.	bryan@olympialawpc.com
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LAW OFFICES OF DONALD WILLIAMS

Donald H. Williams, Esq.	dwilliams@dhwlawlv.com
Robin Gullo	rgullo@dhwlawlv.com

KOCH & SCOW LLC

David R. Koch	dkoch@kochscow.com
Staff	aeshenbaugh@kochscow.com
Steven B. Scow	sscow@kochscow.com

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

Eserve Contact	office@bohnlawfirm.com
Michael F Bohn Esq	mbohn@bohnlawfirm.com

LEGAL AID CENTER OF SOUTHERN NEVADA

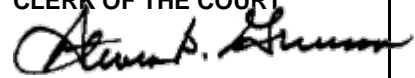
Venicia Considine	vconsidine@lacsns.org
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LAW OFFICES OF GREGORY J. WALCH

Gregory Walch	greg.walch@lvvwd.com
---------------	----------------------

/s/ Erin Surguy

An Employee of Akerman LLP



1 **OPPS**
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 2260 Corporate Circle, Ste. 480
8 Henderson, Nevada 89074
9 (702) 642-3113/ (702) 642-9766 FAX
10 Attorney for plaintiff/counterdefendant
11 Saticoy Bay LLC Series 34 Innisbrook
12

13 DISTRICT COURT
14 CLARK COUNTY, NEVADA
15

16 SATICOY BAY LLC SERIES 34
17 INNISBROOK,

18 Plaintiff,

19 vs.

20 THORNBURG MORTGAGE SECURITIES
21 TRUST 2007-3; FRANK TIMPA and
22 MADELAINE TIMPA, individually and as
23 trustees of the TIMPA TRUST,
24

25 Defendants.
26

27 THORNBURG MORTGAGE SECURITIES
28 TRUST 2007-3,

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 34 INNISBROOK,
a Nevada Limited-liability company; SPANISH
TRAIL MASTER ASSOCIATION, a Nevada
Non-Profit Corporation; RED ROCK
FINANCIAL SERVICES, LLC, an unknown
entity; FRANK TIMPA, an individual; DOES I
through X; and ROE CORPORATIONS I through
X, inclusive,

Counter-defendants.
And All related claims

CASE NO.: A-14-710161-C
DEPT NO.: XXVI

SUPPLEMENT TO PLAINTIFF'S
OPPOSITION TO DEFENDANT
THORNBURG MORTGAGE SECURITIES
TRUST 2007-3'S MOTION FOR
SUMMARY JUDGMENT

1 Plaintiff/Counterdefendant Saticoy Bay LLC Series 34 Innisbrook (hereinafter “plaintiff”), by and
2 through its attorneys, the Law Offices of Michael F. Bohn, Esq. , Ltd., submits the following
3 supplemental points and authorities in opposition to the motion for summary judgment, filed on May 4,
4 2018, by Thornburg Mortgage Securities Trust 2007-1 (hereinafter “defendant”).

5 **POINTS AND AUTHORITIES**

6 **FACTS**

7 The foreclosure deed recorded on November 10, 2014 (Exhibit 1 to plaintiff’s opposition to
8 defendant’s motion for summary judgment, filed on May 22, 2018) states that the lien for delinquent
9 assessments by Spanish Trail Master Association was recorded on August 4, 2011. A copy of the lien
10 is Exhibit 5 to plaintiff’s opposition to defendant’s motion for summary judgment, filed on May 22, 2018.

11 The notice of default for \$8,312.52 recorded on December 6, 2011 also refers to the lien for
12 delinquent assessments recorded on August 4, 2011 and identifies Spanish Trail Master Association as
13 the claimant. A copy of the notice of default is Exhibit 6 to plaintiff’s opposition to defendant’s motion
14 for summary judgment, filed on May 22, 2018.

15 The notice of foreclosure sale for \$20,309.95 recorded on September 15, 2014 also refers to the
16 lien for delinquent assessments recorded on August 4, 2011 and identifies Spanish Trail Master
17 Association as the claimant. A copy of the notice of foreclosure sale is Exhibit 7 to plaintiff’s opposition
18 to defendant’s motion for summary judgment, filed on May 22, 2018.

19 The pages marked as RRFS000196 to RRFS000198 in Exhibit 8 to plaintiff’s opposition to
20 defendant’s motion for summary judgment, filed on May 22, 2018, prove that a copy of the notice of
21 foreclosure sale was mailed to defendant, c/o BAC Home Loans Servicing, LP, on September 15, 2014.
22 Both the cover letter and the recorded notice referred to “File Number: R74507.”

23 **LEGAL ARGUMENT**

24 **The conditional tender of \$2,025.00 made by Miles Bauer on February 9, 2012**
25 **did not relate to the assessment lien that was foreclosed on November 7, 2014.**

26 At page 8 of its motion for summary judgment, filed on May 4, 2018, defendant stated that
27 “BANA’s check for the superpriority amount constituted valid tender and extinguished the superpriority
28

1 amount of the lien.”

2 At lines 18 and 19 at page 8 of its motion, defendant stated: “Prior to the sale, BANA sent a check
3 to Red Rock for the superpriority amount. **Ex. H-4 & 5.**”

4 Upon closer review, the payment tendered by Miles Bauer on February 9, 2012 does not relate to
5 the lien for delinquent assessments recorded by Red Rock Financial Services on August 4, 2011 on behalf
6 of Spanish Trail Master Association.

7 Exhibit H-1 to defendant’s motion is a letter by Miles Bauer, dated December 23, 2011, addressed
8 to “Estates West at Spanish Trail Association/Red Rock Financial Services” and not to the Spanish Trail
9 Master Association. The second full paragraph at page 2 of this letter refers to “your notice of delinquent
10 assessment dated November 21, 2011” and not to the separate assessment lien recorded by Spanish Trail
11 Master Association on August 4, 2011.

12 Exhibit H-2 to defendant’s motion is a letter by Red Rock Financial Services to Miles, Bauer
13 regarding “34 Innisbrook Ave, Las Vegas, NV 89113, **Estates West at Spanish Trail**
14 **Association/R74509.**” (Emphasis added) The second paragraph of this letter states that “[t]he current
15 balance is \$15,021.48” and refers to “Estates West at Spanish Trail.”

16 Exhibit H-2 also includes an account detail for “Estates West at Spanish Trail Association”
17 showing a balance due of \$15,021.48 as of February 1, 2012. The header on each page of the account
18 detail refers to “Red Rock Financial Services Account Number: R75409.”

19 Exhibit H-3 to defendant’s motion is a letter by Miles Bauer, dated February 9, 2012, that refers
20 to “ACCT NO.: R74509” and the statement of account for \$15,021.48. The account information attached
21 to Miles Bauer’s Check # 13325 for \$2,025.00 also includes “Reference # R74509.”

22 The notice of foreclosure sale attached as Exhibit I to defendant’s motion refers to “File Number:
23 R74507,” and the notice specifically refers to “Spanish Trail Master Association” and the “LIEN FOR
24 DELINQUENT ASSESSMENTS, recorded on 08/04/2011 in Book Number 2011110804 as Instrument
25 Number 0002324.”

26 Because defendant has not proved that Miles Bauer, or any other person, tendered any amount
27 to Red Rock Financial Services to pay any portion of the separate lien recorded by Spanish Trail Master
28

1 Association on August 4, 2011, tender is not an issue in the present case.

2 **CONCLUSION**

3 Accordingly, plaintiff respectfully requests that this Court enter an order denying defendant's
4 motion for summary judgment.

5 DATED this 27th day of June, 2018

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

8
9 By: / s / Michael F. Bohn, Esq. /
10 Michael F. Bohn, Esq.
11 2260 Corporate Circle, Ste. 480
12 Henderson, Nevada 89074
13 Attorney for Plaintiff
14 Saticoy Bay LLC Series 34 Innisbrook
15
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law Offices of Michael F. Bohn., Esq., and on the 27th day of June, 2018, an electronic copy of the SUPPLEMENT TO PLAINTIFF'S OPPOSITION TO DEFENDANT THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S MOTION FOR SUMMARY JUDGMENT was served on opposing counsel via the Court's electronic service system to the following counsel of record:

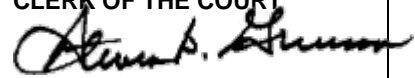
Melanie D. Morgan, Esq.
Thera A. Cooper, Esq.
AKERMAN LLP
1635 Village Center Circle Suite 200
Las Vegas, Nevada 89134
Attorneys for Thornburg Mortgage Securities
Trust 2007-3

David R. Koch, Esq.
Steven B. Scow, Esq.
Daniel H. Stewart, Esq.
KOCH & SCOW LLC
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
Attorneys for counterdefendant/counterclaimant
Red Rock Financial Services

Donald H. Williams, Esq.
Drew Starbuck, Esq.
WILLIAMS & ASSOCIATES
612 South Tenth Street
Las Vegas, NV 89101
Attorney for counterdefendant,
Republic Services, Inc.

Bryan Naddafi, Esq.
OLYMPIC LAW P.C.
292 Francisco St.
Henderson, NV 89014
Attorney for defendants,
Frank and Madeline Timpa

/s/ Marc Sameroff /
An employee of the LAW OFFICES
OF MICHAEL F. BOHN, ESQ., LTD.



ERR

MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215

THERA A. COOPER, ESQ.
Nevada Bar No. 13468

AKERMAN LLP

1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: melanie.morgan@akerman.com

Email: theracooper@akerman.com

*Attorneys for defendant, counterclaimant, and counter-
defendant Thornburg Mortgage Securities Trust 2007-3*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3, *et al.*,

Defendants.

Case No.: A-14-710161-C

Division: XXVI

**ERRATA TO THORNBURG
MORTGAGE SECURITIES TRUST
2007-3'S MOTION FOR SUMMARY
JUDGMENT**

Date of hearing: July 3, 2018

Time of hearing: 9:30 a.m.

AND ALL RELATED ACTIONS.

Thornburg files this errata to its motion for summary judgment filed May 4,
2018.

...

...

...

...

...

...

The motion was erroneously filed with an incorrect copy of the Miles Bauer Affidavit as Exhibit H. A correct copy of Exhibit H is attached.

Dated this 28th day of June, 2018. **AKERMAN LLP**

/s/ Thera Cooper

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

THERA A. COOPER, ESQ.

Nevada Bar No. 13468

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

*Attorneys for Thornburg Mortgage Securities Trust
2007-3*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 28th day of June, 2018, I caused to be served a true and correct copy of the foregoing **ERRATA TO THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S MOTION FOR SUMMARY JUDGMENT**, in the following manner:

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

LEACH JOHNSON SONG & GRUCHOW

Robin Callaway	rcallaway@leachjohnson.com
Patty Gutierrez	pgutierrez@leachjohnson.com
Ryan Hastings	rhastings@leachjohnson.com
Gina LaCascia	glacascia@leachjohnson.com
Sean Anderson	sanderson@leachjohnson.com

OLYMPIA LAW, P.C.

Bryan Naddafi, Esq.	bryan@olympialawpc.com
---------------------	------------------------

LAW OFFICES OF DONALD WILLIAMS

Donald H. Williams, Esq.	dwilliams@dhwlawlv.com
Robin Gullo	rgullo@dhwlawlv.com

KOCH & SCOW LLC

David R. Koch	dkoch@kochscow.com
Staff	aeshenbaugh@kochscow.com
Steven B. Scow	sscow@kochscow.com

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

Eserve Contact	office@bohnlawfirm.com
Michael F. Bohn Esq	mbohn@bohnlawfirm.com

LEGAL AID CENTER OF SOUTHERN NEVADA

Venicia Considine	vconsidine@lacsnsn.org
-------------------	------------------------

LAW OFFICES OF GREGORY J. WALCH

Gregory Walch	greg.walch@lvvwd.com
---------------	----------------------

/s/ Erin Surguy

An Employee of Akerman LLP

EXHIBIT H

MILES, BERGSTROM & WINTERS, LLP AFFIDAVIT

State of California }
 } ss.
Orange County }

Affiant, Doug Miles, being first duly sworn, deposes and says:

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

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

3. Miles Bauer uses ProLaw software to record and track all documents prepared and correspondence sent in connection to a particular file. ProLaw is recognized in the legal industry as a standard software platform for electronic document management and retention. Miles Bauer creates a separate electronic folder on ProLaw for each of its files. Within the folder, Miles Bauer maintains record of communications with its clients and third parties, including, but not limited to, borrowers and homeowners' associations. Miles Bauer also creates and records notes in its ProLaw folders, documenting the status and progress of the related files.

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

the affidavit and attachments, and checking that the information in this affidavit matches Miles Bauer's records available to me.

5. Bank of America, N.A. (BANA) retained Miles Bauer to tender payments to foreclosing homeowners associations (HOA) to satisfy super-priority liens. Spanish Trail Master Association was the foreclosing HOA associated with the following loan:

Loan Number: [REDACTED]

Borrower(s): Frank A. Timpa

Property Address: 34 Innisbrook Avenue, Las Vegas, NV

6. Attached hereto as **Exhibit 1** is a true and correct copy of the ProLaw screenshot of the folder created for this particular loan and borrower. This screenshot is taken directly from ProLaw and reflects Miles Bauer's activity for this particular loan and borrower. I have personal knowledge of Miles Bauer's procedures for creating ProLaw folders. They are: (a) made before or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information stored therein, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer to make such ProLaw folders to store and organize all Miles Bauer records for individual files. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed the information in the ProLaw screenshot is an accurate representation of Miles Bauer's activity by reading the screenshot, and checking that the screenshot information matches Miles Bauer's records available to me.

7. Based on Miles Bauer's business records, attached as **Exhibit 2** is a copy of a December 29, 2011 facsimile transmission from Alexander Bhame, an employee at Miles Bauer,

to Red Rock Financial Services requesting a payoff statement for Spanish Trail Master Association.

8. Based on Miles Bauer's business records, attached as **Exhibit 3** is a copy of a letter dated January 26, 2012 from Red Rock Financial Services enclosing a Statement of Account for Spanish Trail Master Association received by Miles Bauer in response to the letter identified in paragraph 7 above.

9. Based on Miles Bauer's business records, attached as **Exhibit 4** is a copy of a February 9, 2012 letter from Rock K. Jung, an attorney with Miles Bauer, to Red Rock Financial Services enclosing a check made out to Red Rock Financial Services in the amount of \$2,025.00.

10. Based on Miles Bauer's business records, the February 9, 2012 letter and check for \$2,025.00 was delivered to Spanish Trail Master Association, care of Red Rock Financial Services, on February 10, 2012. A copy of a screenshot containing the relevant case management note confirming the check was sent on February 10, 2012 is attached as **Exhibit 1**.

11. Based on Miles Bauer's business records, attached as **Exhibit 5** is a document titled Las Vegas Cost Account further confirming the \$2,025.00 check was delivered to Red Rock Financial Services. The Las Vegas Cost Account document is a Miles Bauer business record reflecting payments made to its delivery courier, Legal Wings, whenever an HOA check was delivered. This A/P Payment Detail Report reflects Miles Bauer made a payment to Legal Wings in connection with the delivery of the \$2,025.00 check to Red Rock Financial Services for Miles Bauer File No. 12-H0207, the file number associated with this loan.


///

///

12. Based on Miles Bauer's business records, Red Rock Financial Services rejected the \$2,025.00 check. See Exhibit 1 (screenshot containing the relevant case management note confirming the check was rejected).

FURTHER DECLARANT SAYETH NOT.

Date: 4/3/18


Declarant Douglas E. Miles

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

State of California

County of ORANGE

Subscribed and sworn to (or affirmed) before me on this 3rd day of APRIL, 2018,

by DOUGLAS E. MILES, proved to me on the basis of satisfactory evidence to be
(Name of Signer)

the person who appeared before me.

Signature Carol M. Grissom (Seal)
(Signature of Notary Public)



EXHIBIT 1

1. Name: [Blank] 2. Address: [Blank] 3. City: [Blank] 4. State: [Blank] 5. Zip: [Blank]	
6. Date of Birth: [Blank] 7. Sex: [Blank] 8. Race: [Blank] 9. Religion: [Blank]	
10. Education: [Blank] 11. Occupation: [Blank] 12. Marital Status: [Blank]	
13. Number of Children: [Blank] 14. Name of Children: [Blank]	
15. Name of Spouse: [Blank] 16. Date of Marriage: [Blank]	
17. Name of Parents: [Blank] 18. Date of Birth of Parents: [Blank]	
19. Name of Siblings: [Blank] 20. Date of Birth of Siblings: [Blank]	
21. Name of Grandparents: [Blank] 22. Date of Birth of Grandparents: [Blank]	
23. Name of Great-Grandparents: [Blank] 24. Date of Birth of Great-Grandparents: [Blank]	
25. Name of Other Relatives: [Blank] 26. Date of Birth of Other Relatives: [Blank]	
27. Name of Friends: [Blank] 28. Date of Birth of Friends: [Blank]	
29. Name of Acquaintances: [Blank] 30. Date of Birth of Acquaintances: [Blank]	
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97. Name of Competitors: [Blank] 98. Date of Birth of Competitors: [Blank]	
99. Name of Opponents: [Blank] 100. Date of Birth of Opponents: [Blank]	

EXHIBIT 2



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

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

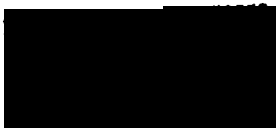
74509
74507

FACSIMILE TRANSMISSION

DATE: 12/29/11
TO: Red Rock Financial Services; Payoff Department
RE: HOA Delinquent Accounts, Payoff Requests
FAX NUMBER: 702-341-7733
FROM: Alexander Blume
Civil Litigation Department
702-942-0443 phone
abblume@mileslegal.com

NUMBER OF PAGES TRANSMITTED, INCLUDING THIS COVER: 1

Hello,
Our firm represents Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP with regard to the following real properties:



34 Innisbrook Ave.

Our client is the lienholder on the deeds of trust encumbering the properties and has been made aware that an HOA default may exist. Would you please send me the HOA arrears as they currently exist? Thank you!

CONFIDENTIALITY NOTE

The information contained in this facsimile message is privileged and confidential and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any distribution or copy of this facsimile is strictly prohibited. If you have received this facsimile in error, please notify the sender by telephone immediately at (714) 481-9100 and arrangements will be made for the return of this material. Thank You.

RRFS000577

JA1287

EXHIBIT 3

Jason Cernak

From: Jason Cernak
Sent: Thursday, January 26, 2012 4:27 PM
To: 'Alexander Bhamé'
Cc: Tammy Esposito
Subject: 34 innisbrook ave
Attachments: 74507_20120126160429.pdf; image001.png; image002.png; image003.jpg; oledata.mso

Good afternoon,

I've attached the payoff demand you requested for the above mentioned property.

Thank you,

Jason Cernak
Mail Clerk
Red Rock Financial Services

o. 702.932.6887 | f. 702.341.7733 | www.RRFS.com



Click to follow Red Rock on LinkedIn!



A FirstService Residential Management Company

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

CONFIDENTIALITY NOTICE: This e-mail message, including any attachments, may contain information that is confidential and/or proprietary. If you are not an intended recipient, please be advised that any review, use, reproduction or distribution of this message is prohibited. If you have received this message in error, please notify the sender immediately by return e-mail and delete/destroy the message and any copies thereof.



Red Rock Financial Services

Numbers of Pages 5

January 26, 2012

Miles, Bauer, Bergstrom & Winters LLP
Attn: Alexander Bhame
Via Email: abhame@mileslegal.com

Re: 34 Innisbrook Ave, Las Vegas, NV 89113
Spanish Trail Master Association / R74507

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

In response to your request for payoff figures for the above reference account, the following accounting ledger is a breakdown for the payoff request.

The current balance is \$9,255.44 (Please collect additional \$200.00 transfer fee for new owner payable to: Spanish Trail Master Association). This demand and its balance due will expire on 2/10/12. You MUST request an update as this balance will only be valid through the date above. Payment received after the expiration date will not be accepted if the balance has changed. Failure to remit the balance by the expiration date may result in the continuation of the collection process at an additional cost. Check(s) should be made payable to Red Rock Financial Services and mailed to the address below.

Spanish Trail Master Association and/or the Management Company's transfer fees as well as other fees and costs may not be included. You must contact Spanish Trail Master Association directly for those additional amounts at 702-367-8747.

If you have any questions, please contact our office at 702-932-6887.

Regards,

Red Rock Financial Services

Red Rock Financial Services

■ 7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rfs.com

■ Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702.341.7733

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a duplicate electronic debit from your account to the financial institution indicated on your check. This electronic debit will be for the amount of your check, no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will treat it as a cash payment of your account.) Please contact the Accounts Receivable department at (702) 932-6887 to make sure your payment is properly processed in the morning.

RRFS000569

JA1290

Red Rock Financial Services
Account Detail
Spanish Trail Master Association
Information as of: January 26, 2012

Page 1

Red Rock Financial Services Account Number: R74507

Property Address: 34 Innisbrook Ave, Las Vegas, NV 89113

COUNTRYWIDE HOME LOANS, INC., / ESTATES WEST AT SPANISH TRAIL
ASSOCIATION, / FRANK ANTHONY TIMPA, TRUSTEE, / MADELAINE TIMPA,
TRUSTEE, / MERS, / REPUBLIC SERVICES, / SPANISH TRAIL MASTER ASSOCIATION, /
THORNBURG MORTGAGE SECURITIES TRUST 2007-3, / Timpa Trust u/t/d/ March 3, 1999,

Detailed Summary

Date	Description	Amount	Balance Check#
07/01/2010	Assessment	\$225.00	\$225.00
08/01/2010	Assessment	\$225.00	\$450.00
08/16/2010	Late Fee	\$25.00	\$475.00
09/01/2010	Assessment	\$225.00	\$700.00
09/15/2010	Assessment	\$825.00	\$1,525.00
09/16/2010	Late Fee	\$25.00	\$1,550.00
10/01/2010	Assessment	\$225.00	\$1,775.00
10/16/2010	Late Fee	\$25.00	\$1,800.00
11/01/2010	Assessment	\$225.00	\$2,025.00
11/16/2010	Late Fee	\$25.00	\$2,050.00
12/01/2010	Assessment	\$225.00	\$2,275.00
12/02/2010	Association Misc. Charge	\$200.00	\$2,475.00
12/16/2010	Late Fee	\$25.00	\$2,500.00
12/21/2010	Intent Mailing Costs	\$9.00	\$2,509.00
12/21/2010	Intent to Lien Letter	\$125.00	\$2,634.00
12/21/2010	Intent Mailing Costs	\$9.00	\$2,643.00
01/01/2011	Assessment	\$225.00	\$2,868.00
01/16/2011	Late Fee	\$25.00	\$2,893.00
02/01/2011	Assessment	\$225.00	\$3,118.00
02/16/2011	Late Fee	\$25.00	\$3,143.00
03/01/2011	Assessment	\$225.00	\$3,368.00
03/01/2011	Assessment	\$825.00	\$4,193.00
03/16/2011	Late Fee	\$25.00	\$4,218.00

7251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 932-8887 Fax: (702) 341-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

PRF8000571

JA1291

Red Rock Financial Services
Account Detail
Spanish Trail Master Association
Information as of: January 26, 2012

Page 2

Red Rock Financial Services Account Number: R74507

Property Address: 34 Innisbrook Ave, Las Vegas, NV 89113

COUNTRYWIDE HOME LOANS, INC., / ESTATES WEST AT SPANISH TRAIL
ASSOCIATION, / FRANK ANTHONY TIMPA, TRUSTEE, / MADELAINE TIMPA,
TRUSTEE, / MERS, / REPUBLIC SERVICES, / SPANISH TRAIL MASTER ASSOCIATION, /
THORNBURG MORTGAGE SECURITIES TRUST 2007-3, / Timpa Trust u/t/d/ March 3, 1999,

Detailed Summary

Date	Description	Amount	Balance Check#
03/17/2011	Red Rock Fee Adjustment	-\$348.96	\$3,869.04
03/17/2011	Lien Mailing Costs	\$7.98	\$3,877.02
03/17/2011	Lien for Delinquent Assessment	\$275.00	\$4,152.02
03/17/2011	Lien Release	\$30.00	\$4,182.02
03/17/2011	Lien Recording Costs	\$28.00	\$4,210.02
03/17/2011	Lien Mailing Costs	\$7.98	\$4,218.00
04/01/2011	Assessment	\$225.00	\$4,443.00
04/16/2011	Late Fee	\$25.00	\$4,468.00
05/01/2011	Assessment	\$225.00	\$4,693.00
05/16/2011	Late Fee	\$25.00	\$4,718.00
06/01/2011	Assessment	\$225.00	\$4,943.00
06/16/2011	Late Fee	\$25.00	\$4,968.00
07/01/2011	Assessment	\$225.00	\$5,193.00
07/16/2011	Late Fee	\$25.00	\$5,218.00
07/28/2011	Lien Mailing Costs	\$8.96	\$5,226.96
07/28/2011	Lien for Delinquent Assessment	\$275.00	\$5,501.96
07/28/2011	Lien Release	\$30.00	\$5,531.96
07/28/2011	Lien Recording Costs	\$28.00	\$5,559.96
07/28/2011	Lien Mailing Costs	\$8.96	\$5,568.92
08/01/2011	Assessment	\$225.00	\$5,793.92
08/16/2011	Late Fee	\$25.00	\$5,818.92
09/01/2011	Assessment	\$225.00	\$6,043.92

7251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 832-8887 Fax: (702) 341-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Printed: 1/26/12
RRFS000572

JA1292

Red Rock Financial Services
Account Detail
Spanish Trail Master Association
Information as of: January 26, 2012

Page 3

Red Rock Financial Services Account Number: R74507

Property Address: 34 Innisbrook Ave, Las Vegas, NV 89113

COUNTRYWIDE HOME LOANS, INC., / ESTATES WEST AT SPANISH TRAIL
ASSOCIATION, / FRANK ANTHONY TIMPA, TRUSTEE, / MADELAINE TIMPA,
TRUSTEE, / MERS, / REPUBLIC SERVICES, / SPANISH TRAIL MASTER ASSOCIATION, /
THORNBURG MORTGAGE SECURITIES TRUST 2007-3, / Timpa Trust u/t/d/ March 3, 1999,

Detailed Summary

Date	Description	Amount	Balance Check#
09/15/2011	Assessment	\$825.00	\$6,868.92
09/16/2011	Late Fee	\$25.00	\$6,893.92
10/01/2011	Assessment	\$225.00	\$7,118.92
10/16/2011	Late Fee	\$25.00	\$7,143.92
10/27/2011	Intent to NOD	\$90.00	\$7,233.92
10/27/2011	Intent to NOD	\$90.00	\$7,323.92
11/01/2011	Assessment	\$225.00	\$7,548.92
11/16/2011	Late Fee	\$25.00	\$7,573.92
11/28/2011	Adjustment	-\$90.00	\$7,483.92
11/29/2011	NOD Mailing Costs	\$17.92	\$7,501.84
11/29/2011	Notice of Default	\$375.00	\$7,876.84
11/29/2011	NOD Mailing Costs	\$89.60	\$7,966.44
11/29/2011	NOD Release	\$30.00	\$7,996.44
11/29/2011	Trustee Sale Guarantee	\$350.00	\$8,346.44
11/29/2011	NOD Recording Costs	\$17.00	\$8,363.44
11/29/2011	NOD Release Recording Costs	\$17.00	\$8,380.44
12/01/2011	Assessment	\$225.00	\$8,605.44
12/15/2011	Late Fee	\$25.00	\$8,630.44
01/01/2012	Assessment	\$225.00	\$8,855.44
01/15/2012	Late Fee	\$25.00	\$8,880.44
01/26/2012	Payoff Demand	\$150.00	\$9,030.44
02/01/2012	Assessment	\$225.00	\$9,255.44

7251 Amigo Street, Suite 100, Las Vegas, NV 89119 Phone: (702) 932-6887 Fax: (702) 341-7733

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Printed: 1/26/12
RRFS000573

JA1293

Spanish Trail Master Association

7495 Mission Hills Drive

Las Vegas, NV 89113

Frank Timpa
34 Innisbrook Avenue
Las Vegas, NV 89113

Property Address: 34 Innisbrook Avenue
Account #: 18432

Code	Date	Amount	Balance	Check#	Memo
PP	12/31/2007	-210.00	-210.00	INIT	INIT CREDIT BAL
A1	1/2/2008	220.00	10.00		APPLY CHARGES
PP	1/11/2008	-220.00	-210.00	10158	10158 080111
A1	2/1/2008	220.00	10.00		APPLY CHARGES
PP	2/14/2008	-220.00	-210.00	10188	10188 080214
A1	3/1/2008	220.00	10.00		APPLY CHARGES
PP	3/12/2008	-220.00	-210.00	10214	10214 080312
A1	4/1/2008	220.00	10.00		APPLY CHARGES
PP	4/15/2008	-220.00	-210.00	10245	10245 080415
A1	5/1/2008	220.00	10.00		APPLY CHARGES
PP	5/7/2008	-220.00	-210.00	10278	10278 080507
PP	5/30/2008	210.00	0.00		EXPENSE ADJ
A1	6/1/2008	220.00	220.00		APPLY CHARGES
PP	6/3/2008	-220.00	0.00	10303	10303 080603
A1	7/1/2008	220.00	220.00		APPLY CHARGES
PP	7/12/2008	-220.00	0.00	10320	10320 080712
A1	8/1/2008	220.00	220.00		APPLY CHARGES
PP	8/14/2008	-220.00	0.00	10365	10365 080814
A1	9/1/2008	220.00	220.00		APPLY CHARGES
PP	9/12/2008	-220.00	0.00	10390	10390 080912
A1	10/1/2008	220.00	220.00		APPLY CHARGES
PP	10/15/2008	-220.00	0.00	10417	10417 081016
A1	11/1/2008	220.00	220.00		APPLY CHARGES
A1	12/1/2008	220.00	440.00		APPLY CHARGES
A1	1/1/2009	225.00	665.00		APPLY CHARGES
A1	2/1/2009	225.00	890.00		APPLY CHARGES
A1	2/16/2009	25.00	915.00		APPLY LATE FEE
01	3/1/2009	225.00	1,140.00		APPLY CHARGES
A1	3/18/2009	25.00	1,165.00		APPLY LATE FEE
01	4/1/2009	225.00	1,390.00		APPLY CHARGES
A1	4/18/2009	25.00	1,415.00		APPLY LATE FEE
01	5/1/2009	225.00	1,640.00		APPLY CHARGES
A1	5/16/2009	25.00	1,865.00		APPLY LATE FEE
01	6/1/2009	225.00	1,890.00		APPLY CHARGES

Spanish Trail Master Association | 7495 Mission Hills Drive | Las Vegas, NV 89113 | 702-367-8747
Make check payable to: Spanish Trail Master Association

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1/25/2012

RRFS000574

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Spanish Trail Master Association

7495 Mission Hills Drive

Las Vegas, NV 89113

Code	Date	Amount	Balance	Check#	Memo
01	6/16/2009	25.00	1,915.00		APPLY LATE FEE
A1	7/1/2009	225.00	2,140.00		APPLY CHARGES
01	7/16/2009	25.00	2,165.00		APPLY LATE FEE
A1	8/1/2009	225.00	2,390.00		APPLY CHARGES
01	8/16/2009	25.00	2,415.00		APPLY LATE FEE
A1	9/1/2009	225.00	2,640.00		APPLY CHARGES
01	9/16/2009	25.00	2,865.00		APPLY LATE FEE
A1	10/1/2009	225.00	2,890.00		APPLY CHARGES
01	10/16/2009	25.00	2,915.00		APPLY LATE FEE
A1	11/1/2009	225.00	3,140.00		APPLY CHARGES
01	11/16/2009	25.00	3,165.00		APPLY LATE FEE
A1	12/1/2009	225.00	3,390.00		APPLY CHARGES
01	1/1/2010	225.00	3,615.00		APPLY CHARGES
A1	2/1/2010	225.00	3,840.00		APPLY CHARGES
01	2/16/2010	25.00	3,865.00		APPLY LATE FEE
A1	3/1/2010	225.00	4,090.00		APPLY CHARGES
C1	3/16/2010	825.00	4,915.00		APPLY CHARGES
01	3/16/2010	25.00	4,940.00		APPLY LATE FEE
01	3/30/2010	25.00	4,965.00		APPLY LATE FEE
A1	4/1/2010	225.00	5,190.00		APPLY CHARGES
A1	5/1/2010	225.00	5,415.00		APPLY CHARGES
01	5/16/2010	25.00	5,440.00		APPLY LATE FEE
PP	5/28/2010	-1,075.00	4,365.00	174281	174281 100007
PP	5/31/2010	-225.00	4,140.00		EXPENSE ADJ
A1	6/1/2010	225.00	4,365.00		APPLY CHARGES
PP	6/16/2010	-4,365.00	0.00	175819	175819 100622
A1	7/1/2010	225.00	225.00		APPLY CHARGES
01	8/1/2010	225.00	450.00		APPLY CHARGES
A1	8/16/2010	25.00	475.00		APPLY LATE FEE
01	9/1/2010	225.00	700.00		APPLY CHARGES
A1	9/15/2010	825.00	1,525.00		APPLY CHARGES
C1	9/18/2010	25.00	1,550.00		APPLY LATE FEE
01	10/1/2010	225.00	1,775.00		APPLY CHARGES
A1	10/16/2010	25.00	1,800.00		APPLY LATE FEE
01	11/1/2010	225.00	2,025.00		APPLY CHARGES
A1	11/16/2010	25.00	2,050.00		APPLY LATE FEE
01	12/1/2010	225.00	2,275.00		APPLY CHARGES
A1	12/16/2010	25.00	2,300.00		APPLY LATE FEE
01	1/1/2011	225.00	2,525.00		APPLY CHARGES
A1	1/16/2011	25.00	2,550.00		APPLY LATE FEE
01	2/1/2011	225.00	2,775.00		APPLY CHARGES
A1	2/16/2011	25.00	2,800.00		APPLY LATE FEE
01	3/1/2011	225.00	3,025.00		APPLY CHARGES

Spanish Trail Master Association | 7495 Mission Hills Drive | Las Vegas, NV 89113 | 702-387-8747

Make check payable to: Spanish Trail Master Association

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1/25/2012

RRFS000575

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Spanish Trail Master Association

7495 Mission Hills Drive

Las Vegas, NV 89113

Code	Date	Amount	Balance	Check#	Memo
C1	3/1/2011	825.00	3,850.00		0
01	3/18/2011	25.00	3,875.00		APPLY LATE FEE
A1	4/1/2011	225.00	4,100.00		APPLY CHARGES
01	4/18/2011	25.00	4,125.00		APPLY LATE FEE
A1	5/1/2011	225.00	4,350.00		APPLY CHARGES
01	5/18/2011	25.00	4,375.00		APPLY LATE FEE
A1	6/1/2011	225.00	4,600.00		APPLY CHARGES
01	6/18/2011	25.00	4,625.00		APPLY LATE FEE
A1	7/1/2011	225.00	4,850.00		APPLY CHARGES
01	7/18/2011	25.00	4,875.00		APPLY LATE FEE
A1	8/1/2011	225.00	5,100.00		APPLY CHARGES
01	8/18/2011	25.00	5,125.00		APPLY LATE FEE
A1	9/1/2011	225.00	5,350.00		APPLY CHARGES
C1	9/18/2011	825.00	6,175.00		APPLY LATE FEE
01	9/18/2011	25.00	6,200.00		APPLY CHARGES
A1	10/1/2011	225.00	6,425.00		APPLY LATE FEE
01	10/18/2011	25.00	6,450.00		APPLY CHARGES
A1	11/1/2011	225.00	6,675.00		APPLY LATE FEE
01	11/18/2011	25.00	6,700.00		APPLY CHARGES
A1	12/1/2011	225.00	6,925.00		30 Day Notice
01-Late Fees	12/18/2011	25.00	6,950.00		Assessment 2012
A1-Assessment	1/1/2012	225.00	7,175.00		
			Balance:	7,175.00	
Current	30 - 59 Days	60 - 89 Days	>90 Days		
225.00	250.00	250.00	6,450.00		

Spanish Trail Master Association | 7495 Mission Hills Drive | Las Vegas, NV 89113 | 702-367-8747

Make check payable to: Spanish Trail Master Association

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1/25/2012

RRFS000576

JA1296

**Request for Taxpayer
Identification Number and Certification**

Give Form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)
RMI Management, LLC

Business name/disregarded entity name, if different from above
Red Rock Financial Services

Check appropriate box for federal tax classification:
☐ Individual sole proprietor ☐ C Corporation ☐ S Corporation ☒ Partnership ☐ Trust/estate
☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) > _____
☐ Other (see instructions) > _____

Address (number, street, and apt. or suite no.)
7251 Amigo Street, Suite 100

City, state, and ZIP code
Las Vegas, NV 89119

List account number(s) here (optional)

Requester's name and address (optional)

☐ Exempt payee

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

			-						
--	--	--	---	--	--	--	--	--	--

Employer identification number

8	8	-	0	3	5	8	1	3	2
---	---	---	---	---	---	---	---	---	---

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign
Here

Signature of
U.S. person >

Date >

1/26/12

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

EXHIBIT 4

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 R. PASTYVICK

Also Admitted in Arizona &
California



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 92703
Phone: (714) 481-9100
Fax: (714) 481-9141

RICHARD J. DAUER, JR.
FRED TIMOTHY WINTERS
KEENAN E. McCLENNAN
MARK T. DOMBYER
Also Admitted in the District

of
Columbia & Virginia
TAMI & CROSBY
L. BRYANT JAQUEZ
WAYNE A. RASH
VY T. PHAM
HADI R. SEYED-ALI
BRIAN IL TRAN
ANNA A. GHAJAR
CORI D. JONES
CATHERINE K. MASON
CHRISTINE A. CHUNG
HANH T. NGUYEN
S. SHELLY RAISZADEH
SHANNON C. WILLIAMS
ADIN SHAKOURI
LAWRENCE R. BOIVIN

February 9, 2012

RED ROCK FINANCIAL SERVICES
7251 Amigo Street, Suite 100
Las Vegas, NV 89119

Re: *Property Address:* 34 Innisbrook Avenue
ACCT NO.: R74507
LOAN #: [REDACTED]
MBBW File No. 12-H0207

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 \$9,255.44. 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:

JA1299

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

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


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

Our client has authorized us to make payment to you in the amount of \$2,025.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Red Rock Financial Services in the sum of \$2,025.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 34 Innisbrook 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.

JA1300

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct
 Payee: RED ROCK FINANCIAL SERVICES
 12-H0207
 Initials: SRN
 Date: 2/6/2012 Amount: 2,025.00
 Check #: 13298

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
2/3/2012	R74507	To Cure HOA Deficiency	2,025.00			

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

Bank of America
 1100 N. Green Valley Parkway
 Henderson, NV 89074
 16-681220
 1020
 12-H0207
 Loan #

13298

Date: 2/6/2012

Amount \$2,025.00

Check Valid After 80 Days

Pay \$2,025.00 Two Thousand, Twenty-Five & No/100 Dollars
 to the order of

RED ROCK FINANCIAL SERVICES

[Handwritten Signature]

Exhibit 5

Miles, Bauer, Bergstrom & Winters, LLP
Las Vegas Cost Account

EAST WEST BANK
23670 Hawthorne Blvd
Torrance, CA 90505
18-7038/3220

773692

11-81822

Date	3/14/2012
Amount	\$***1,346.25

Pay \$****One Thousand, Three Hundred Forty-Six & 25/100 Dollars

To LEGAL WINGS
the 1118 FREMONT
order LAS VEGAS, NV 89101
Account # 3695960

COPY

Requested By: LMG

773692

183220703811

822016740

Miles, Bauer, Bergstrom & Winters, LLP LV Cost Acct

11-81822

Initials: LMG

Payee: LEGAL WINGS

Check #: 773692

Date: 3/14/2012 Amount: 1,346.25

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
2/16/2012	358283	HOA check delivery		12-H0207	Ilmpa, Frank A.	8.00

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

EAST WEST BANK
23670 Hawthorne Blvd.
Torrance, CA 90505
18-7038/3220

11-81822

773692

Date: 3/14/2012

Amount \$*** 1,346.25

Pay \$****One Thousand, Three Hundred Forty-Six & 25/100 Dollars

Check Void After 90 Days

to the
order
of

LEGAL WINGS

1118 FREMONT
LAS VEGAS, NV 89101
Account # 3695960

JA1303



358293@

Route #: 907

Attention: ALEX B.
MILES, BAUER, BERGSTROM, WINTERS, LLP
2200 PASEO VERDE PKWY. * STE.#250
HENDERSON NV 89074

Thursday February 16, 2012

INVOICE

3695960.358293

Work Order #: 01280345

Attorney File #: 021012 RR

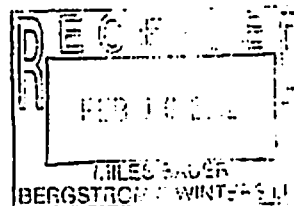
Description: DELIVERY

Date	Description	Amount
02/10/12	Miscellaneous Job: RUNNER	
02/10/12	TODAY	13.00
02/10/12	AREA "D"	29.00

DELIVER TODAY To:
RED ROCK FINANCIAL SVCS., 7251 AMIGO St., Ste. #100
RETURN SIGNED ACKNOWLEDGMENT w/in NORMAL COURSE

TOTAL:

42.00

**RECEIVED**

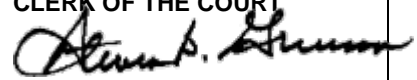
FEB 24 2012

M.B.B.&W
ACCOUNTING DEPARTMENT

1118 FREMONT STREET, Las Vegas, NV 89101
Telephone: (702) 384-0305, FAX: (702) 384-8638, Tax ID: 880223382

DM 2/22
Entered
2/17/12
XS

JA1304



OPP
MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
THERA A. COOPER, ESQ.
Nevada Bar No. 13468
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: melanie.morgan@akerman.com
Email: thera.cooper@akerman.com

*Attorneys for defendant, counterclaimant, and
counter-defendant Thornburg Mortgage Securities
Trust 2007-3*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3, *et al.*,

Defendants.

And All Related Actions.

Case No.: A-14-710161-C

Division: XXVI

**THORNBURG MORTGAGE
SECURITIES TRUST 2007-3'S
REPLY SUPPORTING ITS MOTION
TO STRIKE PLAINTIFF'S
SUPPLEMENTAL OPPOSITION TO
ITS MOTION FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, SURREPLY
SUPPORTING SUMMARY
JUDGMENT**

Date of Hearing: July 3, 2018

Time of Hearing: 9:30 a.m.

Thornburg Mortgage Securities Trust 2007-3 moves to strike Saticoy Bay LLC Series 34
Innisbrook's untimely supplemental opposition to its motion for summary judgment, or in the
alternative moves for leave to submit surreply and surreplies in support of its motion for summay
judgment

...

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Summary judgment briefing closed on June 6, 2018, and the hearing on the parties' competing motions for summary judgment is scheduled for July 3, 2018. Now, over a month after Saticoy opposed Thornburg's motion and over three weeks after filing its reply, Saticoy files a rogue supplemental opposition without seeking leave of court. The deed of trust at issue secures a multi-million dollar loan. Saticoy should not be permitted to disregard procedural rules. The supplement should be stricken.

To the extent the court considers the untimely supplement, Thornburg requests leave to submit its arguments below in surreply and a continuation of the July 3, 2018 hearing.

II. Argument

A. The court should strike Saticoy's untimely rogue supplement.

EDCR 2.20(i) provides supplemental briefs are only permitted if filed within the original time limitations or "by order of the court." Saticoy's supplement does not meet either requirement.

Saticoy's supplement is untimely. It was filed nearly a month after Thornburg's May 29, 2018 reply brief and three weeks after Saticoy filed its reply supporting its own motion. Summary judgment briefing has been closed for weeks. Saticoy did not request leave to file its supplement. The court did not authorize Saticoy's supplement.

There is no new evidence or case law warranting the supplement. All of the evidence Saticoy cites has been available to it since the close of discovery. Saticoy could, and should, have raised its contentions in its motion for summary judgment, opposition to Thornburg's motion, or reply. Thornburg will be prejudiced if the court considers Saticoy's supplement. Thornburg's and Saticoy's motions for summary judgment were fully briefed on June 4, 2018.

B. The supplement's arguments fail on the merits.

Should the court consider the Saticoy's supplement, Thornburg requests the court consider Thornburg's arguments in surreply, set a deadline for the surreply, and continue the hearing on the competing motions for summary judgment. Saticoy's arguments fail on the merits. Saticoy's supplement seeks to undermine the sufficiency of Bank of America's superpriority tender. In sum,

1 Saticoy asserts Bank of America tried to pay the wrong lien directing the court to the account
2 number on the check to support this notion. Saticoy is wrong.

3 Thornburg submitted admissible evidence demonstrating its tender. A copy of Bank of
4 America's superpriority check is located in Red Rock Financial Service's LLC's business records and
5 is attached to Thornburg's motion at Exhibit F.¹ See **Ex. F**, at RRFS000569, 580, and 553-535.
6 These records establish Bank of America delivered payment of \$2,025 for Red Rock file number
7 R74507 on February 6, 2012. See *id*, at RRFS000535. Red Rock file number R74507 is associated
8 with the Spanish Trail Master Association's lien. See *id*, at RRFS000580. Even assuming Saticoy's
9 assertions are correct and Bank of America also tendered payment for the sub-association's lien,
10 admissible evidence proves Red Rock received a check to pay the Spanish Trails Master
11 Association's superpriority lien prior to the sale.² There is no genuine dispute whether Bank of
12 America tendered the correct payment amount to the correct association in advance of the sale.
13 Saticoy's supplement fails.

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27 ¹ Exhibit F to Thornburg's motion for summary judgment is attached for ease of reference.

28 ² Thornburg inadvertently attached the Miles Bauer affidavit for Red Rock account number R74509 to its motion for summary judgment as Exhibit H. Thornburg filed an errata on June 28, 2018 to correct Exhibit H as the Miles Bauer affidavit for Red Rock account number R74507.

1 **VI. CONCLUSION**

2 The court should strike Saticoy's untimely unauthorized supplement. But, to the extent the
3 court considers the merits of the supplement, admissible evidence demonstrates Thornburg tendered
4 payment for the correct superpriority lien prior to the sale. The superpriority lien was discharged
5 prior to the sale, and Saticoy took its interest subject to Thornburg's deed of trust.

6 DATED this 29th day of June, 2018.

7 **AKERMAN LLP**

8 /s/ Thera A. Cooper

9 MELANIE D. MORGAN, ESQ.

10 NEVADA BAR NO. 8215

11 THERA A. COOPER, ESQ.

12 Nevada Bar No. 13468

13 1635 Village Center Circle, Suite 200

14 Las Vegas, Nevada 89134

15 *Attorneys Thornburg Mortgage*
16 *Securities Trust 2007-3*
17
18
19
20
21
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23
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25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 29th day of June, 2018, I caused to be served a true and correct copy of the foregoing **THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S REPLY SUPPORTING ITS MOTION TO STRIKE PLAINTIFF'S SUPPLEMENTAL OPPOSITION TO ITS MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SURREPLY SUPPORTING SUMMARY JUDGMENT**, in the following manner:

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

LEACH JOHNSON SONG & GRUCHOW

Robin Callaway	rcallaway@leachjohnson.com
Patty Gutierrez	pgutierrez@leachjohnson.com
Ryan Hastings	rhastings@leachjohnson.com
Gina LaCascia	glacascia@leachjohnson.com
Sean Anderson	sanderson@leachjohnson.com

OLYMPIA LAW, P.C.

Bryan Naddafi, Esq.	bryan@olympialawpc.com
---------------------	------------------------

LAW OFFICES OF DONALD WILLIAMS

Donald H. Williams, Esq.	dwilliams@dhwlawlv.com
Robin Gullo	rgullo@dhwlawlv.com

KOCH & SCOW LLC

David R. Koch	dkoch@kochscow.com
Staff	aeshenbaugh@kochscow.com
Steven B. Scow	sscow@kochscow.com

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

Eserve Contact	office@bohnlawfirm.com
Michael F. Bohn Esq	mbohn@bohnlawfirm.com

LEGAL AID CENTER OF SOUTHERN NEVADA

Venicia Considine	vconsidine@lacsns.org
-------------------	-----------------------

LAW OFFICES OF GREGORY J. WALCH

Gregory Walch	greg.walch@lvvwd.com
---------------	----------------------

/s/ Erin Surguy

An Employee of Akerman LLP

EXHIBIT F

1 DAVID R. KOCH
2 Nevada Bar No. 8830
3 STEVEN B. SCOW
4 Nevada Bar No. 9906
5 KOCH & SCOW LLC
6 11500 S. Eastern Ave., Suite 210
7 Henderson, NV 89052
8 dkoch@kochscow.com
9 sscow@kochscow.com
10 Telephone: (702) 318-5040
11 Facsimile: (702) 318-5039

12 Attorneys for Counter-Defendant/Counterclaimant
13 Red Rock Financial Services

14
15 EIGHTH DISTRICT COURT
16 CLARK COUNTY, NEVADA

17 SATICOY BAY LLC SERIES 34 INNISBROOK,

18 Plaintiff,

19 vs.

20 THORNBURG MORTGAGE SECURITIES
21 TRUST 2007-3; RECONSTRUCT COMPANY,
22 N.A. a division of BANK OF AMERICA;
23 FRANK TIMPA and MADELAINE TIMPA,
24 individually and as trustees of the TIMPA
25 TRUST,

26 Defendants.

27 THORNBURG MORTGAGE SECURITIES
28 TRUST 2007-3,

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 34 INNISBROOK,
a Nevada Limited-liability company; SPANISH
TRAIL MASTER ASSOCIATION, a Nevada
Non-Profit Corporation; RED ROCK
FINANCIAL SERVICES, LLC, an unknown
entity; FRANK TIMPA, an individual; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

Case No.: A-14-710161-C
Dept.: XV

RED ROCK FINANCIAL
SERVICES, LLC AFFIDAVIT

1 RED ROCK FINANCIAL SERVICES,

2 Counterclaimant,

3 vs.

4 THORNBURG MORTGAGE SECURITIES
5 TRUST 2007-3; COUNTRYWIDE HOME
6 LOANS, INC.; ESTATES WEST AT SPANISH
7 TRAILS; MORTGAGE ELECTRONIC
8 REGISTRATION SYSTEM, INC.; REPUBLIC
9 SERVICES; LAS VEGAS VALLEY WATER
10 DISTRICT; FRANK TIMPA and MADELAINE
11 TIMPA, individually and as trustees of the
12 TIMPA TRUST U/T/D March 3, 1999; and
13 DOES 1-100, inclusive,

14 Counter-Defendants.

15 I, Julia Thompson, under penalty of perjury, declare as follows:

16 1. My name is Julia Thompson I have personal knowledge of and I am
17 competent to testify as to the matters stated herein by virtue of my position as supervisor
18 for Red Rock Financial Services LLC (Red Rock).

19 2. As a supervisor for Red Rock, I am familiar with Red Rock's systems that
20 contain data regarding collection accounts and Red Rock's policies and procedures. This
21 affidavit is based on my review of Red Rock's business records and knowledge as a Red
22 Rock employee.

23 3. Entries in Red Rock's systems and corresponding databases are made at or
24 near the time of the events recorded by, or from information transmitted by, persons
25 with knowledge. Red Rock's systems and databases are maintained and kept in the
26 course of Red Rock's regularly conducted business activity, and it is Red Rock's regular
27 practice to keep and maintain information regarding Red Rock's collection accounts. Red
28 Rock's systems and databases consist of records that were kept and maintained by Red
Rock in the course of its regularly conducted activities pursuant to its regular business
practice of creating such records. These systems and databases are Red Rock's business

1 records.

2 4. Exhibit 1 are true and correct copies from Red Rock's business records
3 regarding the file for Frank and Madelaine Timpa's account for the property located at 34
4 Innisbrook Avenue, Las Vegas, Nevada 89113.

5 5. Further your affiant sayth not.

6 Executed this 26 day of April, 2018

7 By [Signature]

8 Title Supervisor

9
10 State of Nevada

11 County of Clark

12 On 4/26/18 before me, Sara Trevino (insert name and
13 title of the officer) personally appeared Julia Thompson, who proved to
14 me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
15 subscribed to the within instrument and acknowledged to me that he/she/they executed
16 the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)
17 on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
18 executed the instrument. WITNESS my hand and official seal.

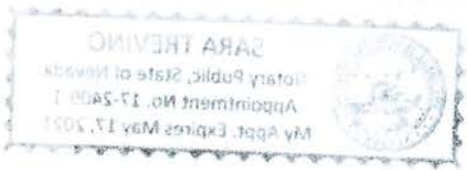
19
20
21
22
23
24
25
26
27
28
Signature [Signature]

(Seal)



36
Sara Trevino
Notary Public

215118
Sara Trevino
Notary Public



Red Rock Financial Services
Trust Account
4775 W. Teco Avenue, Suite 140
Las Vegas, NV 89118
(702) 932-6887

usbank
Five Star Service Guaranteed
www.usbank.com
94-0169/1212

50438

11/10/2014

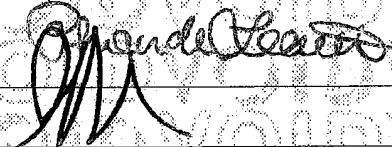
PAY TO THE
ORDER OF

Clark County District Court

\$**1,168,865.05

One Million One Hundred Sixty-Eight Thousand Eight Hundred Sixty-Five and 05/100***** DOLLARS

Clark County District Court



MEMO

34 Innisbrook Avenue Excess Funds

⑈050438⑈

Red Rock Financial Services/Trust Account

50438

Clark County District Court

11/10/2014

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
11/10/2014	Bill	R74507	1,168,865.05	1,168,865.05		1,168,865.05
					Check Amount	1,168,865.05

Trust Account - NV 34 Innisbrook Avenue Excess Funds

1,168,865.05

Red Rock Financial Services/Trust Account

50438

Clark County District Court

11/10/2014

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
11/10/2014	Bill	R74507	1,168,865.05	1,168,865.05		1,168,865.05
					Check Amount	1,168,865.05

Trust Account - NV 34 Innisbrook Avenue Excess Funds

1,168,865.05

RRFSA00015

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**
 Mgmt Account:
 Information as of: **November 10, 2014**

Account Information

Company: Spanish Trail Master Association
 Association: Spanish Trail Master Association
 Property Address: 34 Innisbrook Ave, Las Vegas NV 89113
 Owners: TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

Payment Summary

9 Allocations

Payment Processed	\$98,113.52
Allocation Categories	
Association	(\$8,442.00)
X Misc 1	1,000 + 240,000 + 240,000 + 120,000 ^{x5} + (\$87,865.05) = 1168865.05
RRFS	(\$1,806.47)
Total Allocations	(\$98,113.52)

Payment Detail

Total \$ 1,179,113.52

Date:	Description:	Code:	Amount:	Check:	Memo:
11/10/2014	Red Rock Paid in Full	PIFRR	98,113.52	CC	PIF HOA SALE -
				0743701189	SPLIT WITH 74509

* EXCESS FUNDS
 \$1,168,865.05
 Clark County
 District Court.

give to CLM

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**

Mgmt Account:

Information as of: **November 10, 2014**

Association Allocation Detail

11/10/2014 10:44:16 Processed By: Reporting

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**

Mgmt Account:

Information as of: **November 10, 2014**

Late Fee			Total: (\$950.00)
Date:	Description:	Code:	Amount:
08/16/2011	Late Fee	RRLF	-25.00
09/16/2011	Late Fee	RRLF	-25.00
10/16/2011	Late Fee	RRLF	-25.00
11/16/2011	Late Fee	RRLF	-25.00
12/15/2011	Late Fee	RRLF	-25.00
02/16/2012	Late Fee	RRLF	-25.00
03/16/2012	Late Fee	RRLF	-25.00
04/16/2012	Late Fee	RRLF	-25.00
05/16/2012	Late Fee	RRLF	-25.00
06/16/2012	Late Fee	RRLF	-25.00
07/16/2012	Late Fee	RRLF	-25.00
08/16/2012	Late Fee	RRLF	-25.00
09/16/2012	Late Fee	RRLF	-25.00
10/16/2012	Late Fee	RRLF	-25.00
11/16/2012	Late Fee	RRLF	-25.00
12/16/2012	Late Fee	RRLF	-25.00
01/16/2013	Late Fee	RRLF	-25.00
02/16/2013	Late Fee	RRLF	-25.00
03/16/2013	Late Fee	RRLF	-25.00
04/16/2013	Late Fee	RRLF	-25.00
05/16/2013	Late Fee	RRLF	-25.00
06/16/2013	Late Fee	RRLF	-25.00
07/16/2013	Late Fee	RRLF	-25.00
08/16/2013	Late Fee	RRLF	-25.00
09/16/2013	Late Fee	RRLF	-25.00
10/16/2013	Late Fee	RRLF	-25.00
11/16/2013	Late Fee	RRLF	-25.00
12/16/2013	Late Fee	RRLF	-25.00
01/16/2014	Late Fee	RRLF	-25.00
02/16/2014	Late Fee	RRLF	-25.00
03/16/2014	Late Fee	RRLF	-25.00
04/16/2014	Late Fee	RRLF	-25.00
05/16/2014	Late Fee	RRLF	-25.00
06/16/2014	Late Fee	RRLF	-25.00
07/16/2014	Late Fee	RRLF	-25.00
08/16/2014	Late Fee	RRLF	-25.00

11/10/2014 10:44:16 Processed By: Reporting

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**

Mgmt Account:

Information as of: **November 10, 2014**

09/16/2014	Late Fee	RRLF	-25.00
10/16/2014	Late Fee	RRLF	-25.00
Assessment			Total: (\$7,472.00)
Date:	Description:	Code:	Amount:
03/01/2012	Assessment	MAHOA	-42.00
04/01/2012	Assessment	MAHOA	-225.00
05/01/2012	Assessment	MAHOA	-225.00
06/01/2012	Assessment	MAHOA	-225.00
07/01/2012	Assessment	MAHOA	-225.00
08/01/2012	Assessment	MAHOA	-225.00
09/01/2012	Assessment	MAHOA	-225.00
10/01/2012	Assessment	MAHOA	-225.00
11/01/2012	Assessment	MAHOA	-225.00
12/01/2012	Assessment	MAHOA	-225.00
01/01/2013	Assessment	MAHOA	-235.00
02/01/2013	Assessment	MAHOA	-235.00
03/01/2013	Assessment	MAHOA	-235.00
04/01/2013	Assessment	MAHOA	-235.00
05/01/2013	Assessment	MAHOA	-235.00
06/01/2013	Assessment	MAHOA	-235.00
07/01/2013	Assessment	MAHOA	-235.00
08/01/2013	Assessment	MAHOA	-235.00
09/01/2013	Assessment	MAHOA	-235.00
10/01/2013	Assessment	MAHOA	-235.00
11/01/2013	Assessment	MAHOA	-235.00
12/01/2013	Assessment	MAHOA	-235.00
01/01/2014	Monthly Assessment	ASMA	-235.00
02/01/2014	Monthly Assessment	ASMA	-235.00
03/01/2014	Monthly Assessment	ASMA	-235.00
04/01/2014	Monthly Assessment	ASMA	-235.00
05/01/2014	Monthly Assessment	ASMA	-235.00
06/01/2014	Monthly Assessment	ASMA	-235.00
07/01/2014	Monthly Assessment	ASMA	-235.00
08/01/2014	Monthly Assessment	ASMA	-235.00
09/01/2014	Monthly Assessment	ASMA	-235.00
10/01/2014	Monthly Assessment	ASMA	-235.00
11/01/2014	Monthly Assessment	ASMA	-235.00

11/10/2014 10:44:16 Processed By: Reporting

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**

Mgmt Account:

Information as of: **November 10, 2014**

Other			Total:	(\$20.00)
Date:	Description:	Code:	Amount:	
04/30/2014	Association Misc. Charge	ASMIS	-20.00	

Misc 1 Allocation Detail

Misc 1			Total:	(\$87,865.05)
Date:	Description:	Code:	Amount:	
11/10/2014	Misc. Charge	3PRTY	-87,865.05	

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**

Mgmt Account:

Information as of: **November 10, 2014**

RRFS Allocation Detail

RRFS			Total: (\$1,806.47)
Date:	Description:	Code:	Amount:
07/28/2011	Lien for Delinquent Assessment	LIEN	-146.84
11/29/2011	NOD Mailing Costs	MAIL3	-19.60
11/29/2011	NOD Release	RLNOD	-30.00
11/29/2011	NOD Release Recording Costs	RSNOD	-17.00
01/26/2012	Payoff Demand	PYOFF	-150.00
02/17/2012	Intent to NOS	INNOS	-90.00
05/04/2012	Payment Plan	PPLAN	-30.00
06/25/2012	Payment Plan	PPLAN	-30.00
08/06/2012	Payment Breach Letter	RRPBL	-25.00
02/08/2013	Payment Plan	PPLAN	-30.00
03/27/2014	Payment Breach Letter	RRPBL	-25.00
05/08/2014	Intent to Conduct Foreclosure	RRICF	-25.00
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	NOS Mailing Costs	MAIL4	-8.96
09/11/2014	Notice of Sale	NOS	-275.00
09/11/2014	NOS Recording Costs	RCNOS	-23.00
09/11/2014	Publishing and Posting Costs	PUBLISHING	-496.67
11/07/2014	Conduct Foreclosure Sale	RRCFS	-125.00
11/07/2014	Prepare and Record Trustee Deed	RRRTD	-125.00

11/10/2014 10:44:16 Processed By: Reporting

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**
Mgmt Account:
Information as of: **November 10, 2014**

Account Information

Company: Spanish Trail Master Association
Association: Spanish Trail Master Association
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113
Owners: TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

Payment Summary

Payment Processed	\$120,000.00
Allocation Categories	
Misc 1	(\$120,000.00)
Total Allocations	(\$120,000.00)

Payment Detail

Date:	Description:	Code:	Amount:	Check:	Memo:
11/10/2014	Red Rock Paid in Full	PIFRR	120,000.00	CC	PIF HOA SALE
				0743701214	

Misc 1 Allocation Detail

Misc 1		Total:	(\$120,000.00)
Date:	Description:	Code:	Amount:
11/10/2014	Misc. Charge	3PRTY	-120,000.00

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**
Mgmt Account:
Information as of: **November 10, 2014**

Account Information

Company: Spanish Trail Master Association
Association: Spanish Trail Master Association
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113
Owners: TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

Payment Summary

Payment Processed	\$120,000.00
Allocation Categories	
Misc 1	(\$120,000.00)
Total Allocations	(\$120,000.00)

Payment Detail

Date:	Description:	Code:	Amount:	Check:	Memo:
11/10/2014	Red Rock Paid in Full	PIFRR	120,000.00	CC	PIF HOA SALE
				0743701186	

Misc 1 Allocation Detail

Misc 1	Total:	(\$120,000.00)	
Date:	Description:	Code:	Amount:
11/10/2014	Misc. Charge	3PRTY	-120,000.00

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**
Mgmt Account:
Information as of: **November 10, 2014**

Account Information

Company: Spanish Trail Master Association
Association: Spanish Trail Master Association
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113
Owners: TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

Payment Summary

Payment Processed	\$120,000.00
Allocation Categories	
Misc 1	(\$120,000.00)
Total Allocations	(\$120,000.00)

Payment Detail

Date:	Description:	Code:	Amount:	Check:	Memo:
11/10/2014	Red Rock Paid in Full	PIFRR	120,000.00	CC 0743701187	PIF HOA SALE

Misc 1 Allocation Detail

Misc 1		Total:	(\$120,000.00)
Date:	Description:	Code:	Amount:
11/10/2014	Misc. Charge	3PRTY	-120,000.00

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**
Mgmt Account:
Information as of: **November 10, 2014**

Account Information

Company: Spanish Trail Master Association
Association: Spanish Trail Master Association
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113
Owners: TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

Payment Summary

Payment Processed	\$120,000.00
Allocation Categories	
Misc 1	(\$120,000.00)
Total Allocations	(\$120,000.00)

Payment Detail

Date:	Description:	Code:	Amount:	Check:	Memo:
11/10/2014	Red Rock Paid in Full	PIFRR	120,000.00	CC 0743701188	PIF HOA SALE

Misc 1 Allocation Detail

Misc 1		Total:	(\$120,000.00)
Date:	Description:	Code:	Amount:
11/10/2014	Misc. Charge	3PRTY	-120,000.00

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**
Mgmt Account:
Information as of: **November 10, 2014**

Account Information

Company: Spanish Trail Master Association
Association: Spanish Trail Master Association
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113
Owners: TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

Payment Summary

Payment Processed	\$120,000.00
Allocation Categories	
Misc 1	(\$120,000.00)
Total Allocations	(\$120,000.00)

Payment Detail

Date:	Description:	Code:	Amount:	Check:	Memo:
11/10/2014	Red Rock Partial Payment	PPRR	120,000.00	CC 0743701190	PIF HOA SALE

Misc 1 Allocation Detail

Misc 1		Total:	(\$120,000.00)
Date:	Description:	Code:	Amount:
11/10/2014	Misc. Charge	3PRTY	-120,000.00

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**
Mgmt Account:
Information as of: **November 10, 2014**

Account Information

Company: Spanish Trail Master Association
Association: Spanish Trail Master Association
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113
Owners: TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

Payment Summary

Payment Processed	\$240,000.00
Allocation Categories	
Misc 1	(\$240,000.00)
Total Allocations	(\$240,000.00)

Payment Detail

Date:	Description:	Code:	Amount:	Check:	Memo:
11/10/2014	Red Rock Paid in Full	PIFRR	240,000.00	CC 0743701208	PIF HOA SALE

Misc 1 Allocation Detail

Misc 1		Total:	(\$240,000.00)
Date:	Description:	Code:	Amount:
11/10/2014	Misc. Charge	3PRTY	-240,000.00

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**
Mgmt Account:
Information as of: **November 10, 2014**

Account Information

Company: Spanish Trail Master Association
Association: Spanish Trail Master Association
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113
Owners: TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

Payment Summary

Payment Processed	\$240,000.00
Allocation Categories	
Misc 1	(\$240,000.00)
Total Allocations	(\$240,000.00)

Payment Detail

Date:	Description:	Code:	Amount:	Check:	Memo:
11/10/2014	Red Rock Paid in Full	PIFRR	240,000.00	CC 0743701207	PIF HOA SALE

Misc 1 Allocation Detail

Misc 1		Total:	(\$240,000.00)
Date:	Description:	Code:	Amount:
11/10/2014	Misc. Charge	3PRTY	-240,000.00

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**
Mgmt Account:
Information as of: **November 10, 2014**

Account Information

Company: Spanish Trail Master Association
Association: Spanish Trail Master Association
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113
Owners: TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

Payment Summary

Payment Processed	\$1,000.00
Allocation Categories	
Misc 1	(\$1,000.00)
Total Allocations	(\$1,000.00)

Payment Detail

Date:	Description:	Code:	Amount:	Check:	Memo:
11/10/2014	Red Rock Paid in Full	PIFRR	1,000.00	CC 0743701449	PIF HOA SALE

Misc 1 Allocation Detail

Misc 1		Total:	(\$1,000.00)
Date:	Description:	Code:	Amount:
11/10/2014	Misc. Charge	3PRTY	-1,000.00

Red Rock Financial Services
Trust Account
4775 W. Taco Avenue, Suite 140
Las Vegas, NV 89118
(702) 932-6887

usbank
Five Star Service Guaranteed
www.usbank.com
94-0169/1212

50438

11/10/2014

PAY TO THE
ORDER OF

Clark County District Court

\$**1,168,865.05

One Million One Hundred Sixty-Eight Thousand Eight Hundred Sixty-Five and 05/100***** DOLLARS**

Clark County District Court

[Signature]

MEMO

34 Innisbrook Avenue Excess Funds

⑈050438⑈

Red Rock Financial Services/Trust Account

50438

Clark County District Court

11/10/2014

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
11/10/2014	Bill	R74507	1,168,865.05	1,168,865.05		1,168,865.05
					Check Amount	1,168,865.05

TO
Christie
M.

Trust Account - NV 34 Innisbrook Avenue Excess Funds

1,168,865.05

Red Rock Financial Services/Trust Account

50438

Clark County District Court

11/10/2014

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
11/10/2014	Bill	R74507	1,168,865.05	1,168,865.05		1,168,865.05
					Check Amount	1,168,865.05

Trust Account - NV 34 Innisbrook Avenue Excess Funds

1,168,865.05

RRFSAP0930



Red Rock Financial Services
Accounting Ledger
Information as of: November 13, 2014

Account Number: 74507
Association: Spanish Trail Master Association
Property Address: 34 Innisbrook Ave, Las Vegas, NV 89113
Ledger Balance: \$0.00
Homeowner(s): TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

Posting	Description	Amount	Balance	Pmt Ref	Memo
7/1/2010	Assessment	\$225.00	\$225.00		
8/1/2010	Assessment	\$225.00	\$450.00		
8/16/2010	Late Fee	\$25.00	\$475.00		
9/1/2010	Assessment	\$225.00	\$700.00		
9/15/2010	Assessment	\$825.00	\$1,525.00		Rsrv Assessment
9/16/2010	Late Fee	\$25.00	\$1,550.00		
10/1/2010	Assessment	\$225.00	\$1,775.00		
10/16/2010	Late Fee	\$25.00	\$1,800.00		
11/1/2010	Assessment	\$225.00	\$2,025.00		
11/16/2010	Late Fee	\$25.00	\$2,050.00		
12/1/2010	Assessment	\$225.00	\$2,275.00		
12/2/2010	Association Misc. Charge	\$200.00	\$2,475.00		Admin Fee/ Spanish Trail Master Association
12/16/2010	Late Fee	\$25.00	\$2,500.00		
12/21/2010	Mailing Costs	\$9.00	\$2,509.00		Timpa Trust u/t/d/ March 3, 1999 (Frank Anthony Timpa and Madelaine Timpa, Trustees and any successor Trustee as provided therein)/
12/21/2010	Intent to Lien Letter	\$125.00	\$2,634.00		
12/21/2010	Mailing Costs	\$9.00	\$2,643.00		Timpa Trust u/t/d/ March 3, 1999 (Frank Anthony Timpa and Madelaine Timpa, Trustees and any successor Trustee as provided therein/
1/1/2011	Assessment	\$225.00	\$2,868.00		
1/16/2011	Late Fee	\$25.00	\$2,893.00		
2/1/2011	Assessment	\$225.00	\$3,118.00		
2/16/2011	Late Fee	\$25.00	\$3,143.00		
3/1/2011	Assessment	\$225.00	\$3,368.00		Assesesment
3/1/2011	Assessment	\$825.00	\$4,193.00		Rsrv Assessment
3/16/2011	Late Fee	\$25.00	\$4,218.00		



Red Rock Financial Services
Accounting Ledger
 Information as of: November 13, 2014

Account Number: 74507
Association: Spanish Trail Master Association
Property Address: 34 Innisbrook Ave, Las Vegas, NV 89113
Ledger Balance: \$0.00
Homeowner(s): TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

Posting	Description	Amount	Balance	Pmt Ref	Memo
3/17/2011	Red Rock Fee Adjustment	(\$348.96)	\$3,869.04		
3/17/2011	Mailing Costs	\$7.98	\$3,877.02		Timpa Trust u/t/d/ March 3, 1999 (Frank Anthony Timpa and Madelaine Timpa, Trustees and any successor Trustee as provided therein)/
3/17/2011	Lien for Delinquent Assessment	\$275.00	\$4,152.02		
3/17/2011	Lien Release	\$30.00	\$4,182.02		
3/17/2011	Lien Recording Costs	\$28.00	\$4,210.02		
3/17/2011	Mailing Costs	\$7.98	\$4,218.00		
					Timpa Trust u/t/d/ March 3, 1999 (Frank Anthony Timpa and Madelaine Timpa, Trustees and any successor Trustee as provided therein/
4/1/2011	Assessment	\$225.00	\$4,443.00		
4/16/2011	Late Fee	\$25.00	\$4,468.00		
5/1/2011	Assessment	\$225.00	\$4,693.00		
5/16/2011	Late Fee	\$25.00	\$4,718.00		
6/1/2011	Assessment	\$225.00	\$4,943.00		
6/16/2011	Late Fee	\$25.00	\$4,968.00		
7/1/2011	Assessment	\$225.00	\$5,193.00		
7/16/2011	Late Fee	\$25.00	\$5,218.00		
7/28/2011	Mailing Costs	\$8.96	\$5,226.96		
7/28/2011	Lien for Delinquent Assessment	\$275.00	\$5,501.96		
7/28/2011	Lien Release	\$30.00	\$5,531.96		
7/28/2011	Lien Recording Costs	\$28.00	\$5,559.96		
7/28/2011	Mailing Costs	\$8.96	\$5,568.92		
8/1/2011	Assessment	\$225.00	\$5,793.92		
8/16/2011	Late Fee	\$25.00	\$5,818.92		
9/1/2011	Assessment	\$225.00	\$6,043.92		
9/15/2011	Assessment	\$825.00	\$6,868.92		



Red Rock Financial Services
Accounting Ledger
Information as of: November 13, 2014

Account Number: 74507
Association: Spanish Trail Master Association
Property Address: 34 Innisbrook Ave, Las Vegas, NV 89113
Ledger Balance: \$0.00
Homeowner(s): TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

Posting	Description	Amount	Balance	Pmt Ref	Memo
9/16/2011	Late Fee	\$25.00	\$6,893.92		
10/1/2011	Assessment	\$225.00	\$7,118.92		
10/16/2011	Late Fee	\$25.00	\$7,143.92		
10/27/2011	Intent to NOD	\$90.00	\$7,233.92		
10/27/2011	Intent to NOD	\$90.00	\$7,323.92		
11/1/2011	Assessment	\$225.00	\$7,548.92		
11/16/2011	Late Fee	\$25.00	\$7,573.92		
11/28/2011	Adjustment	(\$90.00)	\$7,483.92		
11/29/2011	NOD Mailing Costs	\$17.92	\$7,501.84		
11/29/2011	Notice of Default	\$375.00	\$7,876.84		
11/29/2011	NOD Mailing Costs	\$89.60	\$7,966.44		
11/29/2011	NOD Release	\$30.00	\$7,996.44		
11/29/2011	Trustee Sale Guarantee	\$350.00	\$8,346.44		
11/29/2011	NOD Recording Costs	\$17.00	\$8,363.44		
11/29/2011	NOD Release Recording Costs	\$17.00	\$8,380.44		
12/1/2011	Assessment	\$225.00	\$8,605.44		
12/15/2011	Late Fee	\$25.00	\$8,630.44		
1/1/2012	Assessment	\$225.00	\$8,855.44		
1/26/2012	Payoff Demand	\$150.00	\$9,005.44		Miles Legal
2/1/2012	Assessment	\$225.00	\$9,230.44		
2/3/2012	Red Rock Partial Payment	(\$250.00)	\$8,980.44	MO 290104375	Partial Payment
2/16/2012	Late Fee	\$25.00	\$9,005.44		
2/17/2012	Intent to NOS	\$90.00	\$9,095.44		
3/1/2012	Assessment	\$225.00	\$9,320.44		
3/16/2012	Late Fee	\$25.00	\$9,345.44		
3/20/2012	Red Rock Partial Payment	(\$250.00)	\$9,095.44	CC 290104868	Partial payment
4/1/2012	Assessment	\$225.00	\$9,320.44		
4/16/2012	Late Fee	\$25.00	\$9,345.44		



Red Rock Financial Services
Accounting Ledger
 Information as of: November 13, 2014

Account Number: 74507
Association: Spanish Trail Master Association
Property Address: 34 Innisbrook Ave, Las Vegas, NV 89113
Ledger Balance: \$0.00
Homeowner(s): TIMPA TRUST U/T/D MARCH 3, 1999 (FRANK ANTHONY TIMPA AND MADELAINE TIMPA, TRUSTEES AND ANY SUCCESSOR TRUSTEE AS PROVIDED THEREIN)

Posting	Description	Amount	Balance	Pmt Ref	Memo
4/25/2012	Red Rock Partial Payment	(\$250.00)	\$9,095.44	CC 290109104	Partial payment
5/1/2012	Assessment	\$225.00	\$9,320.44		
5/4/2012	Payment Plan	\$30.00	\$9,350.44		
5/16/2012	Late Fee	\$25.00	\$9,375.44		
6/1/2012	Assessment	\$225.00	\$9,600.44		
6/16/2012	Late Fee	\$25.00	\$9,625.44		
6/25/2012	Payment Plan	\$30.00	\$9,655.44		
7/1/2012	Assessment	\$225.00	\$9,880.44		
7/16/2012	Late Fee	\$25.00	\$9,905.44		
8/1/2012	Assessment	\$225.00	\$10,130.44		
8/6/2012	Payment Breach Letter	\$25.00	\$10,155.44		
8/16/2012	Late Fee	\$25.00	\$10,180.44		
9/1/2012	Assessment	\$225.00	\$10,405.44		
9/16/2012	Late Fee	\$25.00	\$10,430.44		
10/1/2012	Assessment	\$225.00	\$10,655.44		
10/16/2012	Late Fee	\$25.00	\$10,680.44		
10/22/2012	Red Rock Partial Payment	(\$500.00)	\$10,180.44	MO 300040335	Partial payment
11/1/2012	Assessment	\$225.00	\$10,405.44		
11/16/2012	Late Fee	\$25.00	\$10,430.44		
12/1/2012	Assessment	\$225.00	\$10,655.44		
12/16/2012	Late Fee	\$25.00	\$10,680.44		
1/1/2013	Assessment	\$235.00	\$10,915.44		
1/16/2013	Late Fee	\$25.00	\$10,940.44		
2/1/2013	Assessment	\$235.00	\$11,175.44		
2/8/2013	Payment Plan	\$30.00	\$11,205.44		
2/13/2013	Red Rock Partial Payment	(\$500.00)	\$10,705.44	CC 290117061	Partial Payment
2/13/2013	Red Rock Partial Payment	(\$500.00)	\$10,205.44	CC 290117060	Partial Payment
2/16/2013	Late Fee	\$25.00	\$10,230.44		

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**
Mgmt Account:
Information as of: **December 13, 2013**

Account Information

Company: Spanish Trail Master Association
Association: Spanish Trail Master Association
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113
Owners: Timpa Trust u/t/d/ March 3, 1999; Timpa Trust u/t/d/ March 3, 1999; THORNBURG MORTGAGE SECURITIES TRUST 2007-3; COUNTRYWIDE HOME LOANS, INC.; ESTATES WEST AT SPANISH TRAIL ASSOCIATION; MERS; REPUBLIC SERVICES; SPANISH TRAIL MASTER ASSOCIATION; COUNTRYWIDE HOME LOANS, INC.; MADELAINE TIMPA, TRUSTEE; FRANK ANTHONY TIMPA, TRUSTEE; MERS

Payment Summary

Payment Processed	\$500.00
Allocation Categories	
Association	(\$446.84)
RRFS	(\$53.16)
Total Allocations	(\$500.00)

Payment Detail

Date:	Description:	Code:	Amount:	Check:	Memo:
12/13/2013	Red Rock Partial Payment	PPRR	500.00	CC 290133793	Partial payment

Association Allocation Detail

Assessment			Total:	(\$421.84)
Date:	Description:	Code:	Amount:	
06/01/2011	Assessment	MAHOA	-196.84	
08/01/2011	Assessment	MAHOA	-225.00	

Late Fee			Total:	(\$25.00)
Date:	Description:	Code:	Amount:	
06/16/2011	Late Fee	RRLF	-25.00	

RRFS Allocation Detail

RRFS			Total:	(\$53.16)
Date:	Description:	Code:	Amount:	
07/28/2011	Lien for Delinquent Assessment	LIEN	-53.16	

12/13/2013 12:27:17 Processed By: Reporting

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**

Mgmt Account:

Information as of: **November 08, 2013**

Account Information

Company: Spanish Trail Master Association
 Association: Spanish Trail Master Association
 Property Address: 34 Innisbrook Ave, Las Vegas NV 89113
 Owners: Timpa Trust u/t/d/ March 3, 1999; Timpa Trust u/t/d/ March 3, 1999; THORNBURG MORTGAGE SECURITIES TRUST 2007-3; COUNTRYWIDE HOME LOANS, INC.; ESTATES WEST AT SPANISH TRAIL ASSOCIATION; MERS; REPUBLIC SERVICES; SPANISH TRAIL MASTER ASSOCIATION; COUNTRYWIDE HOME LOANS, INC.; MADELAINE TIMPA, TRUSTEE; FRANK ANTHONY TIMPA, TRUSTEE; MERS

Payment Summary

Payment Processed	\$250.00
Allocation Categories	
Association	(\$250.00)
Total Allocations	(\$250.00)

Payment Detail

Date:	Description:	Code:	Amount:	Check:	Memo:
11/08/2013	Red Rock Partial Payment	PPRR	250.00	CC 290129959	Partial Payment

Association Allocation Detail

Assessment	Total:	(\$225.00)
Date: 07/01/2011	Description: Assessment	Code: MAHOA Amount: -225.00
Late Fee	Total:	(\$25.00)
Date: 07/16/2011	Description: Late Fee	Code: RRLF Amount: -25.00

11/8/2013 3:31:40 PM Processed By: Reporting

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**
Mgmt Account:
Information as of: **October 21, 2013**

Account Information

Company: Spanish Trail Master Association
Association: Spanish Trail Master Association
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113
Owners: Timpa Trust u/t/d/ March 3, 1999; Timpa Trust u/t/d/ March 3, 1999; THORNBURG MORTGAGE SECURITIES TRUST 2007-3; COUNTRYWIDE HOME LOANS, INC.; ESTATES WEST AT SPANISH TRAIL ASSOCIATION; MERS; REPUBLIC SERVICES; SPANISH TRAIL MASTER ASSOCIATION; COUNTRYWIDE HOME LOANS, INC.; MADELAINE TIMPA, TRUSTEE; FRANK ANTHONY TIMPA, TRUSTEE; MERS

Payment Summary

Payment Processed	\$250.00
Allocation Categories	
Association	(\$232.08)
RRFS	(\$17.92)
Total Allocations	(\$250.00)

Payment Detail

Date:	Description:	Code:	Amount:	Check:	Memo:
10/21/2013	Red Rock Partial Payment	PPRR	250.00	CC 290129665	Partial payment

Association Allocation Detail

Late Fee			Total:	(\$75.00)
Date:	Description:	Code:	Amount:	
03/16/2011	Late Fee	RRLF	-25.00	
04/16/2011	Late Fee	RRLF	-25.00	
05/16/2011	Late Fee	RRLF	-25.00	
Assessment			Total:	(\$157.08)
Date:	Description:	Code:	Amount:	
05/01/2011	Assessment	MAHOA	-128.92	
06/01/2011	Assessment	MAHOA	-28.16	

RRFS Allocation Detail

RRFS			Total:	(\$17.92)
Date:	Description:	Code:	Amount:	
11/29/2011	NOD Mailing Costs	MAIL3	-17.92	

10/21/2013 10:01:10 Processed By: Reporting

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**
Mgmt Account:
Information as of: **September 20, 2013**

Account Information

Company: Spanish Trail Master Association
Association: Spanish Trail Master Association
Property Address: 34 Innisbrook Ave, Las Vegas NV 89113
Owners: Timpa Trust u/t/d/ March 3, 1999; Timpa Trust u/t/d/ March 3, 1999; THORNBURG MORTGAGE SECURITIES TRUST 2007-3; COUNTRYWIDE HOME LOANS, INC.; ESTATES WEST AT SPANISH TRAIL ASSOCIATION; MERS; REPUBLIC SERVICES; SPANISH TRAIL MASTER ASSOCIATION; COUNTRYWIDE HOME LOANS, INC.; MADELAINE TIMPA, TRUSTEE; FRANK ANTHONY TIMPA, TRUSTEE; MERS

Payment Summary

Payment Processed	\$500.00
Allocation Categories	
Association	(\$430.00)
RRFS	(\$70.00)
Total Allocations	(\$500.00)

Payment Detail

Date:	Description:	Code:	Amount:	Check:	Memo:
09/20/2013	Red Rock Partial Payment	PPRR	500.00	CC 290129483	Partial Payment

Association Allocation Detail

Other	Total:	(\$200.00)
Date:	Description:	Code:
12/02/2010	Association Misc. Charge	ASMIS
		Amount:
		-200.00

Assessment	Total:	(\$230.00)
Date:	Description:	Code:
04/01/2011	Assessment	MAHOA
		Amount:
		-133.92
05/01/2011	Assessment	MAHOA
		Amount:
		-96.08

RRFS Allocation Detail

RRFS	Total:	(\$70.00)
Date:	Description:	Code:
11/29/2011	NOD Mailing Costs	MAIL3
		Amount:
		-70.00

9/20/2013 2:03:52 PM Processed By: Reporting

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**

Mgmt Account:

Information as of: **August 13, 2013**

Account Information

Company: Spanish Trail Master Association
 Association: Spanish Trail Master Association
 Property Address: 34 Innisbrook Ave, Las Vegas NV 89113
 Owners: Timpa Trust u/t/d/ March 3, 1999; Timpa Trust u/t/d/ March 3, 1999; THORNBURG MORTGAGE SECURITIES TRUST 2007-3; COUNTRYWIDE HOME LOANS, INC.; ESTATES WEST AT SPANISH TRAIL ASSOCIATION; MERS; REPUBLIC SERVICES; SPANISH TRAIL MASTER ASSOCIATION; COUNTRYWIDE HOME LOANS, INC.; MADELAINE TIMPA, TRUSTEE; FRANK ANTHONY TIMPA, TRUSTEE; MERS

Payment Summary

Payment Processed	\$500.00
Allocation Categories	
Association	(\$475.00)
RRFS	(\$25.00)
Total Allocations	(\$500.00)

Payment Detail

Date:	Description:	Code:	Amount:	Check:	Memo:
08/13/2013	Red Rock Partial Payment	PPRR	500.00	CC 290129318	Partial Payment

Association Allocation Detail

Assessment	Total:	(\$475.00)
Date: Description: Code: Amount:		
03/01/2011 Assessment MAHOA		-475.00

RRFS Allocation Detail

RRFS	Total:	(\$25.00)
Date: Description: Code: Amount:		
07/28/2011 Lien for Delinquent Assessment LIEN		-25.00

8/13/2013 3:44:11 PM Processed By: Reporting

PAYMENT ALLOCATION REPORT

RRFS Account: **74507**
 Mgmt Account:
 Information as of: **July 09, 2013**

Account Information

Company: Spanish Trail Master Association
 Association: Spanish Trail Master Association
 Property Address: 34 Innisbrook Ave, Las Vegas NV 89113
 Owners: Timpa Trust u/t/d/ March 3, 1999; Timpa Trust u/t/d/ March 3, 1999; THORNBURG MORTGAGE SECURITIES TRUST 2007-3; COUNTRYWIDE HOME LOANS, INC.; ESTATES WEST AT SPANISH TRAIL ASSOCIATION; MERS; REPUBLIC SERVICES; SPANISH TRAIL MASTER ASSOCIATION; COUNTRYWIDE HOME LOANS, INC.; MADELAINE TIMPA, TRUSTEE; FRANK ANTHONY TIMPA, TRUSTEE; MERS

Payment Summary

Payment Processed	\$500.00
Allocation Categories	
Association	(\$450.00)
RRFS	(\$50.00)
Total Allocations	(\$500.00)

Payment Detail

Date:	Description:	Code:	Amount:	Check:	Memo:
07/09/2013	Red Rock Partial Payment	PPRR	500.00	CC 290125492	Partial payment

Association Allocation Detail

Late Fee		Total:	(\$100.00)
Date:	Description:	Code:	Amount:
11/16/2010	Late Fee	RRLF	-25.00
12/16/2010	Late Fee	RRLF	-25.00
01/16/2011	Late Fee	RRLF	-25.00
02/16/2011	Late Fee	RRLF	-25.00

Assessment		Total:	(\$350.00)
Date:	Description:	Code:	Amount:
03/01/2011	Assessment	MAHOA	-350.00

RRFS Allocation Detail

RRFS		Total:	(\$50.00)
Date:	Description:	Code:	Amount:
07/28/2011	Lien for Delinquent Assessment	LIEN	-50.00

7/9/2013 12:27:55 PM Processed By: Reporting



Red Rock Financial Services

Numbers of Pages 5

January 26, 2012

Miles, Bauer, Bergstrom & Winters LLP

Attn: Alexander Bhame

Via Email: abhame@mileslegal.com

Re: 34 Innisbrook Ave, Las Vegas, NV 89113
Spanish Trail Master Association / R74507

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

In response to your request for payoff figures for the above reference account, the following accounting ledger is a breakdown for the payoff request.

The current balance is \$9,255.44 **(Please collect additional \$200.00 transfer fee for new owner payable to: Spanish Trail Master Association)**. This demand and its balance due will expire on 2/10/12. You MUST request an update as this balance will only be valid through the date above. Payment received after the expiration date will not be accepted if the balance has changed. Failure to remit the balance by the expiration date may result in the continuation of the collection process at an additional cost. Check(s) should be made payable to Red Rock Financial Services and mailed to the address below.

Spanish Trail Master Association and/or the Management Company's transfer fees as well as other fees and costs may not be included. You must contact Spanish Trail Master Association directly for those additional amounts at 702-367-8747.

If you have any questions, please contact our office at 702-932-6887.

Regards,

Red Rock Financial Services

Red Rock Financial Services

■ 7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rrfs.com

■ Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702.341.7733

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

RRFS000569

74507

DOUGLAS E. MILES *
 Also Admitted in California and
 Illinois
 RICHARD J. BAUER, JR. *
 JEREMY T. BERGSTROM
 Also Admitted in Arizona
 FRED TIMOTHY WINTERS*
 KEENAN E. McCLENAHAN*
 MARK T. DOMEYER*
 Also Admitted in District of
 Columbia & Virginia
 TAMI S. CROSBY*
 L. BRYANT JAQUEZ *
 GINA M. CORENA
 WAYNE A. RASH *
 ROCK K. JUNG
 VY T. PHAM *
 KRISTA J. NIELSON
 HADI R. SEYED-ALI *
 JORY C. GARABEDIAN
 THOMAS M. MORLAN
 Admitted in California
 BRIAN H. TRAN *
 ANNA A. GHAJAR *
 CORI B. JONES *
 STEVEN E. STERN
 Admitted in Arizona & Illinois
 ANDREW H. PASTWICK
 Also Admitted in Arizona and
 California
 CATHERINE K. MASON *
 CHRISTINE A. CHUNG *
 HANH T. NGUYEN *
 THOMAS B. SONG *
 S. SHELLY RAISZADEH *
 SHANNON C. WILLIAMS *
 ABTIN SHAKOURI *
 LAWRENCE R. BOIVIN *



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

2200 Paseo Verde Parkway, 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
 FACSIMILE (714) 481-9141



December 23, 2011

Estates West at Spanish Trail Association
 Red Rock Financial Services
 7251 Amigo Street, Suite 100
 Las Vegas, NV 89119

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 34 Innisbrook Avenue, Las Vegas, NV 89113*
MBBW File No. 11-H2280

Dear Sirs:

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

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

The association has a lien on a unit for:

...

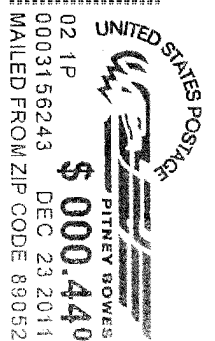
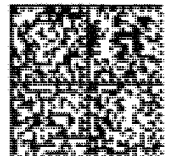
any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section

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

RRES010572

五

ATTORNEYS AT LAW

[illegible]

RRF5000579
J7A1343



Red Rock Financial Services

December 14, 2011

VIA CERTIFIED AND FIRST CLASS MAIL

SPANISH TRAIL MASTER ASSOCIATION
7495 W. MISSION HILLS DR.
LAS VEGAS, NV 89113

Re: 34 Innisbrook Ave Las Vegas, NV 89113
Spanish Trail Master Association / R74507

Dear SPANISH TRAIL MASTER ASSOCIATION:

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services correspondence to you stated that failure to reinstate the above account would result in the ***Notice of Default and Election to Sell*** being prepared and recorded on the above referenced property. Noted in the correspondence, additional fees and costs have been added to the account balance. Enclosed, please find a copy of the ***Notice of Default and Election to Sell***.

Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. All Payments must be in the form of a cashier's check or money order. Please ensure the account number is listed on any payments remitted to our office. If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above.

Additional information regarding this account can be obtained at www.rrfs.com. Please contact Red Rock Financial Services at 702-932-6887 with any questions.

Regards,

Red Rock Financial Services

Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rrfs.com

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702.341.7733

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

RRFS000584

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
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ANDREW H. PASTWICK
Also Admitted in Arizona &
California



MILES, BAUER, BERGSTROM & WINTERS, LLP
ATTORNEYS AT LAW SINCE 1983

2200 Paseo Verde Pkwy., Suite 250
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CALIFORNIA OFFICE
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RICHARD J. BAUER, JR.
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of

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CHRISTINE A. CHUNG
HANH T. NGUYEN
S. SHELLY RAISZADEH
SHANNON C. WILLIAMS
ABTIN SHAKOUBI
LAWRENCE R. BOIVIN

February 9, 2012

RED ROCK FINANCIAL SERVICES
7251 Amigo Street, Suite 100
Las Vegas, NV 89119



Re: *Property Address:* 34 Innisbrook Avenue
ACCT NO.: R74507
LOAN #: [REDACTED]
MBBW File No. 12-H0207

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 \$9,255.44. 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:

RRFS0003435

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

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

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

Our client has authorized us to make payment to you in the amount of \$2,025.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Red Rock Financial Services in the sum of \$2,025.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BANA's financial obligations towards the HOA in regards to the real property located at 34 Innisbrook 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.

RRFS000346

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct 12-H0207 Initials: SRN
 Payee: RED ROCK FINANCIAL SERVICES Check #: 13298 Date: 2/6/2012 Amount: 2,025.00

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
2/3/2012	R74507	To Cure HOA Deficiency	2,025.00			

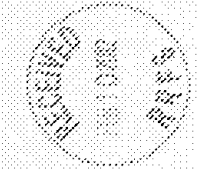
Miles, Bauer, Bergstrom & Winters, LLP
 Trust Account
 1231 E. Dyer Road, #100
 Santa Ana, CA 92705
 Phone: (714) 481-9100

Bank of America
 1100 N. Green Valley Parkway
 Henderson, NV 89074
 16-661220
 1020
 12-H0207

13298
 Date: 2/6/2012
 Amount \$**** 2,025.00

Pay \$*****Two Thousand, Twenty Five & No/100 Dollars
 to the order of
 Check Void After 90 Days

RED ROCK FINANCIAL SERVICES



[Handwritten signature]

RRFS000535

12 13298 12

ENDORSE HERE

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

RRFS000536



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

RS-12

Security Features:

Chemically Sensitive Paper

Erasure Protection
Security Screen

Authentic Watermark

Results of document alteration:

- Stains or spots may appear with chemical alteration
- White mark appears when erased
- Absence of "Original Document" verbiage on back of check
- Authentic watermark not visible when held to light

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JA1348



Red Rock Financial Services

February 17, 2012

THORNBURG MORTGAGE SECURITIES TRUST 2007-3
Attn: Mortgage Division
C/O BAC HOME LOANS SERVICING, LP
400 COUNTRYWIDE WAY SV-35
MIN 1001337-001462185-1
SIMI VALLEY, CA 93065
R74507

Re: 34 Innisbrook Ave, Las Vegas, NV 89113
Spanish Trail Master Association / R74507

To Whom It May Concern:

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services is sending this notice as a courtesy. The above referenced homeowner is currently delinquent in paying their Homeowners Association assessments. Nevada Revised Statutes allow Homeowners Associations to engage in the non-judicial foreclosure process for nonpayment of Homeowner Association assessments.

On behalf of the above mentioned Association, Red Rock Financial Services has recorded the Lien for Delinquent Assessments on 08/04/2011 and the Notice of Default and Election to Sell Pursuant to the Lien For Delinquent Assessments on 12/06/2011. According to Nevada Revised Statutes, the Notice of Default and Election to Sell must be recorded on the property for 90 days and notification must be sent to all parties listed on the Trustee Sale Guarantee via certified mail before the Association can exercise its rights to enforce the Notice of Default and Election to Sell.

Currently, Red Rock Financial Services is approximately 60 days into the mandatory 90-day waiting period. Please consider this your final notice before the Association exercises its right to continue with the non-judicial foreclosure process by recording the Notice of Sale. The Notice of Sale will be sent via first class and certified mail to those listed on the Trustee Sale Guarantee and other parties who have a vested interest in the property.

The Association's Lien for Delinquent Assessments is Junior only to the Senior Lender/Mortgage Holder. This Lien may affect your position. To reinstate the above account, you must contact Red Rock Financial Services to obtain "up to date" payoff figures. Payment must be made payable to Red Rock Financial Services.

At this time, it is possible that we have been unable to reach the borrower. Your office may have been provided a more current mailing address. Please contact the borrower at any known addresses and have them contact our office immediately, as the above property is in default and may be subject to a foreclosure sale.

Thank you for your assistance in this matter. Additional information regarding this account can be obtained at www.rrfs.com. Please contact the office of Red Rock Financial Services at 702-932-6887 with any questions.

Regards,
Red Rock Financial Services

Red Rock Financial Services

7251 Amigo Street, Suite 100 Las Vegas, NV 89119

www.rrfs.com

Phone: 702-932-6887 Toll Free: 888-319-9460 Fax: 702.341.7733

By sending your check, please be aware that you are authorizing Red Rock Financial Services to use the information on your check to make a one-time electronic debit from your account at the financial institution indicated on your check. This electronic debit will be for the amount of your check; no additional amount will be added to the amount. (If we cannot collect your electronic payment, we will issue a draft against your account.) Please contact the Accounts Receivable department at (702) 932-6887 to learn about other payment options should you prefer to not have your payment processed in this manner.

RRFS000549



RED ROCK FINANCIAL SERVICES

April 7, 2010

Miles, Bauer, Bergstrom & Winters, LLP
Attn: Rock K. Jung, Esq.,
2200 Paseo Verde Parkway, Suite 250
Henderson, Nevada 89052

Dear Rock K. Jung, Esq.,

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services is in receipt of numerous correspondences regarding your interpretation of NRS 116.3116 and NRS 3116.3102. Our response to your correspondence is as follows:

When our office records a Notice of Default on behalf of the Homeowners Association, we are required by NRS 116.31162 to send a copy of the Notice of Default to all who have a vested interest in the property. As your client reflected as having a vested interest for all properties listed on Exhibit A, a copy of the Notice of Default was provided. Those that have a vested interest in the property are not required but may pay the debt that is attached to that specific Notice of Default.

In the correspondence you state that our lien is "Junior" to your client's, which we agree. However, we do not agree with your interpretation and implementation of NRS 116.3102 under the current situation.

The industry standard interpretation of NRS 116.3102 and our interpretation are as follows: The First Mortgage is "Senior" to the Homeowners Association. Therefore, when the First Mortgage forecloses, according to NRS 116.3102, the First Mortgage is responsible to pay six months of past due assessments from the time the First Mortgage foreclosed. Therefore, NRS 116.3102 only applies when someone who is "Senior" to the Homeowners Association forecloses on the property in question. Please note that as of October 1, 2009, it is a nine month super-priority lien amount.

Anyone who has a vested interest may pay the debt at any time prior to the Homeowners Association proceeding with the non-judicial foreclosure process however the debt must be paid in full. NRS 116.3102 does not apply in this situation.

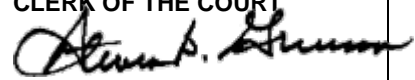
If your client wishes pay, your client must submit Payoff Request in writing for each property to our office. If your client does not wish pay, please be aware that our office will continue to notify them of any further collection action we may take on the properties listed on Exhibit A as required by law.

We feel we have expressed our position in this matter clearly on numerous occasions; as such we will no longer be addressing these notices. If you feel you have any further information you wish to provide, please feel free to respond to this letter via first class mail or our website www.rrfs.com.

Sincerely,

Kimberlee Sibley
Red Rock Financial Services

KJS/jmt



ERR

MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215

THERA A. COOPER, ESQ.
Nevada Bar No. 13468

AKERMAN LLP

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: melanie.morgan@akerman.com

Email: theracooper@akerman.com

*Attorneys for defendant, counterclaimant, and counter-
defendant Thornburg Mortgage Securities Trust 2007-3*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3, *et al.*,

Defendants.

Case No.: A-14-710161-C

Division: XXVI

**ERRATA TO THORNBURG
MORTGAGE SECURITIES TRUST
2007-3'S REPLY SUPPORTING ITS
MOTION TO STRIKE PLAINTIFF'S
SUPPLEMENTAL OPPOSITION TO
ITS MOTION FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, SURREPLY
SUPPORTING SUMMARY JUDGMENT**

Date of hearing: July 3, 2018

Time of hearing: 9:30 a.m.

AND ALL RELATED ACTIONS.

Thornburg files this errata to its reply supporting its motion to strike plaintiff's supplemental opposition to its motion for summary judgment or, in the alternative, surreply supporting summary judgment filed June 29, 2018.

...

...

...

The motion was erroneously filed with an incorrect title. A correct copy of the motion to strike is attached.

Dated this 2nd day of July, 2018. **AKERMAN LLP**

/s/ Thera Cooper

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

THERA A. COOPER, ESQ.

Nevada Bar No. 13468

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

*Attorneys for Thornburg Mortgage Securities Trust
2007-3*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 2nd day of July, 2018, I caused to be served a true and correct copy of the foregoing **ERRATA TO THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S REPLY SUPPORTING ITS MOTION TO STRIKE PLAINTIFF'S SUPPLEMENTAL OPPOSITION TO ITS MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SURREPLY SUPPORTING SUMMARY JUDGMENT**, in the following manner:

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

LEACH JOHNSON SONG & GRUCHOW

Robin Callaway	rcallaway@leachjohnson.com
Patty Gutierrez	pgutierrez@leachjohnson.com
Ryan Hastings	rhastings@leachjohnson.com
Gina LaCascia	glacascia@leachjohnson.com
Sean Anderson	sanderson@leachjohnson.com

OLYMPIA LAW, P.C.

Bryan Naddafi, Esq.	bryan@olympialawpc.com
---------------------	------------------------

LAW OFFICES OF DONALD WILLIAMS

Donald H. Williams, Esq.	dwilliams@dhwlawlv.com
Robin Gullo	rgullo@dhwlawlv.com

KOCH & SCOW LLC

David R. Koch	dkoch@kochscow.com
Staff	aeshenbaugh@kochscow.com
Steven B. Scow	sscow@kochscow.com

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

Eserve Contact	office@bohnlawfirm.com
Michael F. Bohn Esq	mbohn@bohnlawfirm.com

LEGAL AID CENTER OF SOUTHERN NEVADA

Venicia Considine	vconsidine@lacsns.org
-------------------	-----------------------

LAW OFFICES OF GREGORY J. WALCH

Gregory Walch	greg.walch@lvvwd.com
---------------	----------------------

/s/ Erin Surguy

An Employee of Akerman LLP

MOT

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

THERA A. COOPER, ESQ.

Nevada Bar No. 13468

AKERMAN LLP

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: melanie.morgan@akerman.com

Email: thera.cooper@akerman.com

*Attorneys for defendant, counterclaimant, and
counter-defendant Thornburg Mortgage Securities
Trust 2007-3*

EIGHTH JUDICIAL DISTRICT COURT**CLARK COUNTY, NEVADA**

SATICOY BAY LLC SERIES 34
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3, *et al.*,

Defendants.

And All Related Actions.

Case No.: A-14-710161-C

Division: XXVI

**THORNBURG MORTGAGE
SECURITIES TRUST 2007-3'S
MOTION TO STRIKE PLAINTIFF'S
SUPPLEMENTAL OPPOSITION TO
ITS MOTION FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, SURREPLY
SUPPORTING SUMMARY
JUDGMENT**

Date of Hearing: July 3, 2018

Time of Hearing: 9:30 a.m.

Thornburg Mortgage Securities Trust 2007-3 moves to strike Saticoy Bay LLC Series 34
Innisbrook's untimely supplemental opposition to its motion for summary judgment, or in the
alternative moves for leave to submit surreply and surreplies in support of its motion for summay
judgment

...

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Summary judgment briefing closed on June 6, 2018, and the hearing on the parties' competing motions for summary judgment is scheduled for July 3, 2018. Now, over a month after Saticoy opposed Thornburg's motion and over three weeks after filing its reply, Saticoy files a rogue supplemental opposition without seeking leave of court. The deed of trust at issue secures a multi-million dollar loan. Saticoy should not be permitted to disregard procedural rules. The supplement should be stricken.

To the extent the court considers the untimely supplement, Thornburg requests leave to submit its arguments below in surreply and a continuation of the July 3, 2018 hearing.

II. Argument

A. The court should strike Saticoy's untimely rogue supplement.

EDCR 2.20(i) provides supplemental briefs are only permitted if filed within the original time limitations or "by order of the court." Saticoy's supplement does not meet either requirement.

Saticoy's supplement is untimely. It was filed nearly a month after Thornburg's May 29, 2018 reply brief and three weeks after Saticoy filed its reply supporting its own motion. Summary judgment briefing has been closed for weeks. Saticoy did not request leave to file its supplement. The court did not authorize Saticoy's supplement.

There is no new evidence or case law warranting the supplement. All of the evidence Saticoy cites has been available to it since the close of discovery. Saticoy could, and should, have raised its contentions in its motion for summary judgment, opposition to Thornburg's motion, or reply. Thornburg will be prejudiced if the court considers Saticoy's supplement. Thornburg's and Saticoy's motions for summary judgment were fully briefed on June 4, 2018.

B. The supplement's arguments fail on the merits.

Should the court consider the Saticoy's supplement, Thornburg requests the court consider Thornburg's arguments in surreply, set a deadline for the surreply, and continue the hearing on the competing motions for summary judgment. Saticoy's arguments fail on the merits. Saticoy's supplement seeks to undermine the sufficiency of Bank of America's superpriority tender. In sum,

1 Saticoy asserts Bank of America tried to pay the wrong lien directing the court to the account
2 number on the check to support this notion. Saticoy is wrong.

3 Thornburg submitted admissible evidence demonstrating its tender. A copy of Bank of
4 America's superpriority check is located in Red Rock Financial Service's LLC's business records and
5 is attached to Thornburg's motion at Exhibit F.¹ See **Ex. F**, at RRFS000569, 580, and 553-535.
6 These records establish Bank of America delivered payment of \$2,025 for Red Rock file number
7 R74507 on February 6, 2012. See *id*, at RRFS000535. Red Rock file number R74507 is associated
8 with the Spanish Trail Master Association's lien. See *id*, at RRFS000580. Even assuming Saticoy's
9 assertions are correct and Bank of America also tendered payment for the sub-association's lien,
10 admissible evidence proves Red Rock received a check to pay the Spanish Trails Master
11 Association's superpriority lien prior to the sale.² There is no genuine dispute whether Bank of
12 America tendered the correct payment amount to the correct association in advance of the sale.
13 Saticoy's supplement fails.

14 ...

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21 ...

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26
27 ¹ Exhibit F to Thornburg's motion for summary judgment is attached for ease of reference.

28 ² Thornburg inadvertently attached the Miles Bauer affidavit for Red Rock account number R74509 to its motion for summary judgment as Exhibit H. Thornburg filed an errata on June 28, 2018 to correct Exhibit H as the Miles Bauer affidavit for Red Rock account number R74507.

1 **VI. CONCLUSION**

2 The court should strike Saticoy's untimely unauthorized supplement. But, to the extent the
3 court considers the merits of the supplement, admissible evidence demonstrates Thornburg tendered
4 payment for the correct superpriority lien prior to the sale. The superpriority lien was discharged
5 prior to the sale, and Saticoy took its interest subject to Thornburg's deed of trust.

6 DATED this 29th day of June, 2018.

7 **AKERMAN LLP**

8 /s/ Thera A. Cooper

9 MELANIE D. MORGAN, ESQ.

10 NEVADA BAR NO. 8215

11 THERA A. COOPER, ESQ.

12 Nevada Bar No. 13468

13 1635 Village Center Circle, Suite 200

14 Las Vegas, Nevada 89134

15 *Attorneys Thornburg Mortgage*
16 *Securities Trust 2007-3*
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 29th day of July, 2018, I caused to be served a true and correct copy of the foregoing **THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S MOTION TO STRIKE PLAINTIFF'S SUPPLEMENTAL OPPOSITION TO ITS MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SURREPLY SUPPORTING SUMMARY JUDGMENT**, in the following manner:

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

LEACH JOHNSON SONG & GRUCHOW

Robin Callaway	rcallaway@leachjohnson.com
Patty Gutierrez	pgutierrez@leachjohnson.com
Ryan Hastings	rhastings@leachjohnson.com
Gina LaCascia	glacascia@leachjohnson.com
Sean Anderson	sanderson@leachjohnson.com

OLYMPIA LAW, P.C.

Bryan Naddafi, Esq.	bryan@olympialawpc.com
---------------------	------------------------

LAW OFFICES OF DONALD WILLIAMS

Donald H. Williams, Esq.	dwilliams@dhwlawlv.com
Robin Gullo	rgullo@dhwlawlv.com

KOCH & SCOW LLC

David R. Koch	dkoch@kochscow.com
Staff	aeshenbaugh@kochscow.com
Steven B. Scow	sscow@kochscow.com

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

Eserve Contact	office@bohnlawfirm.com
Michael F. Bohn Esq	mbohn@bohnlawfirm.com

LEGAL AID CENTER OF SOUTHERN NEVADA

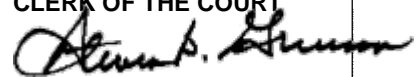
Venicia Considine	vconsidine@lacs.org
-------------------	---------------------

LAW OFFICES OF GREGORY J. WALCH

Gregory Walch	greg.walch@lvvwd.com
---------------	----------------------

/s/ Erin Surguy

An Employee of Akerman LLP



ANS
LEACH JOHNSON SONG & GRUCHOW
SEAN L. ANDERSON
Nevada Bar No. 7259
RYAN D. HASTINGS
Nevada Bar No. 12394
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148
Telephone: (702) 538-9074
Facsimile: (702) 538-9113
Attorneys for Counter-Defendant
Spanish Trail Master Association

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLS SERIES 34
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE
SECURITIES TRUST 2007-3;
RECONSTRUCT COMPANY, N.A. a
division of BANK OF AMERICA; FRANK
TIMPA and MADELAINE TIMPA,
individually and as trustees of the TIMPA
TRUST,

Defendants.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3,

Counterclaimant

vs.

SATICOY BAY LLC SERIES 34
INNISBROOK, a Nevada limited-liability
company; SPANISH TRAIL MASTER
ASSOCIATION, a Nevada Non-Profit
Corporation; RED ROCK FINANCIAL
SERVICES, an unknown entity; FRANK
TIMPA, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Counter-Defendants.

Case No.: A-14-710161-C
Dept. No.: XXVI

**SPANISH TRAIL MASTER
ASSOCIATION'S ANSWER TO
SATICOY BAY'S THIRD AMENDED
COMPLAINT**

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148
Telephone: (702) 538-9074 - Facsimile (702) 538-9113

JA1359

RED ROCK FINANCIAL SERVICES,

Counterclaimant

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3; COUNTRYWIDE HOME
LOANS, INC.; ESTATES WEST AT
SPANISH TRAILS; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; REPUBLIC SERVICES;
LAS VEGAS VALLEY WATER
DISTRICT; FRANK TIMPA and
MADELAINE TIMPA, individually and as
trustees of the TIMPA TRUS U/T/D March
3, 1999; and DOES 1-100, inclusive,

Counter-Defendants.

**SPANISH TRAIL MASTER ASSOCIATION'S ANSWER TO SATICOY BAY'S THIRD
AMENDED COMPLAINT**

Counter-Defendant Spanish Trail Master Association, (the "Association") by and through its attorneys, Leach Johnson Song & Gruchow, Answers Saticoy Bay's ("Saticoy") Third Amended Complaint ("Complaint") as follows:

1. Answering Paragraph 1 of the Complaint, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

2. Answering Paragraph 2 of the Complaint, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

3. Answering Paragraph 3 of the Complaint, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

4. Answering Paragraph 4 of the Complaint, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

THIRD CLAIM FOR RELIEF

14. The Association repeats and re-alleges its responses to Paragraphs 1 through 13 as set forth herein.

15. Answering Paragraph 15, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

16. Answering Paragraph 16, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

17. Answering Paragraph 17, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

18. Answering Paragraph 18, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

19. Answering Paragraph 19, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

FOURTH CLAIM FOR RELIEF

20. The Association repeats and re-alleges its responses to Paragraphs 1 through 19 as set forth herein.

21. Answering Paragraph 21, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

22. Deny.

23. Answering Paragraph 23, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

24. Deny.

25. Answering Paragraph 25, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

26. Deny.

27. Deny.

28. Deny.

///

FIFTH CLAIM FOR RELIEF

29. The Association repeats and re-alleges its responses to Paragraphs 1 through 28 as set forth herein.

30. Answering Paragraph 30, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

31. Deny.

32. Deny.

AFFIRMATIVE DEFENSES

As a separate defense to the Complaint, the Association alleges the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against this Association upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Association alleges that the occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third party or parties over whom this Association has no control.

THIRD AFFIRMATIVE DEFENSE

All risks and dangers involved in the factual situation described in the Complaint were open, obvious and known to Saticoy, and Saticoy voluntarily assumed said risks and dangers.

FOURTH AFFIRMATIVE DEFENSE

The Association is informed, believes, and thereon alleges that the claims of Saticoy are reduced, modified and/or barred by the Doctrine of Laches.

FIFTH AFFIRMATIVE DEFENSE

The Association is informed, believes, and thereon alleges that the claims of Saticoy are reduced, modified and/or barred by the Doctrine of Unclean Hands.

SIXTH AFFIRMATIVE DEFENSE

Saticoy is barred from relief on the grounds that they have acted in bad faith.

SEVENTH AFFIRMATIVE DEFENSE

The Association is informed, believes, and thereon alleges that the claims of Saticoy are reduced, modified and/or barred by the Doctrine of Waiver.

EIGHTH AFFIRMATIVE DEFENSE

That is has become necessary for the Association to retain the law firm of Leach Johnson Song & Gruchow, to defend and litigate this action, and the Association is therefore entitled to reasonable attorneys' fees.

NINTH AFFIRMATIVE DEFENSE

Saticoy is barred from recovering any special damages herein for failure to specifically allege the kind of special damage claimed, pursuant to NRCP 9(g).

TENTH AFFIRMATIVE DEFENSE

Saticoy is barred from relief on the grounds that they have failed to mitigate their damages.

ELEVENTH AFFIRMATIVE DEFENSE

The Association performed no acts or omissions that would warrant the imposition of any damages, including exemplary or punitive damages.

TWELFTH AFFIRMATIVE DEFENSE

Saticoy, by its own acts and conduct, waived and abandoned any and all claims as alleged herein against the Association.

THIRTEENTH AFFIRMATIVE DEFENSE

The Association denies each and every allegation of Saticoy not specifically admitted or otherwise pled herein.

FOURTEENTH AFFIRMATIVE DEFENSE

Saticoy suffered no damages as a result of the events underlying the allegations contained in the Complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

The Association was required by Nevada law and the CC&Rs to hire a third-party to collect past due assessments of its unit owners.

1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2 Saticoy lacks standing.

3 **SEVENTEENTH AFFIRMATIVE DEFENSE**

4 Saticoy's claims are barred by applicable statutes of limitations and/or repose.

5 **EIGHTEENTH AFFIRMATIVE DEFENSE**

6 Saticoy failed to name necessary and indispensable parties.

7 **NINETEENTH AFFIRMATIVE DEFENSE**

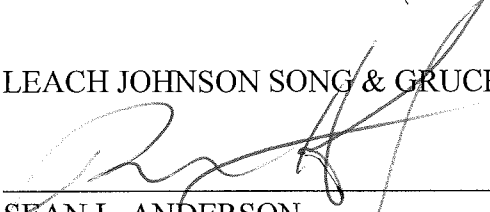
8 Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been
9 alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon the
10 filing of the Association's Answer, and therefore, the Association reserves the right to amend its
11 Answer to allege additional affirmative defenses is subsequent investigation warrants.

12 **WHEREFORE**, the Association requests judgment as follows:

- 13 1. Saticoy takes nothing by virtue of the Complaint;
- 14 2. That Saticoy's Complaint be dismissed with prejudice and the Association be
- 15 dismissed from this action;
- 16 3. That the Association be awarded costs of defense, including reasonable attorneys'
- 17 fees in defending against Saticoy's Complaint; and,
- 18 4. For such other relief that the Court may deem just and proper.

19 Dated this 19th day of July, 2018.

20 LEACH JOHNSON SONG & GRUCHOW

21 
22 SEAN L. ANDERSON
23 Nevada Bar No. 7259
24 RYAN D. HASTINGS
25 Nevada Bar No. 12394
26 8945 West Russell Road, Suite 330
27 Las Vegas, Nevada 89148
28 *Attorneys for Counter-Defendant*
Spanish Trail Master Association

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the undersigned, an employee of LEACH JOHNSON SONG & GRUCHOW, hereby certifies that on this 19th day of July, 2018, service of the foregoing, *Spanish Trail Master Association's Answer to Saticoy Bay's Third Amended Complaint* was made on all parties via the Court's CM/ECF System, as follows:

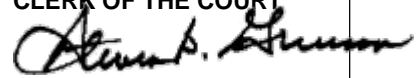
LAW OFFICES OF MICHAEL F. BOHN
367 E. Warm Springs Road, Suite 140
Las Vegas, NV 89119
mbohn@bohnlawfirm.com
jarlitz@bohnlawfirm.com
*Attorneys for Saticoy Bay
LLC Series 34 Innisbrook*

AKERMAN, LLP
1635 Village Center Circle, #200
Las Vegas, NV 89134
melanie.morgan@akerman.com
Jason.zummo@akerman.com
*Attorneys for Thornburg Mortgage Securities
Trust 2007-3*

KOCH & SCOW LLC
11500 S. Eastern Avenue, #210
Henderson, NV 89052
dkoch@kochscow.com
sscow@kochscow.com
Attorneys for Red Rock Financial Services

/s/ Gina M. LaCascia

An employee of LEACH JOHNSON
SONG & GRUCHOW



1 **ANS**
2 **LEACH JOHNSON SONG & GRUCHOW**
3 **SEAN L. ANDERSON**
4 Nevada Bar No. 7259
5 **RYAN D. HASTINGS**
6 Nevada Bar No. 12394
7 8945 West Russell Road, Suite 330
8 Las Vegas, Nevada 89148
9 Telephone: (702) 538-9074
10 Facsimile: (702) 538-9113
11 *Attorneys for Counter-Defendant*
12 *Spanish Trail Master Association*

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

10 SATICOY BAY LLS SERIES 34
11 INNISBROOK,

12 Plaintiff,

13 vs.

14 THORNBURG MORTGAGE
15 SECURITIES TRUST 2007-3;
16 RECONSTRUCT COMPANY, N.A. a
17 division of BANK OF AMERICA; FRANK
18 TIMPA and MADELAINE TIMPA,
19 individually and as trustees of the TIMPA
20 TRUST,

21 Defendants.

22 THORNBURG MORTGAGE SECURITIES
23 TRUST 2007-3,

24 Counterclaimant

25 vs.

26 SATICOY BAY LLC SERIES 34
27 INNISBROOK, a Nevada limited-liability
28 company; SPANISH TRAIL MASTER
ASSOCIATION, a Nevada Non-Profit
Corporation; RED ROCK FINANCIAL
SERVICES, an unknown entity; FRANK
TIMPA, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Counter-Defendants.

Case No.: A-14-710161-C
Dept. No.: XXVI

**SPANISH TRAIL MASTER
ASSOCIATION'S ANSWER TO
THORNBURG MORTGAGE'S
COUNTERCLAIMS**

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

JA1367

RED ROCK FINANCIAL SERVICES,

Counterclaimant

vs.

THORNBURG MORTGAGE SECURITIES
TRUST 2007-3; COUNTRYWIDE HOME
LOANS, INC.; ESTATES WEST AT
SPANISH TRAILS; MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC.; REPUBLIC SERVICES;
LAS VEGAS VALLEY WATER
DISTRICT; FRANK TIMPA and
MADELAINE TIMPA, individually and as
trustees of the TIMPA TRUS U/T/D March
3, 1999; and DOES 1-100, inclusive,

Counter-Defendants.

**SPANISH TRAIL MASTER ASSOCIATION'S ANSWER TO THORNBURG
MORTGAGE'S COUNTERCLAIMS**

Counter-Defendant Spanish Trail Master Association, (the "Association") by and through
its attorneys, Leach Johnson Song & Gruchow, Answers Thornburg Mortgage's Answer to
Saticoy Bay's Third Amended Complaint and Counterclaims ("Counterclaim") as follows:

INTRODUCTION

1. Answering Paragraph 1 of the Counterclaim, the Association is without sufficient
knowledge to form a belief as to the truth of the allegations contained therein and therefore
denies the same.

2. Answering Paragraph 2 of the Counterclaim, the Association is without sufficient
knowledge to form a belief as to the truth of the allegations contained therein and therefore
denies the same.

JURISDICTION AND VENUE

3. Answering Paragraph 3 of the Counterclaim, the Association is without sufficient
knowledge to form a belief as to the truth of the allegations contained therein and therefore
denies the same.

///

PARTIES

4. Answering Paragraph 4 of the Counterclaim, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

5. Answering Paragraph 5 of the Counterclaim, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

6. Admit.

7. Answering Paragraph 7 of the Counterclaim, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

8. Deny.

9. Answering Paragraph 9 of the Counterclaim, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

GENERAL ALLEGATIONS

10. Answering Paragraph 1, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

11. The Association affirmatively states that the allegations contained in Paragraph 2 refer to a Deed of Trust, the terms of which speaks for itself, and which the Association is not required to admit or deny. To the extent that an answer may be required to this Paragraph, the Association is without sufficient knowledge to form a belief as to the truth of the allegations and therefore denies the same.

12. Answering Paragraph 3, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

13. Answering Paragraph 4, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

///

1 14. Answering Paragraph 5, the Association is without sufficient knowledge to form a
2 belief as to the truth of the allegations contained therein and therefore denies the same.

3 15. The Association affirmatively states that the allegations contained in Paragraph 6
4 refer to a Notice of Delinquent Assessment Lien, the terms of which speaks for itself, and which
5 the Association is not required to admit or deny. To the extent that an answer may be required to
6 this Paragraph, the Association is without sufficient knowledge to form a belief as to the truth of
7 the allegations and therefore denies the same.

8 16. The Association affirmatively states that the allegations contained in Paragraph 7
9 refer to a Notice of Default and Election to Sell, the terms of which speaks for itself, and which
10 the Association is not required to admit or deny. To the extent that an answer may be required to
11 this Paragraph, the Association is without sufficient knowledge to form a belief as to the truth of
12 the allegations and therefore denies the same.

13 17. The Association affirmatively states that the allegations contained in Paragraph 8
14 refer to a Notice of Foreclosure Sale, the terms of which speaks for itself, and which the
15 Association is not required to admit or deny. To the extent that an answer may be required to
16 this Paragraph, the Association is without sufficient knowledge to form a belief as to the truth of
17 the allegations and therefore denies the same.

18 18. The Association contends that the allegations contained in Paragraph 9 refer to a
19 Notice of Foreclosure Sale, the terms of which speaks for itself, and which the Association is not
20 required to admit or deny. To the extent that an answer may be required to this Paragraph, the
21 Association is without sufficient knowledge to form a belief as to the truth of the allegations and
22 therefore denies the same.

23 19. The Association contends that the allegations contained in Paragraph 10 refer to a
24 Foreclosure Deed, the terms of which speaks for itself, and which the Association is not required
25 to admit or deny. To the extent that an answer may be required to this Paragraph, the
26 Association is without sufficient knowledge to form a belief as to the truth of the allegations and
27 therefore denies the same.
28

1 20. The Association contends that the allegations contained in Paragraph 11 refer to
2 NRS Chapter 116, the terms of which speaks for itself, and which the Association is not required
3 to admit or deny. To the extent that an answer may be required to this Paragraph, the
4 Association is without sufficient knowledge to form a belief as to the truth of the allegations and
5 therefore denies the same.

6 21. The Association contends that the allegations contained in Paragraph 12 refer to
7 “HOA Foreclosure Notices”, the terms of which speaks for itself, and which the Association is
8 not required to admit or deny. To the extent that an answer may be required to this Paragraph,
9 the Association is without sufficient knowledge to form a belief as to the truth of the allegations
10 and therefore denies the same.

11 22. The Association contends that the allegations contained in Paragraph 13 refer to
12 NRS Chapter 116, the terms of which speaks for itself, and which the Association is not required
13 to admit or deny. To the extent that an answer may be required to this Paragraph, the
14 Association is without sufficient knowledge to form a belief as to the truth of the allegations and
15 therefore denies the same.

16 23. Answering Paragraph 14 of the General Allegations, the Association denies the
17 same.

18 24. Answering Paragraph 15 of the General Allegations, the Association admits the
19 same.

20 25. Answering Paragraph 16 of the General Allegations, the Association admits the
21 same.

22 26. Answering Paragraph 17 of the General Allegations, the Association admits the
23 same.

24 27. The Association contends that the allegations contained in Paragraph 18 constitute
25 conclusions of law rather than factual allegations to which an answer is required. To the extent
26 that an answer may be required to this Paragraph, the Association is without sufficient
27 knowledge to form a belief as to the truth of the allegations and therefore denies the same.

28 28. Answering Paragraph 19 of the General Allegations, the Association is without
sufficient knowledge to form a belief as to the truth of the allegations contained therein and
therefore denies the same.

1 29. Answering Paragraph 20, the Association is without sufficient knowledge to form
2 a belief as to the truth of the allegations contained therein and therefore denies the same.

3 30. Answering Paragraph 21, the Association is without sufficient knowledge to form
4 a belief as to the truth of the allegations contained therein and therefore denies the same.

5 31. Answering Paragraph 22, the Association is without sufficient knowledge to form
6 a belief as to the truth of the allegations contained therein and therefore denies the same.

7 32. The Association contends that the allegations contained in Paragraph 23 constitute
8 conclusions of law rather than factual allegations to which an answer is required. To the extent
9 that an answer may be required to this Paragraph, the Association is without sufficient
10 knowledge to form a belief as to the truth of the allegations and therefore denies the same.

11 33. The Association contends that the allegations contained in Paragraph 24 constitute
12 conclusions of law rather than factual allegations to which an answer is required. To the extent
13 that an answer may be required to this Paragraph, the Association is without sufficient
14 knowledge to form a belief as to the truth of the allegations and therefore denies the same.

15 34. The Association contends that the allegations contained in Paragraph 25 constitute
16 conclusions of law rather than factual allegations to which an answer is required. To the extent
17 that an answer may be required to this Paragraph, the Association is without sufficient
18 knowledge to form a belief as to the truth of the allegations and therefore denies the same.

19 35. Answering Paragraph 26, the Association is without sufficient knowledge to form
20 a belief as to the truth of the allegations contained therein and therefore denies the same.

21 36. Answering Paragraph 27, the Association is without sufficient knowledge to form
22 a belief as to the truth of the allegations contained therein and therefore denies the same.

23 37. Answering Paragraph 28 of the General Allegations, the Association denies the
24 same.

25 38. Answering Paragraph 29 of the General Allegations, the Association denies the
26 same.

27 39. Answering Paragraph 30 of the General Allegations, the Association admits the
28 same.

1 40. The Association contends that the allegations contained in Paragraph 31 of the
2 General Allegations refer to CC&R's, the terms of which speaks for itself, and which the
3 Association is not required to admit or deny. To the extent that an answer may be required to
4 this Paragraph, the Association is without sufficient knowledge to form a belief as to the truth of
5 the allegations and therefore denies the same.

6 41. The Association contends that the allegations contained in Paragraph 32 of the
7 General Allegations refer to CC&R's, the terms of which speaks for itself, and which the
8 Association is not required to admit or deny. To the extent that an answer may be required to
9 this Paragraph, the Association is without sufficient knowledge to form a belief as to the truth of
10 the allegations and therefore denies the same.

11 42. Answering Paragraph 33, the Association is without sufficient knowledge to form
12 a belief as to the truth of the allegations contained therein and therefore denies the same.

13 43. Answering Paragraph 34, the Association is without sufficient knowledge to form
14 a belief as to the truth of the allegations contained therein and therefore denies the same.

15 44. Answering Paragraph 35, the Association is without sufficient knowledge to form
16 a belief as to the truth of the allegations contained therein and therefore denies the same.

17 45. Answering Paragraph 36, the Association is without sufficient knowledge to form
18 a belief as to the truth of the allegations contained therein and therefore denies the same.

19 46. The Association contends that the allegations contained in Paragraph 37 of the
20 General Allegations constitute conclusions of law rather than factual allegations to which an
21 answer is required. To the extent that an answer may be required to this Paragraph, the
22 Association is without sufficient knowledge to form a belief as to the truth of the allegations and
23 therefore denies the same.

24 47. The Association contends that the allegations contained in Paragraph 38 of the
25 General Allegations constitute conclusions of law rather than factual allegations to which an
26 answer is required. To the extent that an answer may be required to this Paragraph, the
27 Association is without sufficient knowledge to form a belief as to the truth of the allegations and
28 therefore denies the same.

1 48. Answering Paragraph 39 of the General Allegations, the Association denies the
2 same.

3 49. Answering Paragraph 40 of the General Allegations, the Association denies the
4 same.

5 50. The Association contends that the allegations contained in Paragraph 41 of the
6 General Allegations refer to NRS Chapter 116, the terms of which speaks for itself, and which
7 the Association is not required to admit or deny. To the extent that an answer may be required to
8 this Paragraph, the Association is without sufficient knowledge to form a belief as to the truth of
9 the allegations and therefore denies the same.

10 51. The Association contends that the allegations contained in Paragraph 42 of the
11 General Allegations refer to NRS 116.310312, the terms of which speaks for itself, and which
12 the Association is not required to admit or deny. To the extent that an answer may be required to
13 this Paragraph, the Association is without sufficient knowledge to form a belief as to the truth of
14 the allegations and therefore denies the same.

15 52. Answering Paragraph 43 of the General Allegations, the Association denies the
16 same.

17 53. The Association contends that the allegations contained in Paragraph 44 of the
18 General Allegations constitute conclusions of law rather than factual allegations to which an
19 answer is required. To the extent that an answer may be required to this Paragraph, the
20 Association is without sufficient knowledge to form a belief as to the truth of the allegations and
21 therefore denies the same.

22 54. Answering Paragraph 45 of the General Allegations, the Association denies the
23 same.

24 55. Answering Paragraph 46 of the General Allegations, the Association denies the
25 same.

26 56. Answering Paragraph 47 of the General Allegations, the Association denies the
27 same.
28

1 57. Answering Paragraph 48 of the General Allegations, the Association denies the
2 same.

3
4 58. Answering Paragraph 49, the Association is without sufficient knowledge to form
5 a belief as to the truth of the allegations contained therein and therefore denies the same.

6
7 59. Answering Paragraph 50, the Association is without sufficient knowledge to form
8 a belief as to the truth of the allegations contained therein and therefore denies the same.

9 60. Answering Paragraph 51, the Association is without sufficient knowledge to form
10 a belief as to the truth of the allegations contained therein and therefore denies the same.

11 61. Answering Paragraph 52 of the General Allegations, the Association denies the
12 same.

13 62. Answering Paragraph 53 of the General Allegations, the Association denies the
14 same.

15 63. The Association contends that the allegations contained in Paragraph 54 of the
16 General Allegations constitute conclusions of law rather than factual allegations to which an
17 answer is required. To the extent that an answer may be required to this Paragraph, the
18 Association is without sufficient knowledge to form a belief as to the truth of the allegations and
19 therefore denies the same.

20 64. Answering Paragraph 55 of the General Allegations, the Association denies the
21 same.

22 65. Answering Paragraph 56 of the General Allegations, the Association denies the
23 same.

24 66. Answering Paragraph 57 of the General Allegations, the Association denies the
25 same.

26 67. Answering Paragraph 58 of the General Allegations, the Association denies the
27 same.
28

68. Answering Paragraph 59 of the General Allegations, the Association denies the same.

69. Answering Paragraph 60 of the General Allegations, the Association denies the same.

70. Answering Paragraph 61, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

71. Answering Paragraph 62, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

72. Answering Paragraph 63, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

73. Answering Paragraph 64, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

74. Answering Paragraph 65, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

75. Answering Paragraph 66, the Association is without sufficient knowledge to form a belief as to the truth of the allegations contained therein and therefore denies the same.

FIRST CAUSE OF ACTION
(Quiet Title/Declaratory Relief Pursuant to NRS 30.010 et seq. and NRS 40.010
versus all Parties)

76. The Association was dismissed from The First Cause of Action on October 9, 2017, therefore, the Association is not required to answer to Paragraphs 67 through 79 of the First Cause of Action.

SECOND CAUSE OF ACTION
(Permanent and Preliminary Injunction versus the Buyer)

77. The Association contends that there are no claims asserted against the Association and therefore is not required to answer to Paragraphs 80 through 88 of Second Cause of Action.

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THIRD CAUSE OF ACTION
(Wrongful Foreclosure versus the HOA, HOA Trustee, and fictitious Defendants)

78. The Association repeats and re-alleges its responses to Paragraphs 1 through 88 as set forth herein.

79. The Association contends that the allegations contained in Paragraph 90 constitute conclusions of law rather than factual allegations to which an answer is required. To the extent that an answer may be required to this Paragraph, the Association is without sufficient knowledge to form a belief as to the truth of the allegations and therefore denies the same.

80. The Association contends that the allegations contained in Paragraph 91 constitute conclusions of law rather than factual allegations to which an answer is required. To the extent that an answer may be required to this Paragraph, the Association is without sufficient knowledge to form a belief as to the truth of the allegations and therefore denies the same.

81. The Association contends that the allegations contained in Paragraph 92 constitute conclusions of law rather than factual allegations to which an answer is required. To the extent that an answer may be required to this Paragraph, the Association is without sufficient knowledge to form a belief as to the truth of the allegations and therefore denies the same.

82. The Association contends that the allegations contained in Paragraph 93 constitute conclusions of law rather than factual allegations to which an answer is required. To the extent that an answer may be required to this Paragraph, the Association is without sufficient knowledge to form a belief as to the truth of the allegations and therefore denies the same.

83. Answering Paragraph 94, the Association denies the same.

84. Answering Paragraph 95, the Association denies the same.

FOURTH CAUSE OF ACTION
(Negligence versus the HOA, HOA Trustee, and fictitious Defendants)

85. The Association repeats and re-alleges its responses to Paragraphs 1 through 95 as set forth herein.

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1 86. Answering Paragraph 97, the Association denies the same.

2 87. Answering Paragraph 98, the Association denies the same.

3 88. Answering Paragraph 99, the Association denies the same.

4 89. Answering Paragraph 100, the Association denies the same.

5 90. Answering Paragraph 101, the Association denies the same.

6 91. Answering Paragraph 102, the Association denies the same.

7 **FIFTH CAUSE OF ACTION**
8 **(Negligence Per Se versus the HOA, HOA Trustee, and fictitious Defendants)**

9 92. The Association was dismissed from The Fifth Cause of Action on October 9,
10 2017, therefore, the Association is not required to answer to Paragraphs 103 through 112 of the
11 Fifth Cause of Action.

12 **SIXTH CAUSE OF ACTION**
13 **(Breach of Contract versus the HOA and HOA Trustee)**

14 93. The Association repeats and re-alleges its responses to Paragraphs 1 through 112
15 as set forth herein.

16 94. Answering Paragraph 114, the Association denies the same.

17 95. Answering Paragraph 115, the Association denies the same.

18 96. Answering Paragraph 116, the Association denies the same.

19 97. Answering Paragraph 117, the Association denies the same.

20 **SEVENTH CAUSE OF ACTION**
21 **(Misrepresentation versus the HOA, HOA Trustee and fictitious Defendants)**

22 98. The Association repeats and re-alleges its responses to Paragraphs 1 through 117
23 as set forth herein.

24 99. Answering Paragraph 119 of the Complaint, the Association denies the same.

25 100. Answering Paragraph 120, the Association is without sufficient knowledge to form
26 form a belief as to the truth of the allegations contained therein and therefore denies the same.

27 101. The Association contends that the allegations contained in Paragraph 121
28 constitute conclusions of law rather than factual allegations to which an answer is required. To

1 the extent that an answer may be required to this Paragraph, the Association is without
2 sufficient knowledge to form a belief as to the truth of the allegations and therefore denies the
3 same.

4 102. Answering Paragraph 122, the Association denies the same.

5 103. Answering Paragraph 123, the Association denies the same.

6 104. Answering Paragraph 124, the Association denies the same.

7 105. Answering Paragraph 125, the Association denies the same.

8 106. Answering Paragraph 126, the Association denies the same.

9 107. Answering Paragraph 127, the Association denies the same.

10 **EIGHTH CAUSE OF ACTION**
11 **(Unjust Enrichment versus the Buyer, HOA, HOA Trustee, and fictitious Defendants)**

12 108. The Association repeats and re-alleges its responses to Paragraphs 1 through 127
13 as set forth herein.

14 109. Answering Paragraph 129, the Association denies the same.

15 110. Answering Paragraph 130, the Association denies the same.

16 111. Answering Paragraph 131, the Association denies the same.

17 112. Answering Paragraph 132, the Association is without sufficient knowledge to form
18 a belief as to the truth of the allegations contained therein and therefore denies the same.

19 113. Answering Paragraph 133, the Association denies the same.

20 114. Answering Paragraph 134, the Association denies the same.

21 115. Answering Paragraph 135, the Association denies the same.

22 **NINTH CAUSE OF ACTION**
23 **(Breach of the Covenant of Good Faith and Fair Dealing versus the HOA and HOA**
24 **Trustee, and the fictitious Defendants)**

25 116. The Association was dismissed from The Ninth Cause of Action on October 9,
26 2017, therefore, the Association is not required to answer to Paragraphs 136 through 142 of the
27 Ninth Cause of Action.

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1 **AFFIRMATIVE DEFENSES**

2 As a separate defense to the Counterclaim, the Association alleges the following
3 affirmative defenses:

4 **FIRST AFFIRMATIVE DEFENSE**

5 The Counterclaim fails to state a claim against this Association upon which relief can be
6 granted.

7 **SECOND AFFIRMATIVE DEFENSE**

8 The Association alleges that the occurrence referred to in the Counterclaim, and all
9 injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third
10 party or parties over whom this Association has no control.

11 **THIRD AFFIRMATIVE DEFENSE**

12 All risks and dangers involved in the factual situation described in the Counterclaim were
13 open, obvious and known to the Bank, and said Bank voluntarily assumed said risks and dangers.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 The Association is informed, believes, and thereon alleges that the claims of the Bank are
16 reduced, modified and/or barred by the Doctrine of Laches.

17 **FIFTH AFFIRMATIVE DEFENSE**

18 The Association is informed, believes, and thereon alleges that the claims of the Bank are
19 reduced, modified and/or barred by the Doctrine of Unclean Hands.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 The Bank is barred from relief on the grounds that they have acted in bad faith.

22 **SEVENTH AFFIRMATIVE DEFENSE**

23 The Association is informed, believes, and thereon alleges that the claims of the Bank are
24 reduced, modified and/or barred by the Doctrine of Waiver.

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 That is has become necessary for the Association to retain the law firm of Leach Johnson
27 Song & Gruchow, to defend and litigate this action, and the Association is therefore entitled to
28 reasonable attorneys' fees.

NINTH AFFIRMATIVE DEFENSE

The Bank is barred from recovering any special damages herein for failure to specifically allege the kind of special damage claimed, pursuant to NRCP 9(g).

TENTH AFFIRMATIVE DEFENSE

The Bank is barred from relief on the grounds that they have failed to mitigate their damages.

ELEVENTH AFFIRMATIVE DEFENSE

The Association performed no acts or omissions that would warrant the imposition of any damages, including exemplary or punitive damages.

TWELFTH AFFIRMATIVE DEFENSE

The Bank, by its own acts and conduct, waived and abandoned any and all claims as alleged herein against the Association.

THIRTEENTH AFFIRMATIVE DEFENSE

The Association denies each and every allegation of the Bank not specifically admitted or otherwise pled herein.

FOURTEENTH AFFIRMATIVE DEFENSE

The Bank suffered no damages as a result of the events underlying the allegations contained in the Counterclaim.

FIFTEENTH AFFIRMATIVE DEFENSE

The Association was required by Nevada law and the CC&Rs to hire a third-party to collect past due assessments of its unit owners.

SIXTEENTH AFFIRMATIVE DEFENSE

The Bank lacks standing.

SEVENTEENTH AFFIRMATIVE DEFENSE

The Banks' claims are barred by applicable statutes of limitations and/or repose.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Bank failed to name necessary and indispensable parties.

NINETEENTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon the filing of the Association's Answer, and therefore, the Association reserves the right to amend its Answer to allege additional affirmative defenses is subsequent investigation warrants.

WHEREFORE, the Association requests judgment as follows:

1. The Bank takes nothing by virtue of the Counterclaim;
2. That the Bank's Counterclaim be dismissed with prejudice and the Association be dismissed from this action;
3. That the Association be awarded costs of defense, including reasonable attorneys' fees in defending against the Bank's Counterclaim; and,
4. For such other relief that the Court may deem just and proper.

Dated this 19th day of July, 2018.

LEACH JOHNSON SONG & GRUCHOW

SEAN L. ANDERSON
Nevada Bar No. 7259
RYAN D. HASTINGS
Nevada Bar No. 12394
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148
Attorneys for Counter-Defendant
Spanish Trail Master Association

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the undersigned, an employee of LEACH JOHNSON SONG & GRUCHOW, hereby certifies that on this 19th day of July, 2018, service of the foregoing, *Spanish Trail Master Association's Answer to Thornburg Mortgage's Counterclaims* was made on all parties via the Court's CM/ECF System, as follows:

LAW OFFICES OF MICHAEL F. BOHN
367 E. Warm Springs Road, Suite 140
Las Vegas, NV 89119
mbohn@bohnlawfirm.com
jarlitz@bohnlawfirm.com
*Attorneys for Saticoy Bay
LLC Series 34 Innisbrook*

AKERMAN, LLP
1635 Village Center Circle, #200
Las Vegas, NV 89134
melanie.morgan@akerman.com
Jason.zummo@akerman.com
*Attorneys for Thornburg Mortgage Securities
Trust 2007-3*

KOCH & SCOW LLC
11500 S. Eastern Avenue, #210
Henderson, NV 89052
dkoch@kochscow.com
sscow@kochscow.com
Attorneys for Red Rock Financial Services

/s/ Gina M. LaCascia

An employee of LEACH JOHNSON
SONG & GRUCHOW