

**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

Electronically Filed  
Nov 23 2020 01:42 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**JOINT APPENDIX VOLUME 10**

Counsel for Appellant:

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# **EXHIBIT L**

**DECLARATION OF R. SCOTT DUGAN, SRA**

I, R. Scott Dugan, under penalty of perjury, hereby declare as follows:

1. I am licensed Certified General Appraiser in the State of Nevada.

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

3. The statements in this declaration are true and correct and made on the basis of my personal knowledge.

4. I have been retained as an expert to testify in the matter of *Saticoy Bay LLC Series 34 Innisbrook, Plaintiff(s) vs. Thornburg Mortgage Securities Trust 2007-3, Defendant(s)* filed in the Eighth Judicial District Court, District of Clark County, Nevada, Case No. A-14-710161-C.

5. I am a licensed Nevada Appraiser and Senior Managing Director of R. Scott Dugan Appraisal Company, Inc.

6. I have conducted a retroactive appraisal analysis of the property located at 34 Innisbrook Ave, Las Vegas, NV 89113. The conclusions I reached are fully expressed in the Summary Appraisal Report, a true and correct copy of which is attached hereto as Exhibit 1.

7. All opinions, analysis, and conclusions expressed in my report fully comply with the Uniform Standard of Professional Appraisal Practice promulgated by the Appraisal Standards Board and of the Appraisal Foundation and the reporting requirements of the Appraisal Institute.

8. That I declare the opinions, analysis and conclusions are expressed in my report, attached hereto as Exhibit 1, are true and correct.

9. That I incorporate into this Declaration my report in its entirety.

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

DATED this 19<sup>th</sup> day of April, 2018.



---

R. Scott Dugan

# **EXHIBIT 1**

## APPRAISAL OF REAL PROPERTY



### LOCATED AT

34 Innisbrook Avenue  
Las Vegas, NV 89113  
Estates at Spanish Trail #5 Plat Book 40 Page 6 Lot 13 Block 1

### FOR

Wright Finlay & Zak  
7785 W Sahara Avenue, Ste 200  
Las Vegas, NV 89117

### AS OF

November 07, 2014

### BY

R. Scott Dugan, SRA  
R. Scott Dugan Appraisal Company, Inc.  
8930 West Tropicana Avenue, Suite 1  
Las Vegas, NV 89147  
702-876-2000  
appraisals@rsdugan.com

R. Scott Dugan Appraisal Company, Inc.  
 8930 West Tropicana Avenue, Suite 1  
 Las Vegas, NV 89147  
 702-876-2000

February 08, 2017

Wright Finlay & Zak  
 7785 W Sahara Avenue, Ste 200  
 Las Vegas, NV 89117

Re: Property: 34 Innisbrook Avenue  
 Las Vegas, NV 89113  
 Borrower: N/A  
 File No.: 34 Innisbrook

Opinion of Value: \$ 2,000,000  
 Effective Date: November 07, 2014

As requested, we have prepared an analysis and valuation of the referenced property. The purpose of this assignment was to develop a value opinion based upon the assignment conditions and guidelines stated within the attached report. Our analysis of the subject property was based upon the property (as defined within the report) and the economic, physical, governmental and social forces affecting the subject property as of the effective date of this assignment.

The analysis and the report were developed and prepared within the stated Scope of Work and our Clarification of Scope of Work along with our comprehension of applicable Uniform Standards of Professional Appraisal Practice and specific assignment conditions provided by the client and intended user.

The findings and conclusions are intended for the exclusive use of the stated client and for the specific intended use identified within the report. The reader (or anyone electing to rely upon this report), should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions regarding the subject property.

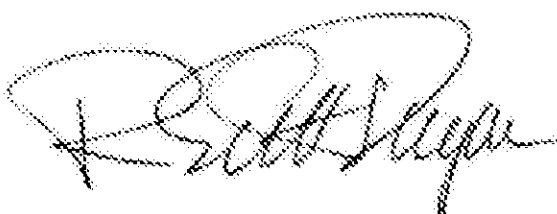
The opinion assumes the date/time of value to be prior to the HOA lien transfer on the same date and assumes the property to be in good condition and professionally marketed under normal terms.

Use and reliance on this report by the client or any third party indicates the client or third party has read the report, comprehends the basis and guidelines employed in the analysis and conclusions stated within and has accepted same as being suitable for their decisions regarding the subject property.

The value opinion reported is as of the stated effective date and is contingent upon the Certification and Limiting Conditions attached. The Assumptions and Limiting Conditions along with the Clarification of Scope of Work provide specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

Thank you for the opportunity to service your appraisal needs.

Sincerely,



R. Scott Dugan, SRA  
 R. Scott Dugan Appraisal Company, Inc.  
 License or Certification #: A.0000166-CG  
 State: NV Expires: 05/31/2017  
 appraisals@rsdugan.com

Client	Wright Finlay & Zak			File No. 34 Innisbrook	
Property Address	34 Innisbrook Avenue				
City	Las Vegas	County	Clark	State	NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa				

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RESIDENTIAL APPRAISAL REPORT

File No.: 34 Innisbrook

SUBJECT	Property Address: 34 Innisbrook Avenue		City: Las Vegas		State: NV		Zip Code: 89113									
	County: Clark		Legal Description: Estates at Spanish Trail #5 Plat Book 40 Page 6 Lot 13 Block 1													
	Assessor's Parcel #: 163-28-614-007															
	Tax Year: 2014		R.E. Taxes: \$ N/A		Special Assessments: \$ 0		Borrower (if applicable): N/A									
	Current Owner of Record: Timpa Trust/Frank A & Madelaine Timpa		Occupant: <input checked="" type="checkbox"/> Owner		<input type="checkbox"/> Tenant		<input type="checkbox"/> Vacant		<input type="checkbox"/> Manufactured Housing							
ASSIGNMENT	Project Type: <input checked="" type="checkbox"/> PUD		<input type="checkbox"/> Condominium		<input type="checkbox"/> Cooperative		<input type="checkbox"/> Other (describe)		HOA: \$ 375		<input type="checkbox"/> per year		<input checked="" type="checkbox"/> per month			
	Market Area Name: Spanish Trail - Southwest Las Vegas				Map Reference: 62-F3				Census Tract: 29.57							
	The purpose of this appraisal is to develop an opinion of: <input checked="" type="checkbox"/> Market Value (as defined), or <input type="checkbox"/> other type of value (describe)															
	This report reflects the following value (if not Current, see comments): <input type="checkbox"/> Current (the Inspection Date is the Effective Date) <input checked="" type="checkbox"/> Retrospective <input type="checkbox"/> Prospective															
	Approaches developed for this appraisal: <input checked="" type="checkbox"/> Sales Comparison Approach <input type="checkbox"/> Cost Approach <input type="checkbox"/> Income Approach (See Reconciliation Comments and Scope of Work)															
MARKET AREA DESCRIPTION	Property Rights Appraised: <input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold <input type="checkbox"/> Leased Fee <input type="checkbox"/> Other (describe)															
	Intended Use: Provide a Retrospective Market Value opinion for litigation involving the HOA foreclosure of the subject property. For definitions, refer to the attached Explanatory Comments - Retrospective Value and Definition of Value section in the Residential Certifications Addendum.															
	Intended User(s) (by name or type): Wright Finlay & Zak and/or legal professionals associated with this case.															
	Client: Wright Finlay & Zak				Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117											
	Appraiser: R. Scott Dugan, SRA				Address: 8930 W Tropicana Avenue, Suite 1, Las Vegas, NV 89147											
SITE DESCRIPTION	Location: <input type="checkbox"/> Urban		<input checked="" type="checkbox"/> Suburban		<input type="checkbox"/> Rural		Predominant Occupancy		One-Unit Housing PRICE AGE \$(000) (yrs)		Present Land Use One-Unit 70 % 2-4 Unit 0 % Multi-Unit 0 % Comm'l 0 % Golf 30 %		Change in Land Use <input checked="" type="checkbox"/> Not Likely <input type="checkbox"/> Likely * <input type="checkbox"/> In Process * * To:			
	Built up: <input checked="" type="checkbox"/> Over 75%		<input type="checkbox"/> 25-75%		<input type="checkbox"/> Under 25%											
	Growth rate: <input type="checkbox"/> Rapid		<input type="checkbox"/> Stable		<input checked="" type="checkbox"/> Slow		<input checked="" type="checkbox"/> Owner									
	Property values: <input type="checkbox"/> Increasing		<input checked="" type="checkbox"/> Stable		<input type="checkbox"/> Declining		<input type="checkbox"/> Tenant		200 Low 15							
	Demand/supply: <input type="checkbox"/> Shortage		<input checked="" type="checkbox"/> In Balance		<input type="checkbox"/> Over Supply		<input checked="" type="checkbox"/> Vacant (0-5%)		3,000 High 30							
	Marketing time: <input type="checkbox"/> Under 3 Mos.		<input checked="" type="checkbox"/> 3-6 Mos.		<input type="checkbox"/> Over 6 Mos.		<input type="checkbox"/> Vacant (>5%)		450 Pred 22							
	Market Area Boundaries, Description, and Market Conditions (including support for the above characteristics and trends): Tropicana Avenue- N, Rainbow Boulevard- E, Hacienda Avenue- S, and Durango Drive- west. The subject project of the Estates is within the MPC of Spanish Trails, which consists of custom homes. It is surrounded by a 27-hole championship golf course with common area facilities, fitness center, tennis courts, pools, perimeter fencing and 24 hour man-gated entrances. There are a variety of residential tract housing with supporting services in the immediate area. 3 miles S is shopping at the Arroyo Market Square, with office/major medical facilities located within just blocks to 4 +/- miles consisting of Spring Valley, Southern Hills and St. Rose Dominican Hospitals. 5 to 8 +/- miles E/NE are the Resort Corridor and CBD of Downtown Las Vegas (key employment centers) with good freeway and major street access. Current market conditions indicate increasing prices.															
	DESCRIPTION OF THE IMPROVEMENTS	Dimensions: 99 x 155 x 145 x 196						Site Area: .50 Acre (21,780 Sq Ft)								
		Zoning Classification: R-1						Description: Single-Family Residential (5 Units Per Acre)								
Zoning Compliance: <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Legal nonconforming (grandfathered) <input type="checkbox"/> Illegal <input type="checkbox"/> No zoning																
Are CC&Rs applicable? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown						Have the documents been reviewed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No						Ground Rent (if applicable) \$ N/A/				
Highest & Best Use as improved: <input checked="" type="checkbox"/> Present use, or <input type="checkbox"/> Other use (explain) The highest and best use is limited to single-family residential via zoning, master plan and CC&R's.																
Actual Use as of Effective Date: Single Family Residential Use as appraised in this report: Single Family Residential																
Summary of Highest & Best Use: The subject is zoned residential and limited to residential uses by zoning and CC&R's, with no other uses permitted. There is sufficient demand and therefore the current use is the Highest & Best Use.																
Utilities		Public	Other	Provider/Description		Off-site Improvements		Type	Public	Private	Topography	Built Up Pad				
Electricity		<input checked="" type="checkbox"/>	<input type="checkbox"/>	NV Energy		Street		Asphalt	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Size	Typical for Area				
Gas		<input checked="" type="checkbox"/>	<input type="checkbox"/>	SW Gas		Curb/Gutter		Concrete	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Shape	Rectangular				
Water		<input checked="" type="checkbox"/>	<input type="checkbox"/>	LLVWD		Sidewalk		Concrete	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Drainage	Appears Adequate				
Sanitary Sewer		<input checked="" type="checkbox"/>	<input type="checkbox"/>	Clark County		Street Lights		Electric	<input type="checkbox"/>	<input checked="" type="checkbox"/>	View	Golf View				
Storm Sewer		<input checked="" type="checkbox"/>	<input type="checkbox"/>	Clark County		Alley		None	<input type="checkbox"/>	<input type="checkbox"/>						
Other site elements: <input checked="" type="checkbox"/> Inside Lot <input type="checkbox"/> Corner Lot <input type="checkbox"/> Cul de Sac <input checked="" type="checkbox"/> Underground Utilities <input type="checkbox"/> Other (describe)																
FEMA Spec'l Flood Hazard Area <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No FEMA Flood Zone X FEMA Map # 32003C2535F FEMA Map Date 11/16/2011																
Site Comments: Typical utility easements and setbacks for the area, adjacent to the Spanish Trail golf course. The site is located on the north side of the street and is protected from errant golf shots by its location. Owners of golf course lots aware of the potential dangers associated with frontage along the course and errant golf shots. Some buyers may be adverse to golf frontage lots, while others pay premiums for golf and open space frontage, not adverse.																
	General Description				Exterior Description				Foundation				Basement <input checked="" type="checkbox"/> None		Heating Yes	
	# of Units		One	<input type="checkbox"/> Acc.Unit	Foundation		Concrete	Slab		Concrete	Area Sq. Ft.		Type	FWA		
	# of Stories		Two		Exterior Walls		Stucco	Crawl Space		None	% Finished		Fuel	Gas		
	Type <input checked="" type="checkbox"/> Det.		<input type="checkbox"/> Att.	<input type="checkbox"/>	Roof Surface		Tile	Basement		None	Ceiling					
	Design (Style)		Mediterranean/2-Stry		Gutters & Dwnspsts.		None	Sump Pump		<input type="checkbox"/> None	Walls					
	<input checked="" type="checkbox"/> Existing		<input type="checkbox"/> Proposed	<input type="checkbox"/> Und.Cons.	Window Type		Insulated	Dampness		<input type="checkbox"/> None	Floor					
	Actual Age (Yrs.)		17		Storm/Screens		None	Settlement		None	Outside Entry					
	Effective Age (Yrs.)		17					Infestation		None						
	Interior Description				Appliances		Attic <input type="checkbox"/> None		Amenities				Car Storage <input type="checkbox"/> None			
	Floors		Exterior Only		Refrigerator		<input checked="" type="checkbox"/>	Stairs		<input type="checkbox"/>	Fireplace(s) # 4		Woodstove(s) #		Garage # of cars ( 6 Tot.)	
Walls		Exterior Only		Range/Oven		<input checked="" type="checkbox"/>	Drop Stair		<input type="checkbox"/>	Patio Yes				Attach.		
Trim/Finish		Exterior Only		Disposal		<input checked="" type="checkbox"/>	Scuttle		<input checked="" type="checkbox"/>	Deck Yes				Detach.		
Bath Floor		Exterior Only		Dishwasher		<input checked="" type="checkbox"/>	Doorway		<input type="checkbox"/>	Porch Yes				Blt.-In 4		
Bath Wainscot		Exterior Only		Fan/Hood		<input checked="" type="checkbox"/>	Floor		<input type="checkbox"/>	Fence Yes				Carport		
Doors		Exterior Only		Microwave		<input checked="" type="checkbox"/>	Heated		<input type="checkbox"/>	Pool Yes				Driveway 2		
				Washer/Dryer		<input type="checkbox"/>	Finished		<input type="checkbox"/>	Spa Yes				Surface Pavers		
Finished area above grade contains: 11 Rooms 6 Bedrooms 7 Bath(s) 11,314 Square Feet of Gross Living Area Above Grade																
Additional features: The property is assumed to have standard features and amenities for this submarket. The gross living area is based on a full inspection performed by the appraiser in 2001.																
Describe the condition of the property (including physical, functional and external obsolescence): As of the physical date of inspection, the subject exterior was in good condition. In that this is a retrospective assignment per client request, the appraiser invokes the following Extraordinary Assumptions as of the effective date of inspection indicated within this report: 1) the condition of the interior was at minimum good 2) no obsolescence affected the interior improvements (missing kitchen appliances or bath fixtures, no AC, etc.). If one or more of these are found to be false, it could alter the value opinion and or other conclusions in this report. Refer to the addendum - definition of Extraordinary Assumption. For further information regarding the improvements, please refer to the photographs included in this report.																



# RESIDENTIAL APPRAISAL REPORT

**File No.: 34 Innisbrook**

[illegible]

RESIDENTIAL APPRAISAL REPORT

File No.: 34 Innisbrook

COST APPROACH	<b>COST APPROACH TO VALUE (if developed)</b> <input checked="" type="checkbox"/> The Cost Approach was not developed for this appraisal.			
	Provide adequate information for replication of the following cost figures and calculations.			
	Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value):		Not developed.	
	ESTIMATED <input type="checkbox"/> REPRODUCTION OR <input type="checkbox"/> REPLACEMENT COST NEW		OPINION OF SITE VALUE _____=\$	
	Source of cost data:		DWELLING Sq.Ft. @ \$ _____=\$	
	Quality rating from cost service: Effective date of cost data:		Sq.Ft. @ \$ _____=\$	
INCOME APPROACH	Comments on Cost Approach (gross living area calculations, depreciation, etc.):		Sq.Ft. @ \$ _____=\$	
	In this assignment the cost approach is not included due to the inherent difficulties in estimating the replacement cost new in today's market as well as accrued depreciation and loss in value due to various types of obsolescence. The subject is located in a master planned community.		Sq.Ft. @ \$ _____=\$	
	While building an alternative to the subject would be an option to purchasing the subject, there were sufficient sales to make the sales comparison approach far more reliable. It is the opinion of the appraiser that development of the cost approach is not necessary for the report to be meaningful as it would not contribute to the value opinion.		Sq.Ft. @ \$ _____=\$	
			Sq.Ft. @ \$ _____=\$	
			Sq.Ft. @ \$ _____=\$	
			Sq.Ft. @ \$ _____=\$	
			Sq.Ft. @ \$ _____=\$	
			Sq.Ft. @ \$ _____=\$	
			Sq.Ft. @ \$ _____=\$	
			Sq.Ft. @ \$ _____=\$	
Estimated Remaining Economic Life (if required): N/A Years		INDICATED VALUE BY COST APPROACH _____=\$		
PUD	<b>INCOME APPROACH TO VALUE (if developed)</b> <input checked="" type="checkbox"/> The Income Approach was not developed for this appraisal.			
	Estimated Monthly Market Rent \$ 6,000 X Gross Rent Multiplier N/A = \$ N/A Indicated Value by Income Approach			
	Summary of Income Approach (including support for market rent and GRM): Given the assumed good condition of the subject, a rent estimate of \$6,000 is considered reasonable. GRMs were limited, thus, data for the income approach was not considered reliable enough to complete a reasonable value opinion via this approach.			
RECONCILIATION	<b>PROJECT INFORMATION FOR PUDs (if applicable)</b> <input checked="" type="checkbox"/> The Subject is part of a Planned Unit Development.			
	Legal Name of Project: Estates at Spanish Trail			
	Describe common elements and recreational facilities: Guard gated community with three entrances, private streets, perimeter fencing, tennis courts, community pools, 27 hole golf course with clubhouse, enforcement of CC&R's, and a second security gated entrance to the subject site for added security.			
ATTACHMENTS	Indicated Value by: Sales Comparison Approach \$ 2,000,000 Cost Approach (if developed) \$ N/A Income Approach (if developed) \$ N/A			
	Final Reconciliation The cost and income approaches were not developed for the reasons stated. The value opinion is based upon sales comparison approach. The opinion considers a 90 to 180 day concurrent marketing and exposure period. The potential range of value was from about \$1,900,000 to \$2,100,000 with a central tendency of \$2,000,000. The opinion assumes the date/time of value to be prior to the HOA lien transfer on the same date and assumes the property to be in good condition and professionally marketed under normal terms.			
	This appraisal is made <input checked="" type="checkbox"/> "as is", <input type="checkbox"/> subject to completion per plans and specifications on the basis of a Hypothetical Condition that the improvements have been completed, <input type="checkbox"/> subject to the following repairs or alterations on the basis of a Hypothetical Condition that the repairs or alterations have been completed, <input type="checkbox"/> subject to the following required inspection based on the Extraordinary Assumption that the condition or deficiency does not require alteration or repair: This is a retrospective value opinion based upon a drive-by inspection and subject to the stated extraordinary assumption(s) elsewhere within this report along with the specific assignment conditions.			
	<input checked="" type="checkbox"/> This report is also subject to other Hypothetical Conditions and/or Extraordinary Assumptions as specified in the attached addenda.			
	Based on the degree of inspection of the subject property, as indicated below, defined Scope of Work, Statement of Assumptions and Limiting Conditions, and Appraiser's Certifications, my (our) Opinion of the Market Value (or other specified value type), as defined herein, of the real property that is the subject of this report is: \$ 2,000,000 , as of: November 07, 2014 , which is the effective date of this appraisal. If indicated above, this Opinion of Value is subject to Hypothetical Conditions and/or Extraordinary Assumptions included in this report. See attached addenda.			
	A true and complete copy of this report contains 24 pages, including exhibits which are considered an integral part of the report. This appraisal report may not be properly understood without reference to the information contained in the complete report.			
	Attached Exhibits:			
	<input checked="" type="checkbox"/> Letter of Transmittal <input checked="" type="checkbox"/> Sketch Addendum <input checked="" type="checkbox"/> Plat and or Flood Maps <input checked="" type="checkbox"/> GP-Res CertsAddenda <input type="checkbox"/>			
	<input checked="" type="checkbox"/> Extraordinary Assumptions <input checked="" type="checkbox"/> Market Conditions/Graph(s) <input checked="" type="checkbox"/> Assessor Page(s) <input type="checkbox"/> <input type="checkbox"/>			
<input checked="" type="checkbox"/> Additional Sales <input checked="" type="checkbox"/> Map, Photo, Sketch Addenda <input checked="" type="checkbox"/> Clarification of SOW <input type="checkbox"/> <input type="checkbox"/>				
SIGNATURES	Client Contact: Wright Finlay & Zak		Client Name: Wright Finlay & Zak	
	E-Mail: fharris@wrightlegal.net		Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117	
	<b>APPRAISER</b>		<b>SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)</b>	
Appraiser Name: R. Scott Dugan, SRA		Supervisory or Co-Appraiser Name: _____		
Company: R. Scott Dugan Appraisal Company, Inc.		Company: _____		
Phone: 702-876-2000 Fax: 702-253-1888		Phone: _____ Fax: _____		
E-Mail: appraisals@rsdugan.com		E-Mail: _____		
Date of Report (Signature): February 08, 2017		Date of Report (Signature): _____		
License or Certification #: A.0000166-CG State: NV		License or Certification #: _____ State: _____		
Designation: SRA		Designation: _____		
Expiration Date of License or Certification: 05/31/2017		Expiration Date of License or Certification: _____		
Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input checked="" type="checkbox"/> Exterior Only <input type="checkbox"/> None		Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input type="checkbox"/> Exterior Only <input type="checkbox"/> None		
Date of Inspection: February 05, 2017		Date of Inspection: _____		



Explanatory Comments

File No. 34 Innisbrook

Client	Wright Finlay & Zak				
Property Address	34 Innisbrook Avenue				
City	Las Vegas	County	Clark	State	NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa				

EXTRAORDINARY ASSUMPTION:

USPAP provides the following definition for “extraordinary assumption”:

Defined as an assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2016-2017 Edition)

This report was completed without an interior inspection of the subject. External sources including, but not limited to, information from a drive-by street inspection, appraiser's files, county records, and or multiple listing service data were relied upon for information used to describe the improvements and or condition of the subject.

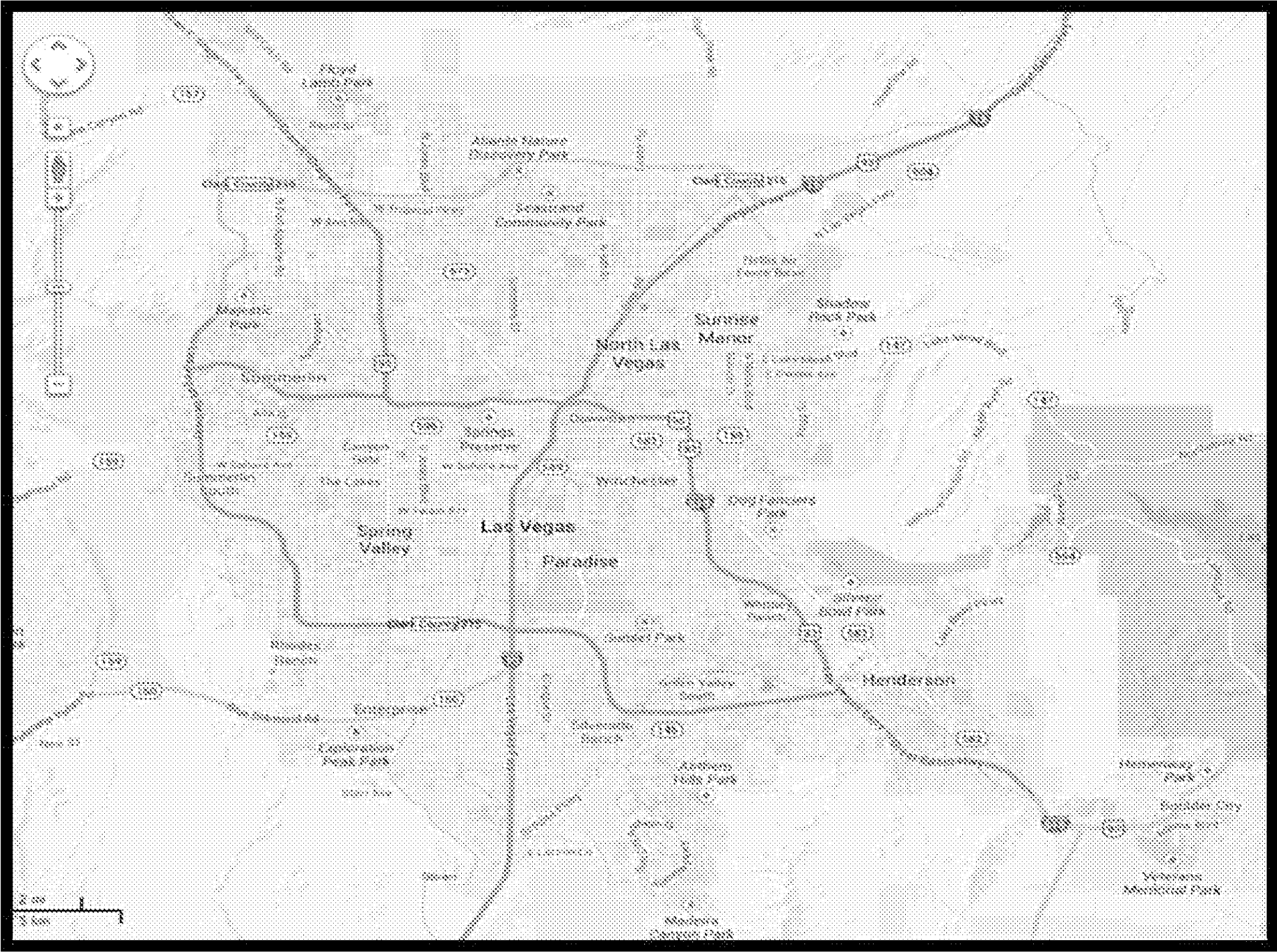
As indicated on page 1 of this report, if the assumptions invoked are found to be false, it could alter the value opinion and or other conclusions in this report. As such, the appraiser reserves the right to amend the value opinion and or conclusions based on new or revised information.

**Retrospective Value:** is generally defined as “A value opinion effective as of a specified historical date. The term does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., “retrospective market value opinion.” Source: Appraisal Institute, The Dictionary of Real Estate Appraisal, 6th ed. (Chicago: Appraisal Institute, 2015).

The final value within this appraisal assignment represents a "Retrospective" Market Value opinion as of the date of the HOA sale, November 7, 2014, the effective date of this report. The physical exterior inspection of the subject property was performed on February 5, 2017.

General Area Overview

Client	Wright Finlay & Zak			
Property Address	34 Innisbrook Avenue			
City	Las Vegas	County	Clark	State NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa			



**General Area Description:** The economy revolves around the Las Vegas Strip and Downtown Casino center along with key employment centers such as Nellis AFB, McCarran International Airport, numerous satellite retail, office and industrial districts that employ and service a base of 2-million people. The valley covers over 600+ square miles and includes parts of unincorporated Clark County, the cities of Las Vegas, North Las Vegas and Henderson. The unincorporated county areas within the valley have "Las Vegas" addresses and access to public services, making them transparent local to residents.

The valley is compact and can be crossed from any location in less than 1 hour. Buyer preferences are less dependent on location and more a function of personal choice, neighborhood attributes and housing types. The valley is divided into seven market areas (NW, NC, NE, SW, SC, SE and Henderson), each of which is further defined by political jurisdictions along with any number of master-planned communities a buyer would consider as a neighborhood, with emphasis on lifestyle, amenities and name recognition.

**Key Factors influencing Housing Market Trends in the area:** People buy or sell based on affordability, investment potential or relocation. From 2004-2007, the market was influenced by speculation. From 2007 through 2012, the market declined severely, influenced by REOs, short sales and investor activity. The market over-corrected from the peak to the bottom, creating an imbalance between "market value" and "economic value." Investors recognized the "economic imbalance" (the spread between the monthly payment vs. the monthly market rent for the same property) and used "all cash sales" to dominate the market for several years.

While investors remain active in the market, recently we are seeing "end users" (owner occupants) take a greater participation in the market. End users also include second homebuyers and long-term investors that purchase homes for rental and cash flow. Unlike investors that buy and flip homes over short periods, end users are more sensitive to shifts in financing.

As interest rates move up from their historically low levels, pricing (and therefore values) will adjust as the market attempts to sort itself out and find balance. Until normal market level balances are reached (relationship between rents and mortgage payments or economic value reaches sale price), it is likely the market will experience some fluctuation between similar units at the neighborhood level.

Key Housing Indicators - Market Conditions

Client	Wright Finlay & Zak						
Property Address	34 Innisbrook Avenue						
City	Las Vegas	County	Clark	State	NV	Zip Code	89113
Owner	Timpa Trust/Frank A & Madelaine Timpa						

The key indicators below show the relationships between employment, housing prices, affordability and movement in the market. Effective housing demand is a combination of supply, price and monthly payment.

Las Vegas Valley Market Overview - 3rd Quarter 2014							
HBR & Other Sources 3rd Annual Activity	2008	2009	2010	2011	2012	2013	2014 2-1Q13
Employment Seasonally Adjusted - {1,000's}	902.4	866.0	857.5	863.8	879.6	891.5	917.6 (P)
Median Sale Price - Resales (HBR)	\$162,999	\$123,000	\$119,000	\$110,000	\$139,900	\$167,500	\$189,950
Interest Rate % 30 Yr - (Oct 30)	6.03	5.01	4.75	3.88	3.94	4.48	3.98
PI with 80% LTV - No MI (@ 200K)	\$962	\$860	\$835	\$753	\$758	\$809	\$762
PI with 95% LTV - No MI (@ 200K)	\$1,143	\$1,021	\$991	\$894	\$901	\$960	\$905
3 BR Metro Avg Apt Rent (3rd Quarter)	\$1,105	\$1,014	\$977	\$964	\$934	\$952	\$945
Metro Median Rent (All product types)	\$1,250	\$1,195	\$1,113	\$1,115	\$1,095	\$1,100	\$1,150
GLVAR MLS & HBR SPK Activity							
Listings Total Year	61,038	57,016	56,643	55,174	40,271	39,819	32,136
Listings W/O Offer	Unavailable	8,405	12,417	8,831	3,688	7,063	8,196
Sales Volume	24,924	38,127	34,434	38,153	36,609	32,756	22,318
Sales Volume - New (HBR - All product types)	9,017	4,924	4,786	1,220	5,544	7,303	4,338
List to Sale Ratio	41%	67%	61%	69%	91%	82%	69%
Median List Price (Available Units)	\$189,500	\$149,900	\$135,000	\$128,500	\$145,000	\$186,500	\$219,900
Median Sale Price	\$222,500	\$140,000	\$135,347	\$124,750	\$132,393	\$177,500	\$202,500
Median Sale Price - New (HBR)	\$244,090	\$216,000	\$216,225	\$212,000	\$210,525	\$296,577	\$296,890
Average DOM	68	61	64	72	69	52	64
Case Shiller Jan 2000 = 100	131.4	104.38	99.2	90.48	102.19	127.23	August 136.65
HBR - Home Builder's Research, GLVAR - Greater Las Vegas Assoc. Realtors, (P) Pending							

**Economics & Statistics:** The economic indicators and statistics presented in this section and following pages are gathered from various public reporting agencies and data sources, and deemed to be consistent in their development methodology. From time to time, different methods may be employed to report various economic indicators. These indicators are presented to provide the reader with a broad overview of the general economy and factors affecting real estate and investment decisions.

**Recent Trends:** There are many reports covering the Las Vegas MSA (Metropolitan Statistical Area) that simply compare period to period and not "apples to apples." Dynamics affecting this type of data are:

- 2010:** The market was dominated by sales of REOs, "all cash" to investors and liquidated at price points, significantly below economic value (affordability) and often 35%+/- or more below value. Physical condition ranged from average to poor.
- 2011:** There was a shift from a market dominated by REOs to one dominated by short sales. Many short sales were in better condition and unlike 2010; lenders took an active participation in negotiations, increasing prices closer to economic value.
- 2012:** Short sales remained dominant and investors (due to a lack of REO inventory) shifted to short sales. Legislation made it difficult for lenders to foreclose and REO inventory was limited.
- 2013:** Observers indicate lenders are holding REO inventory (from 40,000 to 60,000 units), in effect, creating a temporary shortage. The effect of the shortage has been to increase demand and current prices. Upward shifts in mortgage rates may have a negative effect on demand from end users and could cause some cancelations in the new and resale housing market.
- 2014:** In 2013, the market continued to correct and prices rose by 20% to 30% year over year. By year-end 2013 (and heading into 2014), the market slowed as prices reached short-term peaks and inventory adjusted to demand. YTD 2014, the market continues to sort itself out as prices adjust to demand and affordability. Lower interest rates have improved affordability and we are seeing rent levels, sale prices and the Case Shiller Index improving.

**Observations and Conclusions:** Statistical analysis and year over year or period-to-period comparison are not reliable as the data reflects multiple sales of the same property (but in different condition), in the same year and or subsequent year and often, a disproportionate mix of highly dissimilar sales (condition). This will give the appearance of "appreciation", when in essence you are comparing "apples to oranges." In normal years, the sales volume reflects sales of a single property to end users as opposed to sale resale of the same property.

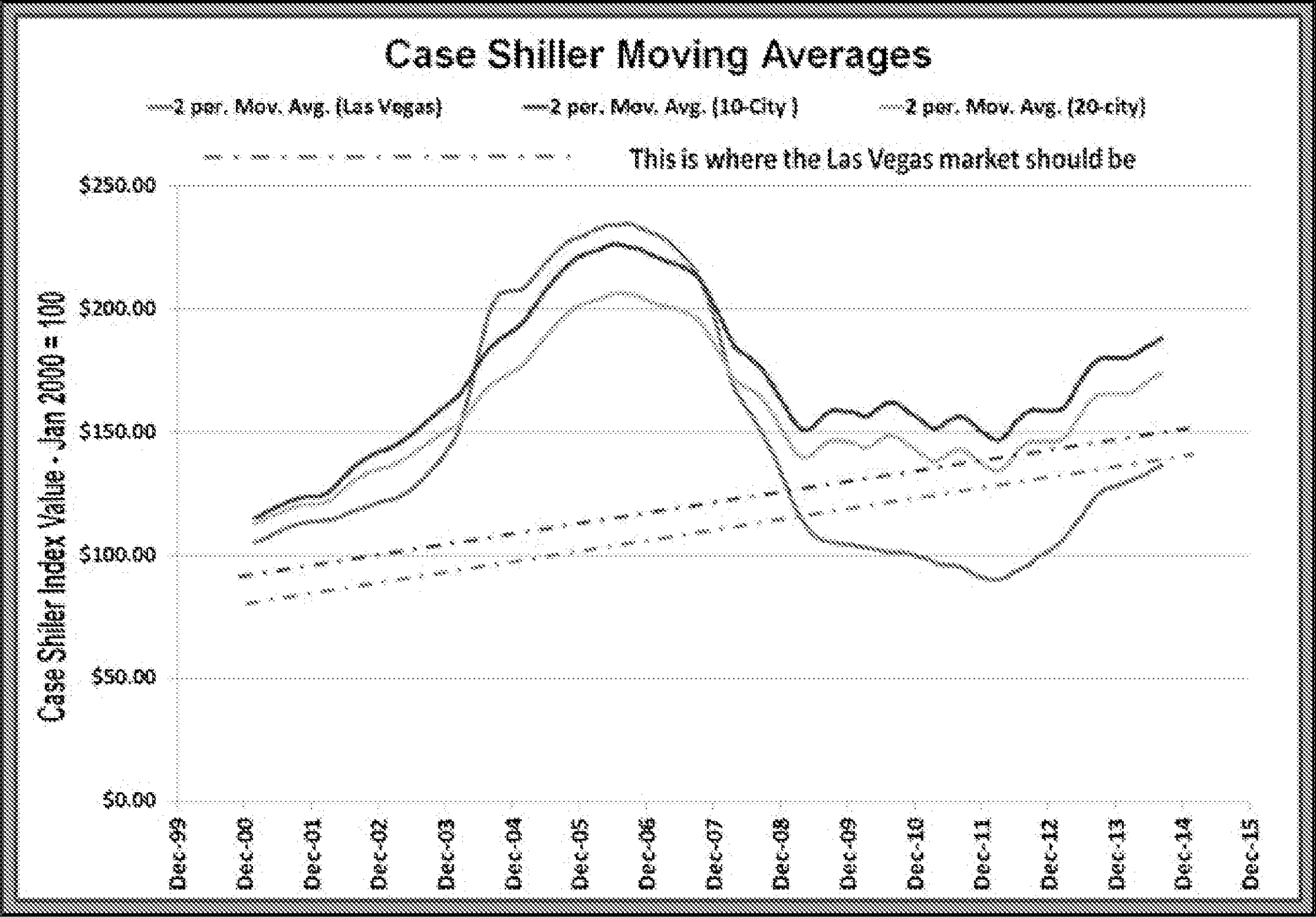
You cannot have a sustained recovery without improvement in employment. Investors are now buying and renting more units. Employment is improving, but lagging behind other areas and the national market. The market has corrected to some degree, however, stabilized prices are not a reflection of a "price point market correction," but rather depend on an "economic correction in the market" or the ability of end users (long-term occupants) to buy.



Case Shiller - Market Conditions

Client	Wright Finlay & Zak				
Property Address	34 Innisbrook Avenue				
City	Las Vegas	County	Clark	State	NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa				

The Case Shiller Index - compares Las Vegas to the 10 City and 20 City Averages. Historically, Las Vegas was below the 10 and 20 City, however, during 2004-2007, Las Vegas exceeded these averages and the market correction began. By 2009, the Las Vegas market over-corrected as shown below and is now attempting to correct back to market norms.



As shown above, Las Vegas still is below the 10 and 20 City averages, however, the gap has closed significantly since late 2011. What we are seeing (current market conditions), is the market sorting itself out and slowly correcting to norms. The two trend lines (red for the composites and blue for Las Vegas) illustrate the normal relationship between Las Vegas and the 10 and 20 City Composites.

The gap between the current Las Vegas market average and the blue Las Vegas trend line show the over-correction (based on buyer affordability) and the market's or recognition of over-correction during 2012 (based upon median income and housing affordability). This is what investors recognized and why investors made significant purchases in the Las Vegas market in 2009 - 2012.

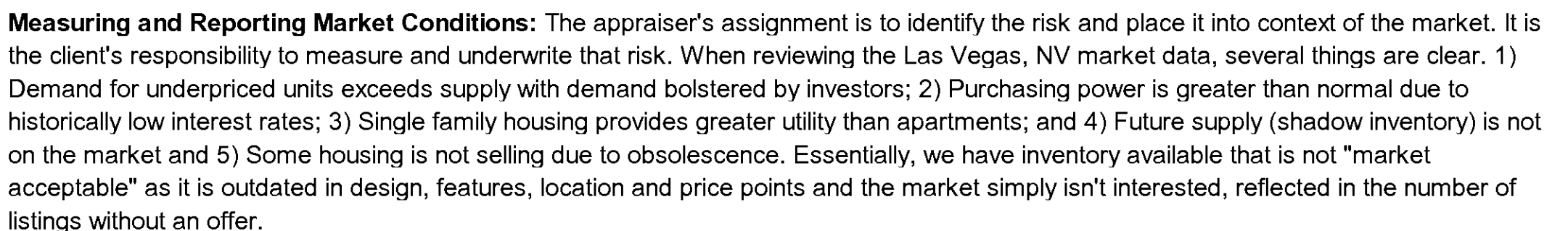
Investors realized what the rest of the market did not, housing in Las Vegas "economically under-valued." The combination of supply, purchasing power (interest rates) and utility (in many cases the condition of the property), made buying a home far more affordable than renting a home or an apartment. An investor could by an "unoccupiable REO" for \$100,000, invest an additional \$25,000 in to it for repairs and sell it for \$150,000, all within 90 days and make a \$25,000 profit. Annualized, the \$25,000 becomes \$100,000 or an 80% annual return. This is why the majority of sales in many markets have been "all cash."

With historic low interest rates, even smaller profit margins, and holding onto and renting homes vs. fixing and flipping homes, makes economic sense to many investors. While single-family rentals are not averaging much more than Class A apartments, they are more attractive to renters (yards, features, size, garages, privacy, etc.), and the resale market value for housing is rising.

Market conditions is an adjustment for market changes over time, supply and demand conditions and other factors (short or long-term) affecting the market, including financing, affordability, etc. The increase or decrease in property values is the cause, and time is the measurement of the adjustment. During a market correction, there can be short-term spikes in market prices requiring a "market conditions" adjustment.

The Las Vegas housing market correction from 2006-2014, the excessive supply of homes (REO's and short sales) combined with unprecedented low interest rates, combined to create a buyer's market, essentially, conditions whereby buying a house is more affordable than renting one. The interest rates are so low, that an extra 10% increase in price is marginal in terms of additional monthly payment. We cannot project the sustainability of a market shift, only evidence an imbalance, to support a market conditions adjustment at this point.

The chart below from Redfin contrasts listing and sale activity in the Las Vegas Valley over the past 12 months.



This combination of factors acting in the market is creating a housing shortage (for some market segment) driving prices upwards and closing the gap between where we should have been and where we have been over the past few years. This is evident in the Case-Shiller Index. The market is not in balance and therefore, this combination of influences (rates, investors, supply, demand) creates conditions that affect the market value criteria and the value opinion. Similarly, some market segments (locations, products, etc.) suffer from obsolescence and are effectively, unsalable inventory. This inventory gives the illusion of "inventory available" that really isn't acceptable to the market.

Anyone relying upon the value opinion must consider these factors and take steps to understand and mitigate the risk associated with unknown future market conditions, the speculative activities and influence of investors in the marketplace along with "shadow inventory" (REOs held by lenders). The key factors that influence value are supply and demand, interest rates and jobs. Investors are active in this market area and affect market trends and "prices". Value influences could easily shift and market prices (and eventually values) will shift as well.

During a correction, sales may not reflect the "collective market" (as required by the definition of "market value"). Over the short-term, market value (most probable price), is tied to the individual market segment and the subject property's position in that segment. Reliability of statistical housing trends is affected by short-term shifts in supply and demand, investor activity and lender liquidations. This translates to sales data that is less reliable than it would be under balanced market conditions.

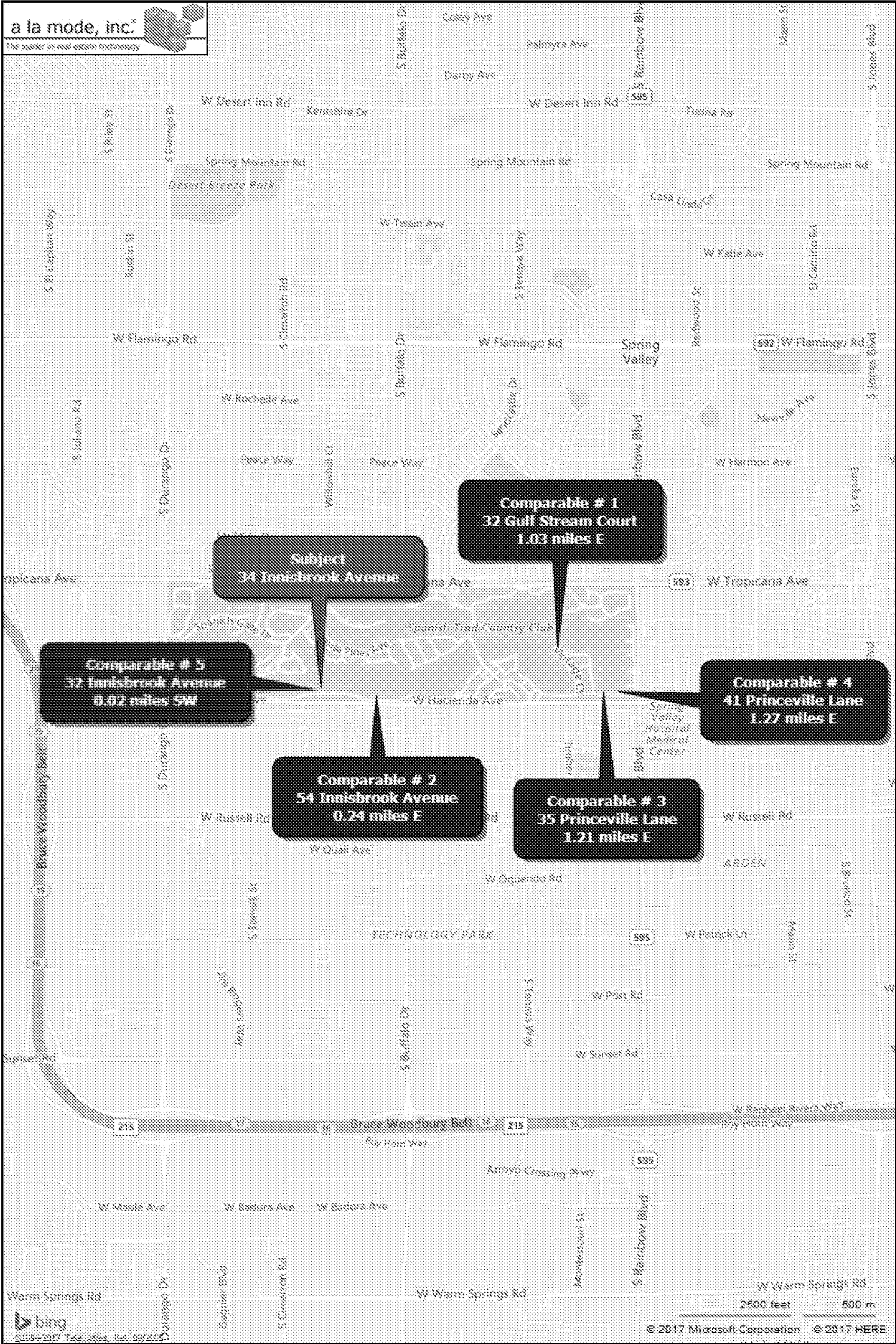






Location Map

Client	Wright Finlay & Zak			
Property Address	34 Innisbrook Avenue			
City	Las Vegas	County	Clark	State NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa			





Plat Map

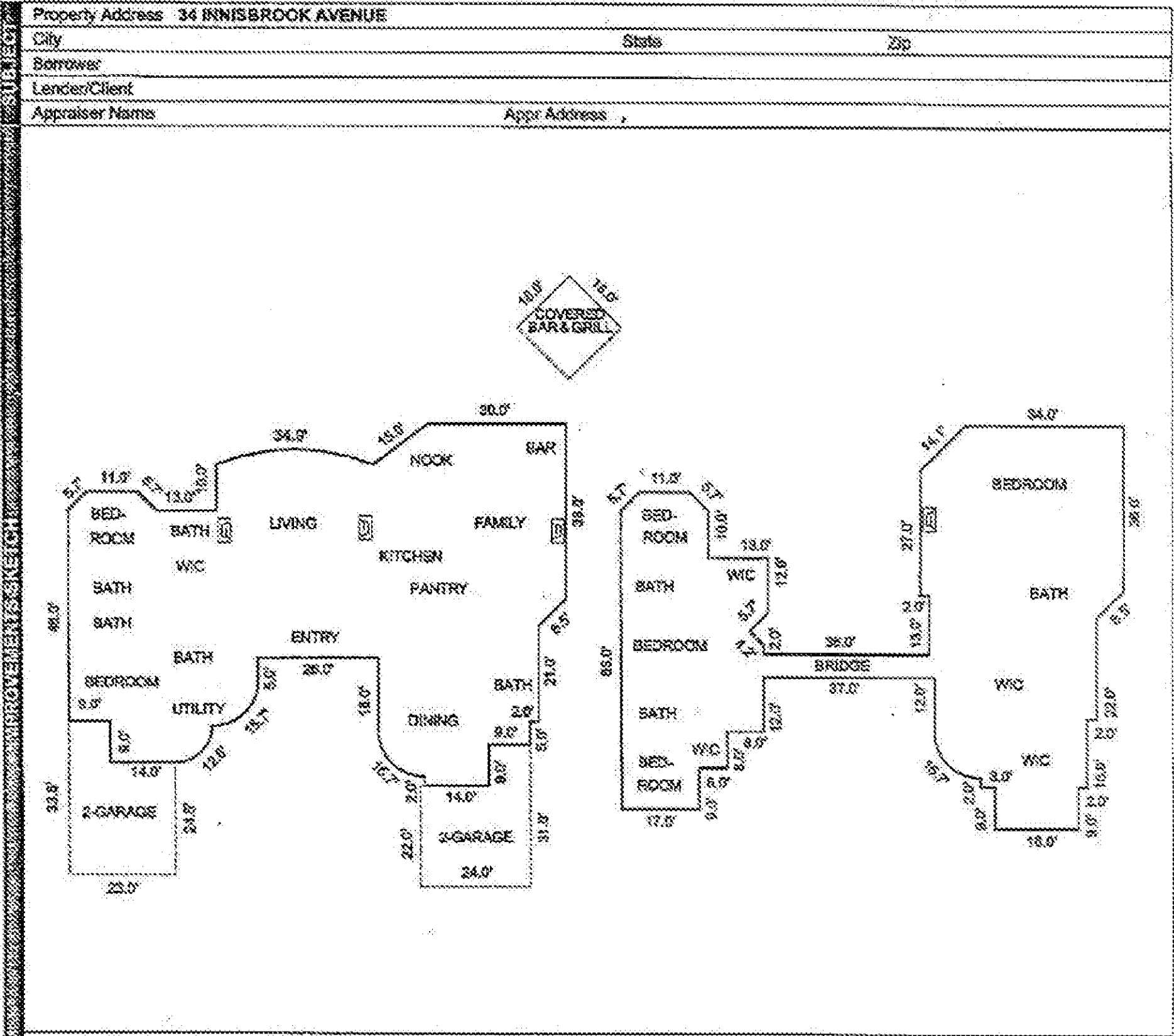
Client	Wright Finlay & Zak			
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Building Sketch

SKETCH/AREA TABLE ADDENDUM

File No 1L350A1



Comments:

Scale: 1" = 32'

AREA CALCULATIONS SUMMARY			
Code	Description	Size	Totals
GLA1	First Floor	6198.50	6198.50
GLA2	Second Floor	5118.35	5118.35
P/P	Covered Bar & Grill	256.00	256.00
GAR	Garage 1, 2-Car	544.50	
	Garage 2, 2-Car	509.00	1253.50
TOTAL LIVABLE (rounded)			11314

LIVING AREA BREAKDOWN			
Breakdown			Subtotals
First Floor			
0.5 x	5.0 x	4.0	18.50
0.5 x	10.0 x	10.0	50.00
	13.0 x	54.0	702.50
	10.0 x	18.0	180.00
	5.0 x	38.0	90.00
	14.0 x	41.0	374.15
0.5 x	2.0 x	2.0	2.00
0.5 x	11.0 x	11.0	64.50
	3.0 x	11.0	32.00
0.5 x	11.0 x	11.0	64.50
	9.0 x	32.0	288.00
	14.0 x	36.0	504.15
	3.0 x	27.0	81.00
	9.0 x	27.0	243.00
	12.0 x	188.0	2256.00
0.5 x	9.0 x	12.0	54.00
0.5 x	4.0 x	4.0	8.00
	0.0 x	63.0	0.00
	4.0 x	11.0	44.00
	10.0 x	46.0	460.00
0.5 x	9.0 x	0.1	0.00
2.5 x	4.0 x	4.0	7.92
35 remaining calculations			5841.51
57 Areas Total (rounded)			11314

APRIL SOFTWARE 600-450-0000

Approved by: [Signature]

Subject Photo Page

Client	Wright Finlay & Zak				
Property Address	34 Innisbrook Avenue				
City	Las Vegas	County	Clark	State	NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa				



Subject Front

34 Innisbrook Avenue	
Sales Price	
Gross Living Area	11,314
Total Rooms	11
Total Bedrooms	6
Total Bathrooms	7
Location	Spanish Trail
View	Golf View
Site	21,780 SF/Interior
Quality	Stucco
Age	17



Subject Street



Comparable Photo Page

Client	Wright Finlay & Zak				
Property Address	34 Innisbrook Avenue				
City	Las Vegas	County	Clark	State	NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa				



Comparable 1

32 Gulf Stream Court	
Prox. to Subject	1.03 miles E
Sales Price	1,850,000
Gross Living Area	9,281
Total Rooms	11
Total Bedrooms	4
Total Bathrooms	5
Location	Spanish Trail
View	Golf View
Site	22,216 SF/CDS
Quality	Stucco
Age	12



Comparable 2

54 Innisbrook Avenue	
Prox. to Subject	0.24 miles E
Sales Price	1,725,000
Gross Living Area	8,021
Total Rooms	8
Total Bedrooms	4
Total Bathrooms	4.5
Location	Spanish Trail
View	Golf/Lake View
Site	23,522 SF/CDS
Quality	Stucco
Age	21



Comparable 3

35 Princeville Lane	
Prox. to Subject	1.21 miles E
Sales Price	1,400,000
Gross Living Area	6,819
Total Rooms	9
Total Bedrooms	4
Total Bathrooms	5
Location	Spanish Trail
View	Golf View
Site	15,246 SF/Interior
Quality	Stucco
Age	24

Comparable Photo Page

Client	Wright Finlay & Zak				
Property Address	34 Innisbrook Avenue				
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Comparable 4

41 Princeville Lane	
Prox. to Subject	1.27 miles E
Sales Price	1,525,000
Gross Living Area	5,648
Total Rooms	14
Total Bedrooms	4
Total Bathrooms	5
Location	Spanish Trail
View	Golf View
Site	13,504 SF/Interior
Quality	Stucco
Age	15



Comparable 5

32 Innisbrook Avenue	
Prox. to Subject	0.02 miles SW
Sales Price	1,425,000
Gross Living Area	7,470
Total Rooms	9
Total Bedrooms	5
Total Bathrooms	6.5
Location	Spanish Trail
View	Golf View
Site	18,295 SF/Interior
Quality	Stucco
Age	24

Comparable 6

Prox. to Subject	
Sales Price	
Gross Living Area	
Total Rooms	
Total Bedrooms	
Total Bathrooms	
Location	
View	
Site	
Quality	
Age	



Clarification of Scope of Work

File No. 34 Innisbrook

Client	Wright Finlay & Zak				
Property Address	34 Innisbrook Avenue				
City	Las Vegas	County	Clark	State	NV Zip Code 89113
Owner	Timpa Trust/Frank A & Madelaine Timpa				

CLARIFICATION OF SCOPE OF WORK

(Rev. 09/08/2014)

This following, explanatory comments are not a modification of the assumptions, limiting conditions or certifications in the appraisal report, but a "clarification" of the appraiser's actions with respect to generally accepted appraisal practice and the requirements of this assignment. The intent is to clarify and document what the appraiser did and or did not do in order to develop the value opinion.

**Limitations of the Assignment:** The appraisal process is technical and therefore requires the intended user or anyone relying on the conclusions, to have a general understanding of the appraisal process to comprehend the limits of the applicability of the value opinion to the appraisal problem. Real estate is an “imperfect market” and one that can be affected by many factors. Therefore, supplemental reporting requirements and the realities of the market, including the reliability of the data sources, inability to verify key information and the reliance on information sources as being factual and accurate, can affect the conclusions within the report. Those relying on the report and its conclusions must understand and factor these limitations into their decisions regarding the subject property.

The "single point of value" (SPV) is based on the definition of value (stated within the report) which has criteria that may or may not be consistent in the marketplace. Value definitions often assume “knowledgeable buyers and sellers” or “no special motivations,” when these and other criteria cannot be verified. For most assignments, guidelines require the selection and reporting of a SPV, taken from a range of value indicators that may vary high or low from the SPV due to factors that cannot be quantified or qualified within the constraints of the data, market conditions and time limits imposed in the development of the report and associated scope of work.

The SPV conclusion is a “benchmark” in time, provided at the request of the client and or intended user of this report and for the purpose stated. Anyone relying upon the conclusions should read the report in its entirety, to comprehend and accept the assignment conditions as suitable and reliable for their purpose. The definition of market value and its criteria is not universal in its application, nor consistent from one intended use to another.

This report was prepared to the intended user’s requirements and only for their stated purpose. The analysis and conclusions are unique to that purpose and should not be relied upon for another purpose or use, even though they may seem similar. Decisions related to this property should only be made after properly considering all factors including information not within the report, but known or available to the reader and comprehending the process and guidelines that shape the appraisal process.

**SCOPE OF WORK (SOW):** Is “the type and extent of research and analysis in an assignment.” This is specific to each appraisal given the appraisal problem and assignment conditions. The SOW is generally similar for most assignments, however, the property type or assignment conditions may require deviations from normal procedures. With some assignments, it is not possible to complete an interior inspection of the subject property. Likewise, with a retrospective date of value, the subject property and comparables may appear different than they were as of the effective value date.

For these and other reasons, this “clarification of scope of work” (COSOW) is intended as a guide to general tasks and analysis performed by the appraiser. These statements are a guide for comparison purposes (as part of the valuation process) and do not represent a detailed analysis of the physical or operational condition of these items. This report is not a home inspection. Any statement is advisory based only upon casual observation. The reader or intended user should not rely on this report to disclose hidden conditions and defects.

**Complete Visual Inspection Includes:** A visual inspection of only the readily accessible areas of the property and only those components that were clearly visible from the ground or floor level. List amenities, view readily observable interior and exterior areas, note quality of materials/workmanship and observe the general condition of improvements. Determine the building areas of the improvements; assess layout and utility of the property. Note the conformity to the market area. Perform a limited check and or observation of mechanical and electrical systems. Photograph interior/exterior, view site, observe and photograph each comparable from the street.

**Complete Visual Inspection Does/Did NOT Include:** Observation of spaces or areas not readily accessible to the typical visitor; building code compliance beyond obvious and apparent issues; testing or inspection of the well or septic system; mold and radon assessments; moving furniture or personal property; roof condition report beyond observation from the ground level.

**No Interior Inspection:** Some assignment conditions preclude inspection of the interior and or improvements on the site. Drive-by, review assignments, proposed construction and other assignment factors may affect the ability to view the improvements from the interior and at times, the exterior. In these cases, the appraiser has disclosed the “non-inspection” and used various sources of information to determine the property characteristics and condition as of the effective date of value. When applicable, these assignment conditions are stated in the report.

**Inspect The Neighborhood:** Observations were limited to driving through a representative number of streets in the area, reviewing maps and other data and observing comparables from the street to determine factors that may influence the value of the subject property. “Neighborhood” boundaries are not exact and are defined by the influence of physical, social, economic

Clarification of Scope of Work

File No. 34 Innisbrook

Client	Wright Finlay & Zak				
Property Address	34 Innisbrook Avenue				
City	Las Vegas	County	Clark	State	NV Zip Code 89113
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and governmental characteristics (the same criteria used to define census tracts). Over time, small areas merge and once distinct boundaries become less defined. **Comparable data was selected based upon the area proximate to the subject that a buyer would consider directly competitive.**

**Repairs or Deterioration: Deficiency and livability** are subjective terms. The value considers repair items that (in his/her opinion), affect **safety, adequacy, and marketability** of the property. Physical deterioration has not been itemized, but considered in the approaches to value.

**Construction Defects:** Construction defect issues (even when widely publicized) are not consistently reported in the MLS data. State law requires disclosure by the seller to a buyer of known defects and or prior issues. The definition of value assumes “informed buyer” and disclosure to the buyer is mandated by law. The analysis and conclusions presume the prices reported in the market data reflect the buyer’s knowledge of prior or current defect related issues (if any).

**Satisfactory Completion:** The work will be completed as specified and consistent with the quality and workmanship associated with the quality classification identified and physical characteristics outlined within the report.

**Cost Approach:** Is applicable when the improvements are new or relatively new and when sufficient building sites are available to provide a buyer with a "construction alternative" to purchasing the subject. In areas where similar sites are not available and or in cases where the economy of scale from multi-unit construction is not available to a potential buyer, reliability of the cost approach is limited. Applicability of the cost approach in this assignment is specifically addressed in that section of the appraisal report.

If the cost approach was used it represents the “replacement cost estimate.” If used, its inclusion was based on one of the following: request by the client; age requirement under FHA/HUD guidelines; or deemed appropriate for use by the appraiser for “valuation purposes.” Regardless of the condition or reason for its use, it should not be relied upon for insurance purposes. The definition of “market value” used within this report is not consistent with the definition of “insurable value.”

**Income Approach:** Is applicable when investors regularly acquire properties that are similarly desirable to the subject for the express purpose of the income they provide. While rentals may exist in any area, their presence alone is not proof of a viable rental and investor marketplace. Use or exclusion of the income approach is specifically addressed in that section of the appraisal report.

**Gross Living Area (GLA):** The Greater Las Vegas Association of Realtors ® MLS auto-populates the GLA from Clark County Assessor (CCAO) records. Assessors in Nevada are granted (by statute), leeway in determination of the GLA via several commonly employed methods to measure properties and typically rounds measurements to the nearest foot. Therefore, it is common to have variances between the “as measured” GLA by the appraiser and the “as reported” GLA from the CCAO. The GLVAR MLS handles more than 90% of the transactions in this area. Buyers and sellers rely on the MLS and therefore, the GLAs therein are the de-facto standard used by the market as a decision making factor. The appraiser deems the CCAO reported GLA as being reasonable and reliable for comparison purposes, regardless of any other standard used by builders, architects, agents, etc. The appraiser has considered these facts in the analysis and reconciled in the value opinion, only differences in GLA that would be “market recognized” and contribute to greater utility or function in the subject or comparable and greater value by the buying and selling public.

**Extent of Data Research-Comparable Data:** The appraiser used reasonably available information from city/county records, assessor's records, multiple listing service (MLS) data and visual observation to identify the relevant characteristics of the subject property. Comparables used were considered relevant to the analysis of subject property and applicable to the appraisal problem. The data was adjusted to the subject to reflect the market's reaction (if any and in terms of value contribution) to differences. Photographs taken by the appraiser are originals and un-altered, unless physical access was unavailable. In some cases, MLS photographs may be used to illustrate property conditions, views, etc.

**Public and Private Data:** The appraiser has access to public records and data available on the internet, the Multiple Listing Service, various cost estimating services, flood data, maps and other property related information, along with private information and knowledge of the market that is pertinent and relevant for this assignment.

**Adverse Factors:** Based upon the standards of the party observing the property, a range of factors internal or external to the property may be "adverse" by their viewpoint. The appraiser noted factors that may affect the marketability and livability to potential buyers, based upon knowledge of the market and as evidenced by sales of properties with similar or comparable conditions. These items are noted in the report and the valuation approaches that were applied to the analysis. Some buyers in the market may consider factors such as drug labs, registered sex offenders, criminal activity, interim rehabilitation facilities, halfway houses or similar uses as "adverse". No attempt was made to investigate or discover such activities, unless such factors were readily apparent and obviously affecting the subject property as evidenced by market data. If the intended user or a reader has concerns in these areas, it is recommended that they secure this information from a reliable source.

Clarification of Scope of Work

File No. 34 Innisbrook

Client	Wright Finlay & Zak				
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City	Las Vegas	County	Clark	State	NV      Zip Code    89113
Owner	Timpa Trust/Frank A & Madelaine Timpa				

**Easements:** Major power transmission and distribution lines, railroad and other services related easements, including utility easements, limited common areas and conditions that grant others the right to access the subject property and or travel adjacent to the private areas of the subject property. The term adverse applies to individual perspective. It may or may not be negative, dependent upon the individual. One perspective may hold easements to be unappealing visually or disruptive. From another, such easements and corridors provide open space and ensure greater privacy (due to the size of the easement) from neighboring properties. Unless the easement affects the utility or use of the site or improvements, any impact was only considered from the perspective of marketability. In cases where the site abuts a major power transmission easement, the towers are generally centered within the right of-way and engineered to collapse within the easement. The effect or impact is inconsistent (as measured in the market) and therefore unless compelling evidence was found in comparable data, no adjustment was made, only the presence stated.

**Valuation Methodology:** The data presented in the report is considered to be the most relevant to the valuation of the subject property (and its market segment) based on its current occupancy and market environment. In areas influenced by foreclosure, short-sale and REO activity, and motivated (or impacted) by factors that cannot be qualified or quantified, the transactional characteristics of those sales may not fully meet the definition of market value criteria and therefore may be misleading. Verifications and drive-by inspections frequently reveal inconsistencies between the MLS and public records. Through this process, the appraiser can present the rationale supporting the final value opinion within the reconciliation and the reader can comprehend the logic and its application to the valuation process.

**The Value Opinion:** The value opinion may not be valid in another time-period. It is important for anyone relying on the report to comprehend the dynamic nature of real estate and the validity of the single value point or value range reported. The reported value is a benchmark or reference in time (as of a specific date) and subject to change (sometimes rapidly), based upon many factors including market conditions, interest rates, supply and demand. Therefore, anyone relying on the reported conclusions should first comprehend and accept the assignment conditions, assumptions, limiting conditions and other factors stated within the report as being suitable and reliable for their purpose and intended use.

**Specific Reporting Guidelines:** Market participants have unique appraisal reporting guidelines. The COSOW is supplemental to the forms stated scope of work, providing an overview of the appraiser's actions with respect to general appraisal practice and the stated requirements of the assignment. The intent is to clarify what the appraiser did and or did not do in order to develop the value opinion. Guidelines require the borrower receive a copy of the appraisal report, however, the borrower is not an intended user. The appraisal process and specific reporting requirements are highly technical and in most cases, beyond the comprehension of most readers. Anyone choosing to rely upon the appraisal should read the report in its entirety and if needed, consult with professionals that can assist them with understanding the basis of this report and the required reporting requirements, prior to making any decisions based upon the conclusions and or observations stated within.

**Use of Electronic Appraisal Delivery Services:** If the client directed that the appraiser transmit the content of this report via Appraisal Port or a similar delivery portal service, pursuant to user agreements, these services disclaim any warranty that the service provided will be error free and that these services may be subject to transmission errors. Accordingly, the client should make its own determination as to the accuracy and reliability of any such service they employ. The appraiser makes no representations and specifically disclaims any warranty regarding the accuracy or portrayal of content transmitted via Appraisal Port or any similar service or their reliability. The appraiser uses such technology at the specific direction and sole risk of the client. At its request, the client may obtain a true copy of the original report directly from the appraiser via email (PDF), mail or other means.

Assumptions, Limiting Conditions & Scope of Work

File No.: 34 Innisbrook

Property Address:	34 Innisbrook Avenue	City:	Las Vegas	State:	NV	Zip Code:	89113
Client:	Wright Finlay & Zak	Address:	7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117				
Appraiser:	R. Scott Dugan, SRA	Address:	8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147				

**STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS**

— The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.

— The appraiser may have provided a sketch in the appraisal report to show approximate dimensions of the improvements, and any such sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size. Unless otherwise indicated, a Land Survey was not performed.

— If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

— The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.

— If the cost approach is included in this appraisal, the appraiser has estimated the value of the land in the cost approach at its highest and best use, and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used. Unless otherwise specifically indicated, the cost approach value is not an insurance value, and should not be used as such.

— The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.

— The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.

— The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.

— If this appraisal is indicated as subject to satisfactory completion, repairs, or alterations, the appraiser has based his or her appraisal report and valuation conclusion on the assumption that completion of the improvements will be performed in a workmanlike manner.

— An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.

— The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database.

— An appraisal of real property is not a 'home inspection' and should not be construed as such. As part of the valuation process, the appraiser performs a non-invasive visual inventory that is not intended to reveal defects or detrimental conditions that are not readily apparent. The presence of such conditions or defects could adversely affect the appraiser's opinion of value. Clients with concerns about such potential negative factors are encouraged to engage the appropriate type of expert to investigate.

**The Scope of Work is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.**

**Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):**

**Important – Please Read – The client should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions. This appraisal report includes comments, observations, exhibits, maps, explanatory comments, and addenda that are necessary for the reader to comprehend the relevant characteristics of the subject property. The Expanded Comments and Clarification of Scope of Work provides specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.**

**INTENDED USE/USER:**

The intended user of this appraisal report is the lender/client. No additional intended users are identified by the appraiser. This report contains sufficient information to enable the client to understand the report. Any other party receiving a copy of this report for any reason is not an intended user; nor does it result in an appraiser-client relationship. Use of this report by any other party(ies) is not intended by the appraiser.


**SCOPE OF WORK:**

In the normal course of business, the appraiser attempted to obtain an adequate amount of information regarding the subject and comparable properties. Some of the required standardized responses, especially those in which the appraiser has not had the opportunity to verify personally or measure, could mistakenly imply greater precision and reliability in the data than is factually correct or typical in the normal course of business. Consequently, this information should be considered an estimate unless otherwise noted by the appraiser.

Examples include condition and quality ratings, as well as comparable sales and listing data. Not every element of the subject property was viewable, and comparable property data was generally obtained from third-party sources (real estate agents, buyers, sellers, public records, and the Greater Las Vegas Board of Realtors Multiple Listing Service).

Certifications

File No.: 34 Innisbrook

Property Address:	34 Innisbrook Avenue	City:	Las Vegas	State:	NV	Zip Code:	89113	
Client:	Wright Finlay & Zak	Address:	7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117					
Appraiser:	R. Scott Dugan, SRA	Address:	8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147					
<b>APPRAISER'S CERTIFICATION</b>								
<p><b>I certify that, to the best of my knowledge and belief:</b></p> <p>— The statements of fact contained in this report are true and correct.</p> <p>— The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.</p> <p>— I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.</p> <p>— I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.</p> <p>— My engagement in this assignment was not contingent upon developing or reporting predetermined results.</p> <p>— My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.</p> <p>— My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.</p> <p>— I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.</p> <p>— Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.</p> <p>— Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.</p>								
<b>Additional Certifications:</b>								
<p><u>Supplemental Certification:</u> In compliance with the Ethics Rule of USPAP, I hereby certify that I have not performed any services with regard to the subject property within the 3-year period immediately preceding the engagement of this assignment.</p> <p><u>Supplemental Certification:</u> The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. As of the date of this report, I, R. Scott Dugan, SRA, Certified General Appraiser, have completed the continuing education program for Designated members of the Appraisal Institute.</p>								
<p><b>Definition of Market Value:</b> (X) Market Value    ( ) Other Value</p> <p><b>Source of Definition:</b> FDIC Interagency Appraisal and Evaluation Guidelines (December 2, 2010) Appendix D</p> <p>As defined in the Agencies' appraisal regulations, the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:</p> <ol style="list-style-type: none"><li>1. Buyer and seller are typically motivated;</li><li>2. Both parties are well informed or well advised, and acting in what they consider their best interest;</li><li>3. A reasonable time is allowed for exposure in the open market;</li><li>4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and</li><li>5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.</li></ol> <p>*The definition of market value above is the most widely cited by federally regulated lending institutions, HUD and VA. Absent a specific definition from the client, this definition was used in the assignment.</p>								
SIGNATURES	Client Contact:		Wright Finlay & Zak		Client Name:		Wright Finlay & Zak	
	E-Mail:		fharris@wrightlegal.net		Address:		7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117	
	<b>APPRAISER</b>				<b>SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)</b>			
								
	Appraiser Name:		R. Scott Dugan, SRA		Supervisory or Co-Appraiser Name:			
	Company:		R. Scott Dugan Appraisal Company, Inc.		Company:			
	Phone:		702-876-2000		Fax:		702-253-1888	
	E-Mail:		appraisals@rsdugan.com		E-Mail:			
	Date Report Signed:		February 08, 2017		Date Report Signed:			
	License or Certification #:		A.0000166-CG		State:		NV	
Designation:		SRA		Designation:				
Expiration Date of License or Certification:		05/31/2017		Expiration Date of License or Certification:				
Inspection of Subject:		<input type="checkbox"/> Interior & Exterior <input checked="" type="checkbox"/> Exterior Only <input type="checkbox"/> None		Inspection of Subject:		<input type="checkbox"/> Interior & Exterior <input type="checkbox"/> Exterior Only <input type="checkbox"/> None		
Date of Inspection:		February 05, 2017		Date of Inspection:				

## **EXHIBIT B**

## **EXHIBIT B**

## **EXHIBIT B**



## Appraiser Resume (Qualifications) - Page 1

## R. Scott Dugan, SRA

**GENERAL APPRAISAL EXPERIENCE:**

- Independent Real Estate Appraiser - September 1976 to Present
- Senior Real Estate Appraiser First Western Savings Association, Las Vegas, NV - 10/74 to 09/76
- Independent Real Estate Appraiser - 1969 to 1974

**SPECIALIZED VALUATION EXPERIENCE:**

Qualified Expert Witness: Real Estate and Appraisal Matters- District, Bankruptcy and Federal Courts

Forensic Review Expert: Appraisal reviews for litigation. Clients include major banks, attorneys and the FDIC.

**TYPES OF PROPERTIES:**

Residential, Condominium, Planned Unit Developments, Small Residential Income, Existing, Proposed and Vacant Land, Commercial and Income units.

**LICENSING:**

Licensed in the State of Nevada, Certified General Appraiser-License #A.0000166-CG

**PROFESSIONAL DESIGNATION:**

SRA Member - Appraisal Institute - 1989 to Present

**EDUCATION:**

Bachelor of Science in Business Administration - Finance, University of Nevada  
High School Diploma - General Studies, Ed W. Clark High School, Las Vegas, NV

**REALTOR ASSOCIATIONS:**

Appraiser Member - National Association of Realtors - 1992 to Present

Appraiser Member - Greater Las Vegas Association of Realtors - 1992 to Present

**MEMBERSHIPS:**

Employee Relocation Council, Appraiser Member - 1990 to 2013

Member of the Clark County Board of Equalization - 1994 to Present (Current Vice Chair)

Relocation Appraisers & Consultants Member - 1995 to Present

**REFERENCES:**

**Cheryl Moss, SVP - Chief Appraiser**  
Bank of Nevada  
2700 W. Sahara Avenue  
Las Vegas, NV 89102  
702-252-6366

**Terry Jones, VP**  
First Security Bank  
10501 W. Gowan Road, Ste. 170  
Las Vegas, NV 89129  
702-853-0950

**Dan Schwartz, VP**  
City National Bank  
555 S. Flower St, 10<sup>th</sup> Floor  
Los Angeles, CA 90071  
213-673-9283

**Timothy R. Morse - MAI, SRPA**  
Timothy R. Morse & Associates  
801 S. Rancho Drive, Ste. B-1  
Las Vegas, NV 89106  
702-386-0068 X21

**Glenn Anderson, MAI, SRPA**  
Glenn Anderson  
1601 S. Rainbow Boulevard, Ste. 230  
Las Vegas, NV 89146  
702-307-0888

**Sandy Boatwright, Branch Manager**  
I Mortgage  
2855 St. Rose Parkway, Ste. 110  
Henderson, NV 89052  
702-575-6413

**Jim Goodrich, MAI, SRA, CCIM**  
Goodrich Realty Consulting, LLC  
2570 Eldorado Pkwy, Ste. 110  
McKinney, TX 75070  
972-529-2828

**Rick Plette, Owner**  
Premier Mortgage Lending Group  
8689 W. Sahara Ave, Ste. 100  
Las Vegas, NV 89117  
702-485-6600

## Appraiser Resume (Qualifications) - Page 2

## OFFICES HELD:

- Nevada Commission of Appraisers - Real Estate Division Educational Committee - 1994-1996
- Member of the Regional Ethics and Counseling Panel Appraisal Institute - 1994-1996
- State Chair Nevada, State Government Relations Subcommittee Appraisal Institute - 1994-1995
- Chapter Admissions Chair, Las Vegas Chapter Appraisal Institute - 1994
- Chapter Representative, Las Vegas Chapter Appraisal Institute - 1993-1995
- Vice Chair Nevada, State Government Relations Subcommittee Appraisal Institute - 1993
- Member of Region VII Nominating Committee Appraisal Institute - 1992-1995
- President, Las Vegas chapter Appraisal Institute - 1992
- First Vice President, Las Vegas Chapter Appraisal Institute - 1990 - 1991

## CONTINUING EDUCATION: GENERAL, LITIGATION, APPRAISAL INSTITUTE, ERC, and SREA:

- A.I. Las Vegas Market Symposium 2014 – November 2014
- Unraveling the Mystery of Fannie Mae Appraisal Guidelines – June 2014
- Litigation Assignments for Residential Appraisers: Expert Work on Atypical Cases – June 2014
- Liability Issues for Appraisers Performing Litigation and Other Non-Lending Work – May 2014
- 2014 National USPAP Update Course – January 2014
- Las Vegas Market Symposium 2013 – November 2013
- Do's and Don't's of Litigation Support – October 2013
- Appraising the Appraisal: Appraisal Review-Residential – April 2013
- A. I. Uniform Appraisal Dataset Aftereffects: Efficiency vs. Obligation – February 2013
- Complex Litigation Appraisal Case Studies – January 2013
- Seller Concessions in Market Value Appraisals – November 2012
- National USPAP Update Course – May 2012
- Valuation of Basements – March 2012
- Accurately Analyzing and Reporting Market Rebounds and Declines – December 2011
- Las Vegas Market Symposium 2011 – October 2011
- The Uniform Appraisal Dataset from FNMA and FMAC – July 2011
- Tools, Techniques & Opportunities for Residential Appraising – November 2010
- Business Practice and Ethics – September 2010
- Appraisal Curriculum Overview Residential – September 2010
- Nevada Commission of Appraisers Hearing – June 2010
- Inspecting the Residential Green or High Performance House – January 2010
- ENERGY STAR and the Appraisal Process – January 2010
- 2009 National USPAP Update Course – January 2010
- A.I. Committee CE Credit – Chapter Level – December 2009
- Residential Design: The Making of a Good House November 2009
- The New Residential Market Conditions Form Seminar – March 2009
- REO Appraisal - Appraisal of Residential Property Foreclosure – October 2008
- National USPAP Update Course - Las Vegas, NV - March 2008
- Dealing with Client Pressure, Appraiser Identity Theft and Appraisal Report Tampering – March 2008
- Inside & Outside the Boxes, Developing & Communicating the URAR – October 2007
- Housing Market Analysis - September 2007
- Making Sense of the Changing Landscape of Value - Las Vegas, NV - July 2007
- The Real Estate Economy: What's in Store for 2008? - Las Vegas, NV - July 2007
- Real Estate Investing & Development - A Valuation Perspective - July 2007
- Litigation Skills for the Appraiser: An Overview - October 2006
- National USPAP Update Course - June 2006
- The Professional's Guide to the Uniform Residential Appraisal Report Seminar - July 2005
- Re-appraising, Re-addressing, and Re-assigning What to do and why Seminar - June 2005
- Market Analysis and the Site to Do Business Seminar - June 2005
- Secrets of a Successful Litigation Seminar - June 2005
- Mortgage Fraud & the Appraiser's Role Seminar - June 2005
- Uniform Standards of Professional Appraisal Practice Update Course - February 2005
- Course 705 Litigation Appraising - October 2004
- Avoiding Liability as a Residential Appraiser - October 2004
- AVM, VFR and Power Tools for Appraisers - September 2004
- Course 400 - National USPAP Update - November 2003
- Residential Sales Comparison Approach - October 2003
- Appraisal Review (Residential) - February 2003
- Nevada Real Estate Appraisal Statutes - October 2002
- National USPAP Update Course - June 2002
- Standard of Professional Practice Part A and Part B - Course 410 and 420 - September 2001
- Appraisal Procedures - Course 120 - November 2000
- Standards of Professional Practice Part A - Course 410 - October 1999
- Standards of Professional Practice Part B - Course 420 - October 1999
- Attacking & Defending an Appraisal in Litigation - September 1999
- FHA and the Appraisal Process - July 1999



## Appraiser Resume (Qualifications) - Page 3

- Reporting Sales Comparison Grid Adjustments for Residential Properties - March 1999
- Valuation of Detrimental Conditions in Real Estate - September 1998
- Standards of Professional Practice Part C - Course 430 - May 1998
- Incorporating Energy Efficiency into Residential Appraisals - December 1998
- Residential Design and Functional Utility Seminar - September 1997
- Alternative Residential Reporting Forms Seminar - July 1996
- Evaluation Guidelines Workshop - July/August 1994
- Understanding Limited Appraisals and Appraisal Reporting Options - July/August 1994
- Appraisal Review - Residential properties - July/August 1994
- Fair Lending and the Appraiser - July 1994
- Evaluation Guidelines Workshop July 1993
- Environmental Checklists, ASTM Property Screen Standard & the Valuation Process - July 1993
- Current Standards of Professional Appraisal Practice Issues - July 1993
- Americans With Disabilities Act (ADA) - July 1993
- The New Uniform Residential Appraisal Report - September 1993
- Intern Appraiser and the Law - February 1993
- Appraisal Reporting of Complex Residential Properties - December 1992
- Accrued Depreciation Seminar - September 1992
- Appraising from Blueprints - September 1992
- Appraising the Tough Ones - July 1992
- Employee or Independent Contractor - The Impact of an IRS Audit on an Appraiser - July 1992
- Landfills and Their Effect Upon Value - August 1991
- Subdivision Analysis - August 1991
- Real Estate Law for Real Estate Appraisers - August 1991
- Technical Inspection of Real Estate - August 1991
- Relocation Appraisal Seminar - August 1991
- Practical Approach: The New Small Residential Income Property Guidelines - July 1990
- Extraction of Market Data on Residential Properties - August 1990
- Residential Appraisal Report from the User's Perspective - August 1990
- Legislative Update Panel - August 1990
- Relocation Appraising in the 90's PHH Home Equity - September 1990
- Nevada Real Estate Appraisal Statute - October 1990
- Professional Practice and Real Estate Appraisal Law - October 1990
- Exam Preparation Seminar for Appraiser - General Certification - October 1990

### ERC NATIONAL RELOCATION CONFERENCE:

- ERC - RAC Trac Conference - May 2007
- National Relocation Appraisal Forum - May 1996

### PHH REAL ESTATE NETWORK:

- Regional Seminar "Hearts, Smarts & Courage" - September 1996
- "Force of Excellence" - November 1995
- Western Appraiser Regional Seminar "Leaders in Change" - September 19

### CLIENTS: Banks and Mortgage Companies:

- |  |   |
|--|---|
| • AAA Mortgage                         | • D.L. Evans Bank                       |
| • Allegiance Relocation Services       | • Deutsche Bank                         |
| • AMC Links                            | • ENG Lending                           |
| • Appraisal Logistics                  | • Evergreen Home Loans                  |
| • Appraisals2U                         | • Sirva Relocation                      |
| • Axia Home Loans                      | • Federal National Mortgage Association |
| • Bank of Las Vegas                    | • First Republic Bank                   |
| • Bank of Nevada                       | • First Security Bank of Nevada         |
| • Bank of New York                     | • Guarantee Bank                        |
| • Boulder Dam Credit Union             | • Guaranteed Rate                       |
| • Broad Street Nationwide Valuations   | • Home Base Mortgage                    |
| • Capital One Bank                     | • HomeBridge Financial Services, Inc.   |
| • Castle & Cook Mortgage               | • Imortgage                             |
| • Chase Bank                           | • Irwin Union Bank and Trust Company    |
| • Citibank                             | • J.P. Morgan                           |
| • Citicorp Mortgage, Inc.              | • Kinecta Federal Credit Union          |
| • City National Bank                   | • Leader One Financial                  |
| • Clark County Public Guardians Office | • Lender X                              |
| • Coester Appraisal Management Co.     | • Meadows Bank                          |

## Appraiser Resume (Qualifications) - Page 4

- Mellon Bank
- Mutual of Omaha Bank
- Nationstar Mortgage
- Nevada Guardian Services
- Northern Trust Bank
- Paramount Residential Mortgage Group
- Premier Mortgage Lending Group
- Prudential Relocation
- Real Valuation Services
- Red Rock Mortgage
- Reichert Workforce Mobility
- Rels Valuation - Wells Fargo Bank
- REO Management Services
- RMS & Associates
- Royal Business Bank
- RPM Mortgage
- Settlement One
- SIRVA Relocation
- Solidifi
- Solution Star
- South Pacific Financial
- Stars Valuations Services
- The Home Lending Group
- Trimavin Appraisal Management Co.
- United States Appraisals
- US Bank
- Valuation Partners
- Veteran's Administration
- Washington Federal Savings
- Wells Fargo Bank

## Attorneys / Others:

- Abrams, Jennifer
- Akerman, LLP
- Alverson, Taylor, Mortenson-Judd Balmer
- Americana Nevada Company
- Anderson, McPharlin & Conners
- Barney, Anthony
- Barranco & Kircher
- Black & Lobello
- Bourassa Law Group
- Boyce & Gianni
- Bradley Arant Boult Cummings
- Bremer Whyte Brown & O'Meara
- Brooks Hubley
- Cooper Castle
- Delanoy, Schuetz & McGaha
- Dickerson Law Group
- Drizin, Lee A
- Ecker Law Group
- Fennemore Craig
- Fine, Fran (Broker)
- Gerrard Cox Larsen
- Goodrich, Jim (Valuation Consulting)
- Gordon Silver
- Hansen, Randon
- Holland & Hart LLP
- Hoskin, Hughes and Pifer
- Jensen, Rob (Broker)
- Jolley Urga Wirth Woodbury & Standish
- Kainen Law Group
- Kelleher & Kelleher
- Kerr, Preston Sterling
- Kolesar & Leatham
- Koeller, Nebeker, Carlson & Halvek
- Leavitt, Andrew
- Lee & Russell
- Lee, Hernandez, Kelsey, & Brooks
- Love, Tom (Broker)
- Mazur Brooks
- Menninger, Carol
- Millier & Wright Rawlings, Olsen, Cannon, Gormley & Desruisseaux
- Mullin Hoard Brown
- Shapiro, Florence (Broker)
- Shea & Carlyon
- Wilson Elser Moskowitz Edleman & Diker
- Wolfe & Wyman
- Wright Finlay & Zak
- Woodbury & Standish

(Rev. February 19, 2015)

# **EXHIBIT C**

# **EXHIBIT C**

# **EXHIBIT C**

ATTORNEY WORKLOAD REPORT

	Subject Address	Name	Purpose	Attorney or Client	Court Date	Case No.
1	Lots 1, 3, 4 & 5 Ghost Dance	Town & Country vs Goddard	Court Testimony	Holland & Hart LLP	12/20/2010	
2	2966/2970 San Lorenzo	Bank of Nevada	Deposition/Crt Testimony	Lionel, Sawyer & Collins	1/6/2011	120-201-0059
3	5025 Kell Lane	OneCap Mortgage	District Court Appearance	Reade & Associates	1/25/2011	
4	2966/2970 San Lorenzo	Bank of Nevada	Federal Court Testimony	Lionel, Sawyer & Collins	1/28/2011	120-201-0059
5	940 N Sloan Lane #105	Bank of Nevada	Court Testimony/Settled	Mazur & Associates	3/3/2011	
6	Platinum	Platinum Condo Dev	Litigation/Deposition	Foley & Lardner LLP	7/4/2011	209CV00671PMPGWF
7	4945 Ghost Dance Circle	Goddard	Federal Court Testimony	Town & Country Bank	9/8/2011	2:09CV00686RLHLRL
8	2132 Country Cove	Bank of Nevada vs King	District Court Testimony	Gerrard & Cox	10/6/2011	A627640
9	14480 Roundabout Circle	Shavitz vs Jacobs Construction	District Court Deposition	Schofield Miller Law Firm	12/5/2011	A-09-592088-D
10	39 Quail Hollow Drive	Limpcomb vs Smith	Depo/Court Testimony	Silvermann Decaria & Kattelman	1/8/2012	D-11-444324-D
11	645 Sarf Drive	M&I vs. Long	Court Testimony	Cooper Castle Law Firm	1/13/2012	A-11-65-203-C
12	7811 Dana Point Court	BoNV vs Troncosco	Court Testimony	Mazur & Brooks	9/24/2012	A647414
13	2139 Wilbanks Circle	BoNV vs Deevers	Court Testimony	Mazur & Brooks	10/4/2012	A-12-655231-C
14	22 Sawgrass Court	Provident vs Levy	Deposition	Cooper Castle Law Firm	10/5/2012	A-09-601666-C
15	23 Mallard Creek Trail	Goldstein/Irfield	Deposition	The Bourassa Law Group	11/30/2012	A617125
16	8031 Springbuck Court	BoNV vs Townsend	Deficiency Hearing	Michael Marcellette	4/2/2013	A-12-671738-C
17	49 Hawk Ridge Drive	BoNV vs Barry	Deficiency Hearing	Michael Marcellette	5/7/2013	A-126555559-C
18	1500 Windhaven	FDIC	Deposition	Kolesar & Leatham	7/23/2013	8408-2
19	32 Via Vasari	Deutsche Bank	Litigation	Blut Law Group	Current	A-11-651083-C
20	8623 Fire Mountain	Bank of Nevada	Deficiency Hearing	Mazur & Brooks	7/31/2013	A-11-642953-C
21	1157 Via Casa Palmero	FDIC vs Rekis	Deposition	Kolesar & Leatham	8/29/2013	2:12-cv-02061-GMN
22	51 Agate Ave #303	Giuliano vs Giuliano	Court Testimony	Zashin & Rich	10/9/2013	DR12343002
23	FDIC Reviews	FDIC vs Core Logic	Deposition	Mullin Hoard Brown	12/10/2013	8:11-cv-00704-DOC-AN
24	53 Hawk Ridge Drive	D&J Family Trst vs Palm Canyon	Deposition	Bourassa Law Group	12/17/2013	A646373
25	FDIC Reviews	FDIC vs LSI Appraisal LLC	Deposition	K&L Gates LLP	1/8/2014	SACV11-706 DOC(Any)
26	8 Rue Meditera Drive	RBM Constuction vs Rosenaur	Deposition	Bremer, Whyte, Brown & Omeara	1/15/2014	09-A595366
27	2621 Dandelion Street	Puckett vs Bank of Nevada	Court Testimony	Michael Marcellette	2/13/2014	A-13-677331-C
28	3180 Darby Gardens Court	Everflow	Court Testimony	Lionel, Sawyer & Collins	3/4/2014	A-11-652597-B
29	4381 W Flamingo Rd #39301	Royal Business Bank vs Lin	Court Testimony	Compton Law	3/26/2014	A-14-694431
30	7229 Mira Vista Street	Anthony Savino	Court Testimony	McDonald Law Offices	6/12/2014	A-13-674390-C
31	1147 Evening Canyon Ave	Ana Thompson	Court Testimony	Brooks Hudley LLP	9/26/2014	A-13-17461
32	4381 W Flamingo Rd #18321	Palms Place vs Lue Garlick	Deficiency Hearing	Brownstein Hyatt Farber Schreck	11/4/2014	A-14-697506-B
33	6583 Mermaid Cr.	McGee vs. Citi Mortgage	Deposition	Wolfe & Wyman	11/24/2014	2:12-CV-02025JCM/PAL

# **EXHIBIT D**

# **EXHIBIT D**

# **EXHIBIT D**

**R Scott Dugan, SRA  
R Scott Dugan Appraisal Company, Inc.  
Fee Schedule  
(As of November 15, 2014)**

Assignments are for bid on a case-by-case basis. Standard fees for additional work (if needed) are listed below:

Expert Witness Work and Testimony:

- Deposition, Court Testimony, Trial Preparation - \$400/Hour
- Supplemental Work and Research - \$400/Hour
- Consulting Meetings, Case Discussions, etc. - \$200/Hour

There is a three-hour minimum for deposition and court testimony. If either is canceled within 24 hours of a scheduled appearance, the client will be billed for 50% of the minimum, in addition to any time for preparation.

The above fees are exclusive of the costs associated with both the development of the valuation report or consulting study, and that of supporting materials that may be required for trial.

# **EXHIBIT E**

# **EXHIBIT E**

# **EXHIBIT E**



B7  
File No. 34Innisbrook

\*\*\*\*\* INVOICE \*\*\*\*\*

File Number: 34Innisbrook

02/08/2017

ATTN: Faith

Wright Finlay & Zak  
7785 W Sahara Avenue, Ste 200  
Las Vegas, NV 89117

Borrower : Timpa  
Reference/Case # : B7

FOR THE PROPERTY LOCATED AT:

34 Innisbrook Avenue  
Las Vegas, NV 89113

GPAP Exterior (L)

\$ 750.00  
\$  
\$  
\$  
\$  
\$  
-----

Invoice Total  
Deposit  
Deposit

\$ 750.00  
(  
\$  
\$  
\$  
\$  
\$  
-----

Amount Due

\$ 750.00

Terms: Due and Payable Upon Receipt - Now accepting Visa, MC & Amex

Please Make Check Payable To:

R. SCOTT DUGAN APPRAISAL CO., INC.  
8930 W. TROPICANA AVENUE, SUITE 1  
LAS VEGAS, NV 89147-8129

Fed. I.D. #: 88-0222300

REFERENCING THE FILE NUMBER, BORROWER OR CASE NUMBER NOTED ABOVE  
WILL HELP US TO PROPERLY CREDIT YOUR ACCOUNT

TMST1082



# **EXHIBIT M**

1 MICHAEL F. BOHN, ESQ.  
Nevada Bar No.: 1641  
2 [mbohn@bohnlawfirm.com](mailto:mbohn@bohnlawfirm.com)  
LAW OFFICES OF  
3 MICHAEL F. BOHN, ESQ., LTD.  
376 East Warm Springs Road, Ste. 140  
4 Las Vegas, Nevada 89119  
(702) 642-3113/ (702) 642-9766 FAX  
5 Attorney for plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY NEVADA

9 SATICOY BAY LLC SERIES 34 INNISBROOK,  
10 Plaintiff,

CASE NO.: A71016  
DEPT NO.: XV

11 vs.

12 THORNBURG MORTGAGE SECURITIES TRUST  
13 2007-3; and RECONTRUST COMPANY, N.A. a  
14 division of BANK OF AMERICA; FRANK TIMPA and  
MADELAINE TIMPA, individually and as trustees of  
the TIMPA TRUST,

15 Defendants.

16 And all related matters.  
17

18 **PLAINTIFF'S RESPONSES TO DEFENDANT, THORNBURG MORTGAGE**  
19 **SECURITIES TRUST 2007-3'S FIRST SET OF REQUESTS FOR ADMISSIONS**

20 Plaintiff, Saticoy Bay LLC Series 34 Innisbrook, by and through their attorney, Michael F. Bohn,  
21 Esq., hereby responds to the defendant's requests for admissions as follows:

22 **REQUEST FOR ADMISSION NO. 1:**

23 Admit that YOU attended the HOA foreclosure auction for the Property on or around August 8,  
24 2013.

25 **RESPONSE TO REQUEST NO. 1:**

26 Deny. Date of auction was November 7, 2014.

27 ...  
28

1 **REQUEST FOR ADMISSION NO. 2:**

2 Admit that YOU were not the highest bidder on the Property at the HOA Foreclosure Sale.

3 **RESPONSE TO REQUEST NO. 2:**

4 Deny

5 **REQUEST FOR ADMISSION NO. 3:**

6 Admit that prior to purchasing the Property, YOU researched the fair market value of the Property.

7 **RESPONSE TO REQUEST NO. 3:**

8 Admit.

9 **REQUEST FOR ADMISSION NO. 4:**

10 Admit that YOU had knowledge that the Property would be placed up for auction prior to the date  
11 of the Foreclosure Sale.

12 **RESPONSE TO REQUEST NO. 4:**

13 Admit.

14 **REQUEST FOR ADMISSION NO. 5:**

15 Admit that at the time that YOU purchased Your interest in the Property, You had reviewed the  
16 publicly recorded documents on file with the Clark County Recorder's office that related to the Property.

17 **RESPONSE TO REQUEST NO. 5:**

18 Admit.

19 **REQUEST FOR ADMISSION NO. 6:**

20 Admit that prior to purchasing its interest in the Property, YOU were aware that Thornburg's deed  
21 of trust had been recorded against the property.

22 **RESPONSE TO REQUEST NO. 6:**

23 Admit.

24 **REQUEST FOR ADMISSION NO. 7:**

25 Admit that prior to you purchasing your interest in the Property, THORNBURG held a beneficial  
26 interest in the Deed of Trust.

1 **RESPONSE TO REQUEST NO. 7:**

2 Admit.

3 **REQUEST FOR ADMISSION NO. 8:**

4 Admit that you subsequently acquired Your interest in the Property from the HOA via a  
5 Foreclosure Deed.

6 **RESPONSE TO REQUEST NO. 8:**

7 Admit.

8 **REQUEST FOR ADMISSION NO. 9:**

9 Admit the Property sold for less than the fair market value at the time of the foreclosure.  
10

11 **RESPONSE TO REQUEST NO. 9:**

12 Deny.

13 **REQUEST FOR ADMISSION NO. 10:**

14 Admit that Property sold for less than the assessed value of the property according to the Clark  
15 County Assessor's records at the time of the foreclosure.

16 **RESPONSE TO REQUEST NO. 10:**

17 Admit.

18 **REQUEST FOR ADMISSION NO. 11:**

19 Admit that YOU believed the fair market value of the Property was greater than the amount You  
20 paid for the property at the HOA foreclosure.

21 **RESPONSE TO REQUEST NO. 11:**

22 Deny.

23 **REQUEST FOR ADMISSION NO. 12:**

24 Admit that the amount that YOU paid for the Property was based, in part, on the fact that you  
25 obtained title without warranty, express or implied, regarding title, possession or encumbrances.  
26

27 **RESPONSE TO REQUEST NO. 12:**

28 Deny.

1 **REQUEST FOR ADMISSION NO. 13:**

2 Admit that YOU have obtained income from the rental or lease of the Property.

3 **RESPONSE TO REQUEST NO. 13:**

4 Admit.

5 **REQUEST FOR ADMISSION NO. 14:**

6 Admit that the Property is currently rented or leased to a third party.

7 **RESPONSE TO REQUEST NO. 14:**

8 Admit that the property has been leased.

9 **REQUEST FOR ADMISSION NO. 15:**

10 Admit that you have purchased other properties at HOA foreclosure sales or from a Homeowner's  
11 Association at an HOA foreclosure sale prior to November 7, 2014.

12 **RESPONSE TO REQUEST NO. 15:**

13 Admit.

14 **REQUESTS FOR ADMISSION NO. 16:**

15 Admit that you entered into an agreement (written or oral) with the HOA to acquire YOUR  
16 interest in the Property.

17 **RESPONSE TO REQUEST NO. 16:**

18 Deny.

19 **REQUEST FOR ADMISSION NO. 17:**

20 Admit that prior to purchasing the Property, YOU were aware that the amounts included in the  
21 HOA lien notices included amounts subordinate to THORNBURG's lien.

22 **RESPONSE TO REQUEST NO. 17:**

23 Objection, ambiguous.

24 **REQUEST FOR ADMISSION NO. 18:**

25 Admit that YOU were aware that litigation would likely ensue upon purchasing the Property.

26 ...

1 **RESPONSE TO REQUEST NO. 18:**

2 Admit.

3 **REQUEST FOR ADMISSION NO. 19:**

4 Admit YOU have entered into a lease agreement concerning the use of the Property.

5 **RESPONSE TO REQUEST NO. 19:**

6 Admit that the property has been leased.

7 **REQUEST FOR ADMISSION NO. 20:**

8 Admit YOU have received income through leasing YOUR interest in the Property.

9 **RESPONSE TO REQUEST NO. 20:**

10 Admit.

11 **REQUEST FOR ADMISSION NO. 21:**

12 Admit YOU have no evidence that THORNBURG had actual notice prior to the HOA Sale that  
13 the HOA was asserting a lien against the Property for unpaid HOA assessments, dues and/or fines.

14 **RESPONSE TO REQUEST NO. 21:**

15 Deny.

16 **REQUEST FOR ADMISSION NO. 22:**

17 Admit YOU have no evidence that THORNBURG had actual notice, prior to the HOA Sale, that  
18 the HOA recorded a Notice of Delinquent Assessment (Lien) against the Property.

19 **RESPONSE TO REQUEST NO. 22:**

20 Deny.

21 **REQUEST FOR ADMISSION NO. 23:**

22 Admit YOU have no evidence that THORNBURG was notified, prior to the HOA Sale, that the  
23 HOA recorded a Notice of Default and Election to Sell Under Homeowners Association Lien against the  
24 Property.

25 **RESPONSE TO REQUEST NO. 23:**

26 Deny.

1 **REQUEST FOR ADMISSION NO. 24:**

2 Admit YOU have no evidence that THORNBURG had actual notice, prior to the HOA Sale, that  
3 the HOA recorded a Notice of Foreclosure Sale against the Property.

4 **RESPONSE TO REQUEST NO. 24:**

5 Deny.

6 **REQUEST FOR ADMISSION NO. 25:**

7 Admit that the HOA Sale was not commercially reasonable as to the manner of the sale.

8 **RESPONSE TO REQUEST NO. 25:**

9 Objection. Commercial reasonableness is not required in a foreclosure sale conducted pursuant  
10 to NRS Chapter 116. Without waiving this objection the plaintiff denies this request. The auction and  
11 sale was conducted pursuant to Chapter NRS 116, and as a matter of law was commercially reasonable.  
12 Plaintiff therefore denies.

13 **REQUEST FOR ADMISSION NO. 26:**

14 Admit that the HOA Sale was not commercially reasonable as to the method of the sale.

15 **RESPONSE TO REQUEST NO. 26:**

16 See response to request no. 26.

17 **REQUEST FOR ADMISSION NO. 27:**

18 Admit that you were the only prospective purchaser to bid on the Property.

19 **RESPONSE TO REQUEST NO. 27:**

20 Deny.

21 **REQUEST FOR ADMISSION NO. 28:**

22 Admit that Thornburg's predecessor in interest attempted to make a payment in an amount equal  
23 to 9 months of assessments to the HOA prior to the HOA foreclosure sale.

24 **RESPONSE TO REQUEST NO. 28:**

25 Objection, ambiguous as to time.

26 ...

1 **REQUEST FOR ADMISSION NO. 28:(sic)**

2 Admit that Thornburg's predecessor in interests' attempted payment equal to 9 months of  
3 assessments constitutes the super-priority amount for the Property.

4 **RESPONSE TO REQUEST NO. 28:**

5 See response to prior request.

6 Dated this 7th day of April, 2017.

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

9  
10 By: /s/ /Michael F. Bohn, Esq./  
Michael F. Bohn, Esq.  
11 376 E. Warm Springs Rd., Ste. 140  
12 Las Vegas, NV 89119  
Attorney for plaintiff



1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW  
3 OFFICES OF MICHAEL F. BOHN., ESQ., and on the 7th day of April, 2017, an electronic copy  
4 of the PLAINTIFF'S RESPONSES TO DEFENDANT, THORNBURG MORTGAGE SECURITIES  
5 TRUST 2007-3'S FIRST SET OF REQUESTS FOR ADMISSIONS was served on opposing counsel via  
6 the Court's electronic service system to the following:  
7

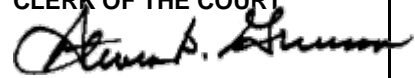
8  
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Frank and Madeline Timpa

18  
19  
20 /s/ /Maggie Lopez/  
An Employee of the LAW OFFICES OF  
21 MICHAEL F. BOHN, ESQ., LTD.  
22  
23  
24  
25  
26  
27  
28



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10 Attorney for plaintiff/counterdefendant  
11 Saticoy 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

**PLAINTIFF'S OPPOSITION TO MOTION  
FOR RECONSIDERATION**

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., opposes the defendants motion for  
3 reconsideration as follows.

#### 4 FACTS

5 This is the case where the plaintiff purchased the property at foreclosure sale shortly after the  
6 decision in SFR Investments Pool 1, LLC v. U.S. Bank N.A. 130 Nev. Adv. Op 75, 334 P.3d 408 (2014)  
7 was issued. The purchase date was November 7, 2014, and the price paid was \$1,201,000.00. A copy of  
8 the foreclosure deed is attached as Exhibit 1.

9 As this case is unique because of the dollar amount involved, the motion for reconsideration  
10 should be denied, and the case should proceed to trial.

#### 11 POINTS AND AUTHORITIES

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

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

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

20 It is respectfully submitted that because of the dollar amount involved, the number of parties, and  
21 the issues, for this court to properly evaluate the equities, this case should proceed to trial to develop all  
22 the facts and evidence.

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

24 NRS 116.1108 provides:

25 **Supplemental general principles of law applicable.** The principles of **law and equity**,  
26 including the law of corporations and any other form of organization authorized by law  
27 of this State, the law of unincorporated associations, **the law of real property**, and the  
28 law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud,  
misrepresentation, duress, coercion, mistake, receivership, substantial performance, or

1 other validating or invalidating cause supplement the provisions of this chapter, except  
2 to the extent inconsistent with this chapter.

3 (Emphasis added)

4 The principles of equity and real property are applicable to this foreclosure sale, and preclude  
5 relief to the bank.

6 **C. Equitable relief is not available because the bank was on notice of the sale and failed to take any  
7 steps to protect its interests.**

8 The Nevada Supreme Court has NEVER decided a reported case in which equitable remedy was  
9 not available because of the inaction of the mortgage holder. The Shadow Wood case, however,  
10 discusses the issue in detail. The court noted that equitable relief is not available to a party that was on  
11 notice but failed to act. Footnote 7 to the decision states:

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

17 (Emphasis added)

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

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

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

27 This includes considering the status and actions of all parties involved, including whether  
28 an innocent party may be harmed by granting the desired relief.<sup>7</sup> *Smith v. United States*,  
373 F.2d 419, 424 (4th Cir.1966) (“Equitable relief will not be granted to the possible  
detriment of innocent third parties.”); *see also In re Vlasek*, 325 F.3d 955, 963 (7th  
Cir.2003) (“[I]t is an age-old principle that in formulating equitable relief a court must

1 consider the effects of the relief on innocent third parties.”); *Riganti v. McElhinney*, 248  
2 Cal.App.2d 116, 56 Cal.Rptr. 195, 199 (Ct.App.1967) (“[E]quitable relief should not be  
3 granted where it would work a gross injustice upon innocent third parties.”).

4 The bank received the foreclosure notices and failed to act, and the property was acquired by a  
5 third party. The bank is not entitled to equitable relief.

6 The recent case of *Bank of America, N.A. v. SFR Investments Pool 1*, 134 Nev. Adv. Op. 72  
7 (2018) did not discuss the availability of equitable relief in a foreclosure sale. The court in the case did  
8 note that the bona fide purchaser doctrine was not applicable. However, the standard for equitable relief  
9 is simply an innocent third party, not a bona fide purchaser.

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

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

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

17 During oral argument, counsel for respondents suggested that an action at law would not  
18 be adequate because it could not be enforced by a writ of execution against a county fund.  
19 Whether this be true or not, it is hardly to be supposed that an execution would be  
20 necessary in the event a judgment at law were obtained against the county in this type of  
21 case any more than a contempt proceeding would be required in the event a peremptory  
22 writ of mandamus were issued. **In answer to this suggestion however it is necessary to  
23 say only that our concern is with the existence of a remedy and not whether it will  
24 be unproductive in this particular case,** *Hughes v. Newcastle Mutual Insurance Co.*, 13  
25 U.C.Q.B. (Ont.) 153, or inconvenient, *Gulf Research & Development Co. v. Harrison*, 9  
26 Cir., 185 F.2d 457, or ineffectual, *United States ex rel. Crawford v. Addison*, 22 How.  
27 174, 63 U.S. 174, 16 L.Ed. 304.

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

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

1                   the judgment procure pecuniary compensation.’

2                   (Emphasis added)

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

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

15                   Id. at 831-832. (Emphasis added)

16                   Under the Shadow Wood factors, the defendant bank’s remedy is against the foreclosure agent.

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

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

26                   Shadow Wood, consistent with this stated:

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

1 There is no defect with the sales process. If there was a defect, and the purchaser is a bona fide  
2 purchaser, the sale cannot be set aside. The bank, however, is not without a remedy, providing, of course,  
3 that there was a prejudicial defect with the sale (which has not been shown here). It has an claim for  
4 money damages against the HOA for any defect in the sale process.

5 **E. The recent case law is distinguishable.**

6 On September 13, 2018, the Nevada Supreme Court, en banc, entered a published decision  
7 involving the issue of tender in the case of Bank of America v. SFR Investments Pool 1 134 Nev. Adv.  
8 Op. 72 (2018). It is respectfully submitted that the decision is erroneous and distinguishable from the  
9 present case for the reasons set forth herein.

10 1. The tender of the super priority lien by one who is not primarily responsible does not discharge  
11 the lien, but assigns the lien under the theory of subrogation to the party making the payment.

12 2. There are multiple conditions contained in the letter accompanying the tender. The new case  
13 only discussed one condition.

14 3. A good faith rejection of the tender does not discharge or assign the lien.

15 Defendant Saticoy Bay now discusses each of these issues herein.

16 **1. Payment creates an assignment, not a discharge of the lien.**

17 The initial flaw with the court's assessment of the issue is that there is a legal distinction between  
18 payment of a lien by the party that is primarily responsible for the debt, and someone who is not primarily  
19 liable for the debt.

20 The rules regarding payment by a party not primarily liable are discussed in the Restatement  
21 (Third) of Prop.: Mortgages §6.4 as follows:

22 **§ 6.4 Redemption from Mortgage by Performance or Tender**

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



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

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

10 At the threat of foreclosure by a senior lien, a junior lienor is entitled, even without express  
11 contractual authority, to reinstate the loan by making a payment sufficient to cure the default or to pay  
12 off the senior lien and become subrogated to the rights of the senior lienholder as against the owner of  
13 the property. See Restatement (Third) of Prop.: Mortgages §7.6; American Sterling Bank v. Johnny  
14 Management LV, Inc., 126 Nev. 423, 245 P.3d 535 (2010); Houston v. Bank of America 119 Nev. 485,  
15 78 P.3d 71 (2003).

16 The Restatement (Third) of Prop.: Mortgages §6.4 , comment a, explains the distinction between  
17 payment or tender by someone primarily liable for the debt, and payment or tender by a party seeking to  
18 protect its interest in the property. It states in part:

19 Equitable redemption is ultimately accomplished by performance in full of the obligation  
20 secured by the mortgage. **However, redemption has two quite distinct results,**  
21 **depending on whether the performance is made by a person who is primarily**  
22 **responsible for payment of the mortgage obligation, or by someone else who holds**  
23 **an interest in the land subordinate to the mortgage.** In the first of these situations, the  
24 mortgage is simply extinguished, as provided in Subsection (a) of this section. **In the**  
25 **second, the mortgage is not extinguished, but by virtue of Subsection (e) is assigned**  
26 **by operation of law to the payor under the doctrine of subrogation;** see §7.6.  
27 Subrogation does not occur in the first situation, since one who is primarily responsible  
28 for payment of a debt cannot have subrogation by performing that duty; see §7.6,  
Comment b. (emphasis added)

29 The court in American Sterling Bank stated:

30 The practical effect of equitable subrogation is a revival of the discharged lien and  
31 underlying obligation and assignment to the payor or subrogee, permitting the subrogee  
32 to enforce the seniority of the satisfied lien against junior lienors. Restatement (Third) of  
33 Prop.: Mortgages § 7.6 cmt. a (1997); Land Title Ins. Cor. v. Ameriquet Mor. Co., 207  
34 P.3d 141, 144–45 (Colo.2009).

35 Similarly, Comment g to §6.4 of the Restatement further explains:

1 The second distinction, mentioned above, is that redemption by a person who is not  
2 primarily responsible for payment of the debt **does not extinguish the mortgage, but**  
3 **rather assigns both the mortgage and the debt to the payor by operation of law**  
4 **under the doctrine of subrogation**; See §7.6 (emphasis added)

5 Paragraph F on page 2 of 2 of the Planned Unit Development Rider to the deed of trust states:

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

12 This language is consistent with Restatement (Third) of Prop.: Mortgages §6.4(e) and (f) that treat  
13 any payment offered by plaintiff as an assignment.

14 Comment d to this section of the Restatement notes that something needs to be recorded to clear  
15 the public record stating:

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

20 This is clearly because the purpose of the recording statutes is to impart notice to subsequent  
21 purchasers. SFR Investments Pool 1 v. First Horizon Home Loans 134 Nev. Adv. Op. 4, 409 P.3d 891  
22 (2018); State Department of Taxation v. Kawahara 131 Nev. Adv. Op 42, 351 P.3d 746 (2015); All  
23 American Van and Storage v. DeLuca Realty, 95 Nev. 253, 592 P.2d 951 (1979); Allison Steel Mfg. Co.  
24 v. Bentonite 86 Nev. 494, 471 P.2d 666 (1970).

## 25 **2. There are multiple conditions and falsehoods contained in the letter accompanying the** 26 **check**

27 In the recent Bank of America v. SFR case, the Nevada Supreme Court stated regarding conditions  
28 with a tender:

**In addition to payment in full, valid tender must be unconditional, or with**  
**conditions on which the tendering party has a right to insist.** 74 Am. Jur. 2d Tender  
§ 22 (2012). “The only legal conditions which may be attached to a valid tender are either  
a receipt for full payment or a surrender of the obligation.” Heath v. L.E. Schwartz &  
Sons, Inc., 203 Ga.App. 91, 416 S.E.2d 113, 114-15 (1992); see also Stockton Theatres,  
Inc. v. Palermo, 179 Cal.App.2d 323, 3 Cal.Rptr. 767, 768 (1960) (tender of entire  
judgment with request for satisfaction of judgment was not conditional); cf. Steward v.  
Yoder, 86 Ill.App.3d 223, 41 Ill.Dec. 709, 408 N.E.2d 55, 57 (1980) (concluding tender  
with request for accord and satisfaction was conditional, but not unreasonable).

1 The only “condition” discussed by the Supreme Court in the recent case was for satisfaction of  
2 the super priority portion of the lien. However, there are other conditions and false statements in the form  
3 letter which were not discussed in the published case.

4 A copy of the tender letter is attached as Exhibit 2. A copy of the letter from Red Rock,  
5 explaining its rejection is attached as Exhibit 3.

6 The February 9, 2012 tender letter contains include false statements of facts regarding the extent  
7 of the super priority lien, the finality of the bank’s obligations on the property, and falsely states that  
8 payment is by cashiers check when in fact it is by trust account check. The letter states in relevant part:

9 NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 16.3116:

10 The association has a lien on a unit for:

11 *...  
12 any penalties, fees, charges, late charges, fines and interest charge pursuant to  
13 paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as  
14 assessments under this section.*

15 While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j)  
16 through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust  
17 to the extent the lien is for fees and charges imposed for collection and/or attorneys fees,  
18 collection costs, late fees, service charges and interest....

19 This explanation is a false definition of the super priority lien, because subsection (m) of NRS  
20 116.3102 because this section permits the HOA to impose fines for abatement liens as provided in NRS  
21 116.310312. The abatement lien also has super priority status. This statute provides in part:

22 7. Except as otherwise provided in this subsection, **a lien described in subsection 5 is  
23 prior and superior to all liens, claims, encumbrances and titles other than the liens  
24 described in paragraphs (a) and (c) of subsection 2 of NRS 116.3116.** If the federal  
25 regulations of the Federal Home Loan Mortgage Corporation or the Federal National  
26 Mortgage Association require a shorter period of priority for the lien, the period during  
27 which the lien is prior and superior to other security interests shall be determined in  
28 accordance with those federal regulations. Notwithstanding the federal regulations, the  
period of priority of the lien must not be less than the 6 months immediately preceding the  
institution of an action to enforce the lien. (emphasis added)

The letter also omits the abatement lien language in NRS 116.3116(2)(c) in the next paragraph  
of the letter. One of the “facts” contained in the letter was the inclusion of the following statutory  
language:

The lien is also prior to all security interests described in paragraph (b) to the extent of the

1 assessments for common expenses...which would have become due in the absence of  
2 acceleration during the 9 months immediately preceding institution of an action to enforce  
the lien.

3 The complete section from the statute reads:

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

8 The statute at the relevant time clearly included any expenses incurred pursuant to NRS  
116.310312 related to nuisance and abatement cost, which the Miles Bauer letter appears to have  
9 intentionally omitted. The language in the letter misquotes the statute and leaves out the abatement  
10 language without indicating that the language had been deleted, and then demands that the HOA accept  
11 the check as an unconditional acceptance of the “facts” stated in the letter.

12 The second to last sentence in the letter states:

13 This is a non-negotiable amount and any endorsement of said cashier’s check on your part,  
14 whether express or implied, will be strictly construed as **an unconditional acceptance**  
15 **on your part of the facts stated herein** and express agreement that **BANA’s financial**  
16 **obligations toward the HOA in regards to the real property located at 4039 Meadow**  
**Foxtail Drive have now been “paid in full.”** (emphasis added)

17 The letter makes the demand that the facts stated in the letter are true, when clearly they are not.  
18 Regardless of whether abatement charges were actually incurred, there is no right to demand acceptance  
19 of statements which are false, incomplete and inaccurate, especially when there have been hundreds if  
not thousands of ongoing tenders from Miles Bauer to the same collection companies.

20 Additionally, the letter demands that BANA’s financial obligations are “paid in full” when in law  
21 and in fact, such obligation has not been paid in full. In the case of Property Plus Investments v.  
22 Mortgage Electronic Registration Systems 133 Nev. Adv. Op. 62, 401 P.3d 728 (2017) ruled that an HOA  
23 can assert a super priority lien on an annual basis. The court stated:

24 We agree with the analysis set forth in JPMorgan and conclude that NRS 116.3116 does  
25 not limit an HOA to one lien enforcement action or one superpriority lien per property  
26 forever. To hold otherwise “would be contrary to the purposes of Nevada’s HOA lien  
27 statute, one of which is to encourage the collection of needed HOA funds and avoid  
adverse impacts on other residents.” Id. (citing SFR Invs. Pool 1, 130 Nev. —, 334 P.3d  
at 417).

1        Additionally, because the bank has a deed of trust on the property, it could conceivably foreclose  
2 on the property and become the owner of the property. Once it becomes owner of the property it would  
3 be responsible for the periodic assessments as owner. The bank could use the language in the letter as  
4 grounds to not pay the periodic assessments.

5        The condition contained in the Miles Bauer letter that “BANA’s financial obligations toward the  
6 HOA in regards to the real property located at 4039 Meadow Foxtail Drive have now been ‘paid in full.’”  
7 is clearly erroneous, and requires a condition that the bank was not permitted to make.

8        The other false statement contained in the letter is that payment is being made by cashier’s check,  
9 when the check is clearly a trust account check.

10        In two recent unpublished orders in Bank of America, N.A. v. SFR Investments Pool 1, LLC, No.  
11 69323, 420 P.3d 559 (Table) (Nev. June 15, 2018) (unpublished disposition), and The Bank of New York  
12 Mellon v. SFR Investments Pool 1, LLC, No. 68165 (Nev. June 15, 2018) (unpublished disposition), the  
13 Nevada Supreme Court stated that a payment must actually be submitted to make a tender valid. In this  
14 case, because no payment was actually submitted, plaintiff did not make a valid tender of any amount to  
15 pay the HOA’s superpriority lien.

16        Both of the recent unpublished orders cite Southfork Investment Group, Inc. v. Williams, 706 So.  
17 2d 75 (Fla. Dist. Ct. App. 1998), where the court stated: “To make an effective tender, the debtor must  
18 actually attempt to pay the sums due; mere offers to pay, or declarations that the debtor is willing to pay,  
19 are not enough.” Id. at 79.

20        Both of the unpublished orders also cite Graff v. Burnett, 414 N.W.2d 271 (Neb. 1987), where  
21 the Nebraska Supreme Court stated:

22        One claiming an adequate and proper tender of payment has the burden to prove both the  
23 offer to pay **and the present ability of immediate performance at the time of the**  
24 **tender.** Cf. Hanson v. Duffy, 106 Ill.App.3d 727, 62 Ill.Dec. 401, 435 N.E.2d 1373  
(1982).

25        The court in Graff also stated:

26        While the record does not reflect that Burnett actually wrote his check for payment and  
27 then delivered or offered to deliver that check to the Graffs, existence of such check is not  
28 necessary for resolution of the basic issue involved in this case. **An additional absence**  
**in the record is more important and crucial in Burnett's appeal, namely, the absence**

1 **of any evidence that Burnett, when he offered to pay by check, had sufficient funds**  
2 **on deposit at the bank on which such check would have been drawn.** Although  
3 Burnett acknowledged that he would have to “run home and stop payment” of a check  
4 given to pay for the entire account at Graffs' farm, Burnett offered no evidence that he had  
5 sufficient funds deposited in his checking account to cover the check he would have  
6 delivered to Graffs. As a consequence of such absent evidence, Burnett failed in his  
burden to show that he had the present ability of immediate performance, an element  
required for an effective tender, when the claimed tender was made. See, *Mr. U Inc. v.*  
*Mobil Oil Corp.*, supra; *Caha v. Nelson*, supra. Without tender of payment, Burnett did  
not satisfy the obligation underlying the liens on the horses, and Graffs' liens subsisted for  
disposition by the district court. Burnett's first assignment of error has no merit.

7 The letter from the plaintiff contains a blatant falsehood that the accompanying check was a  
8 cashier's check, when in fact it was a trust account check. This raises a new issue for the plaintiff which  
9 the plaintiff needs to prove because plaintiff here has failed to provide evidence that there were sufficient  
10 funds in the trust account to cover the check which was submitted. Consequently, the plaintiff made an  
11 invalid tender.

### 12 **3. Good faith rejection of the tender**

13 Red Rock Financial issued a letter to Miles Bauer when correspondence began. The letter  
14 constitutes a good faith rejection of any tender. Any such explanation was absent in the recent published  
15 decision.

16 Rejection of tender does not release the lien if the creditor has a good faith belief that more is  
17 owed than what is offered.

18 In *Hohn v. Morrison*, 870 P.2d 513, 517-518 (Colo. App. 1993), the court stated:  
19 Although this is an issue of first impression in Colorado, other jurisdictions which have  
20 adopted the lien theory of real estate mortgages have also adopted the rule that an  
21 **unconditional tender** of the amount due by the debtor releases the lien of the mortgage  
22 **unless the creditor establishes a justifiable and good faith reason for the rejection of**  
23 **the tender.** *Moore v. Norman*, 43 Minn. 428, 45 N.W. 857 (1890); *Renard v. Clink*, 91  
24 Mich. 1, 51 N.W. 692 (1892); *Easton v. Littooy*, 91 Wash. 648, 158 P.531 (1916) (tender  
of the full amount due operates to discharge the lien of the mortgage **if the tender is**  
**refused without adequate excuse.**) Under this rule, although the underlying debt  
remains enforceable, the lien of the mortgage is discharged. See *Easton v. Littooy*, supra;  
*Security State Bank v. Waterloo Lodge No. 102*, 85 Neb. 255, 122 N.W. 992 (1909)  
(emphasis added)

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

26 “To constitute a sufficient tender, it must be unconditional. *Where a larger sum than that*  
27 *tendered is in good faith claimed to be due*, the tender is ineffectual as such if its

1 acceptance involves the admission that no more is due.” (Emphasis ours.) A number of  
2 other authorities were cited in the Bly case establishing the general recognition of the rule.  
3 More recently this rule was reiterated with specific allusion to attorneys’ fees in the  
4 annotation in 93 A.L.R. 73, where it is stated: “And refusal by the mortgagee to accept  
a tender upon the ground that it does not include attorneys’ fees may prevent the tender  
from operating as a discharge of the mortgage lien when made in good faith, even though,  
as a matter of law, the mortgagee was not entitled to the fees.”

5 In Smith v. School Dist. No. 64 Marion County, 131 P. 557, 558 (Kan. 1913), the Kansas  
6 Supreme Court stated:

7 A conditional tender is not valid. Where it appears that a larger sum than that tendered  
8 is claimed to be due, the offer is not effectual as a tender if coupled with such conditions  
9 that acceptance of it as tendered involves an admission on the part of the person accepting  
it that no more is due. Moore v. Norman, 52 Minn. 83, 53 N.W. 809, 18 L.R.A. 359, 38  
Am. St. Rep. 526, and not page 529; 38 Cyc. 152, and cases cited in note 152, 153.

10 In Hilmes v. Moon, 11 P.2d 253, 260 (Wash. 1932), the Washington Supreme Court stated:  
11 In order to discharge the lien of the mortgage, the proof must be clear that the refusal was  
palpably unreasonable, absolute, arbitrary, and unaccompanied by any bona fide, though  
mistaken, claim of right.

12 Based upon the state of the law when plaintiff made its tender, it was appropriate for the HOA  
13 and its foreclosure agent to believe that the HOA’s superpriority lien was not limited to the nine months  
14 of assessments.

15 The Advisory Opinion No. 2010-01 issued by the Commission for Common-Interest  
16 Communities and Condominium Hotels (“CCICCH”) sets forth the opinion that an HOA may collect  
17 several fees and costs, including “the ‘costs of collecting’ authorized by NRS 116.310313. A copy of that  
18 opinion is attached as Exhibit 4.

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

24 The Nevada Supreme Court stated in State Dep’t of Business & Industry, Financial Institutions  
25 Div’n v. Nevada Ass’n Services, Inc., 128 Nev. Adv. Op. 54, 294 P.3d 1223, 1227-1228 (2012): “We  
26 therefore determine that the plain language of the statute requires that the CCICCH and the Real Estate  
27  
28

1 Division, and no other commission or division, interpret NRS Chapter 116.” Thus, on the date of the  
2 foreclosure agent’s letter, the foreclosure agent had every reason to rely upon the CCICCH opinion.

3 The decision in Horizons at Seven Hills v. Ikon Holdings, 132 Nev. Adv. Op. 35, 373 P.3d 66  
4 (2016), cannot be used as a basis to refute the HOA’s good faith belief because that opinion was not  
5 issued until April 28, 2016, several years after the tender in this matter. Thus, the HOA could not rely  
6 on that decision in making its determination regarding the tender.

7 **F. This court should consider the time between the rejected tender, the decision on the SFR case,  
and the sale date**

8 One of the unique issues in this case is that it is a sale that occurred AFTER the decision in SFR  
9 Investments Pool 1, LLC v. U.S. Bank N.A. 130 Nev. Adv. Op 75, 334 P.3d 408 (2014) was issued on  
10 September 18, 2014. The letter and check were sent out on February 9, 2012, and over 18 months elapsed  
11 between the rejection and the sale. In between, the SFR decision was issued, and the bank knew what the  
12 law was at that time. This should be considered by the court in determining equitable relief.

13 **CONCLUSION**

14 This case is too unique not to be brought to trial. There are issues to be determined at trial, and  
15 this case is unique to be disposed of on summary judgment. The recent case law is not dispositive as to  
16 the issues raised by the plaintiff in this case. The case should be ordered to proceed to trial.

17 DATED this 2<sup>nd</sup> day of October, 2018

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

20  
21 By: / s / Michael F. Bohn, Esq. /  
22 Michael F. Bohn, Esq.  
2260 Corporate Circle, Ste. 480  
23 Henderson, Nevada 89074  
Attorney for Plaintiff  
Saticoy Bay LLC Series 34 Innisbrook



**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 2nd day of October, 2018, an electronic copy of the PLAINTIFF'S OPPOSITION TO MOTION FOR RECONSIDERATION 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

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

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

Inst #: 20141110-0002475  
Fees: \$18.00 N/C Fee: \$25.00  
RPTT: \$6125.10 Ex: #  
11/10/2014 11:49:45 AM  
Receipt #: 2215809  
Requestor:  
RESOURCES GROUP  
Recorded By: DXI Pgs: 3  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

## FORECLOSURE DEED

The undersigned declares: *\$6125.10*


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.

JA1667

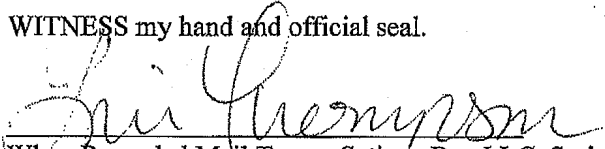
Dated: November 10, 2014

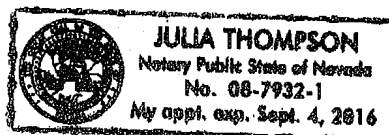
  
By: Christie Marling, employee of Red Rock Financial Services, agent for Spanish Trail  
Master Association

STATE OF NEVADA )  
COUNTY OF CLARK )

On November 10, 2014, before me, personally appeared Christie Marling, 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: Saticoy Bay LLC, Series 34 Innisbrook  
900 S. Las Vegas Blvd., #810  
Las Vegas, NV 89101



*Sept 4 2016*

JA1668

# STATE OF NEVADA DECLARATION OF VALUE

## 1. Assessor Parcel Number (s)

- a) 163-28-614-007  
b) \_\_\_\_\_  
c) \_\_\_\_\_  
d) \_\_\_\_\_

## 2. Type of Property:

- |                             |              |  |                 |
|-----------------------------|--------------|--|-----------------|
| a) <input type="checkbox"/> | Vacant Land  | b) <input checked="" type="checkbox"/> | Single Fam Res. |
| c) <input type="checkbox"/> | Condo/Twnhse | d) <input type="checkbox"/>            | 2-4 Plex        |
| e) <input type="checkbox"/> | Apt. Bldg.   | f) <input type="checkbox"/>            | Comm'l/Ind'l    |
| g) <input type="checkbox"/> | Agricultural | h) <input type="checkbox"/>            | Mobile Home     |
| i) <input type="checkbox"/> | Other        |  |                 |

### FOR RECORDERS OPTIONAL USE ONLY

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

## 3. Total Value/Sales Price of Property:

Deed in Lieu of Foreclosure Only (value of property) \$ 1,201,000.00  
Transfer Tax Value: \$ 1,201,000.00  
Real Property Transfer Tax Due: \$ 6125.10

## 4. If Exemption Claimed:

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

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

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

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity AGENT  
Signature \_\_\_\_\_ Capacity \_\_\_\_\_

## SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: Red Rock Financial Services  
Address: 4775 West Teco Ave #140  
City: Las Vegas  
State: NV Zip: 89118

## BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: Saticoy Bay LLC, Series 34 Innisbrook  
Address: 900 S. Las Vegas Blvd., #810  
City: Las Vegas  
State: NV Zip: 89101

## COMPANY/PERSON REQUESTING RECORDING

(REQUIRED IF NOT THE SELLER OR BUYER)

Print Name: Reserve Property LLC Escrow # \_\_\_\_\_  
Address: 900 S Las Vegas Blvd #810  
City: NV State: NV Zip: 89101

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

JA1669

# EXHIBIT 2

# EXHIBIT 2

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



MILES, BAUER, BERGSTROM & WINTERS, LLP  
ATTORNEYS AT LAW SINCE 1983

2200 Paseo Verde Pkwy., Suite 250  
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Fax: (702) 369-4955

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

RICHARD J. BAUER, JR.  
FRED TIMOTHY WINTERS  
KEENAN E. McCLENAHAN  
MARK T. DOMEYER  
Also Admitted in the District  
of

Columbia & Virginia  
TAMI S. CROSBY  
L. BRYANT JAQUEZ  
WAYNE A. RASH  
VY T. PHAM  
HADI R. SEYED-ALI  
BRIAN H. TRAN  
ANNA A. GHAJAR  
CORI B. JONES  
CATHERINE K. MASON  
CHRISTINE A. CHUNG  
HANH T. NGUYEN  
S. SHELLY RAISZADEH  
SHANNON C. WILLIAMS  
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 #: 138344335  
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:

RRFS000631

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.

RRFS0006342



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

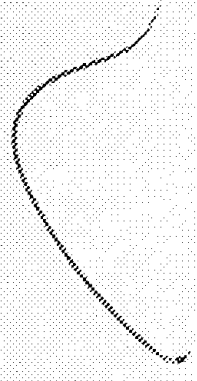
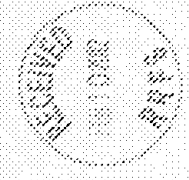
13298  
 Date: 2/6/2012  
 Amount \$\*\*\*\* 2,025.00

Loan # 138344335

Pay \$\*\*\*\*\*Two Thousand, Twenty-Five & No/100 Dollars  
 to the order of

Check Void After 90 Days

RED ROCK FINANCIAL SERVICES



⑈ 13298⑈ 12122400724⑈ 501006876973⑈ RRFS000535

EXHIBIT 3

EXHIBIT 3



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](http://www.rrfs.com).

Sincerely,

Kimberlee Sibley  
Red Rock Financial Services

KJS/jmt

# EXHIBIT 4

# EXHIBIT 4

ADOPTED DECEMBER 8, 2010

**COMMISSION FOR COMMON INTEREST COMMUNITIES  
AND CONDOMINIUM HOTELS  
ADVISORY OPINION NO. 2010-01**

**Subject:** Inclusion of Fees and Costs as an Element of the Super Priority Lien

**QUESTION**

Under NRS 116.3116, the super priority of an assessment lien includes "assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration" during the 6 or 9 month super priority period. May the association also recover, as part of the super priority lien, the costs and fees incurred by the association in collecting such assessments?

**ANSWER**

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

**ANALYSIS**

**Statutory Super Priority.** NRS Chapter 116 provides for a "super priority" lien for certain association assessments. NRS 116.3116 provides, in pertinent part, as follows:

**NRS 116.3116 Liens against units for assessments.**

1. The association has a lien on a unit for . . . any assessment levied against that unit . . . from the time the . . . assessment . . . becomes due. . . .

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

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

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

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in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

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

The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312<sup>1</sup> and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. . .

NRS 116.3116 further provides that "Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section."

UCIOA. The "super priority" provisions of NRS Chapter 116, like the rest of the chapter, are based on the 1982 version of the Uniform Common Interest Ownership Act (UCIOA) adopted by the National Conference of Commissioners

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<sup>1</sup> NRS 116.310312, enacted in 2009, provides for the recovery by the association of certain costs incurred by an association with respect to a foreclosed or abandoned unit, including costs incurred to "Maintain the exterior of the unit in accordance with the standards set forth in the governing documents" or "Remove or abate a public nuisance on the exterior of the unit...."

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of Uniform State Laws (NCCUSL). A comparison of the statutory language in UCIOA<sup>2</sup> and NRS reveals few material changes:

<b>UCIOA 3-116. (1994)</b>	<b>NRS 116.3116 Liens against units for assessments.(2009)</b>
<p>(a) The association has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to Section 3-102(a)(10), (11), and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due.</p>	<p>1. The association has a lien on a unit for . . . any assessment levied against that unit or any fines imposed against the unit's owner from the time the . . . assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.</p>
<p>(b) A lien under this section is prior to all other liens and encumbrances on a unit except</p>	<p>2. A lien under this section is prior to all other liens and encumbrances on a unit except:</p>
<p>(i) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to,</p>	<p>(a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;</p>
<p>(ii) a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and</p>	<p>(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and</p>

<sup>2</sup> The 1982 version of UCIOA was superseded by a 1994 version, which is used here, and a 2008 version, discussed below.

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<p>(iii) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.</p> <p>The lien is also prior to all security interests described in clause (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien.</p>	<p>(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.</p> <p>The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien.</p>
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**Reported Cases.** There are no reported Nevada cases addressing the issue of whether the super priority lien may include amounts other than just the 6 or 9 months of assessments. Because NRS Chapter 116 is based on a Uniform



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Act, however, decisions in other states that have adopted UCIOA can be helpful. Colorado and Connecticut are both UCIOA states; reported cases in both these states have addressed the question presented in this opinion.

In *Hudson House Condominium Association, Inc. v. Brooks*, 611 A.2d 862 (Conn., 1992), the Connecticut Supreme Court rejected an argument by the holder of the first mortgage that "because [the statute] does not specifically include 'costs and attorney's fees' as part of the language creating [the association's] priority lien, those expenses are properly includable only as part of the nonpriority lien that is subordinate to [the first mortgagee's] interest." In reaching its conclusion, however, the court relied on a non-uniform statute dealing with the judicial enforcement of the association lien.<sup>3</sup> In a footnote the court also noted that the super priority language of the Connecticut version of UCIOA 3-116 had since been amended to expressly include attorney's fees and costs in the priority debt.

The two Colorado cases that have considered this issue reached their conclusion, that the priority debt *includes* attorneys' fees and costs, based on statutory language similar to Nevada's. The language of the court in *First Atl. Mortgage, LLC v. Sunstone N. Homeowners Ass'n*, 121 P.3d 254 (Colo. App. 2005) is very helpful:

Within the meaning of Section 2(b), a "lien under this section" may include any of the expenses listed in subsection (1), including "fees, charges, late charges, attorney fees, fines, and interest." Thus, ***although the maximum amount of a super priority lien is defined solely by reference to monthly assessments, the lien itself may comprise debts other than delinquent monthly assessments.***[Emphasis added.]

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<sup>3</sup> C.G.S.A. Section 47-258(g)

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In support of its holding, the Sunstone court quoted the following language from James Winokur, *Meaner Lienor Community Associations: The "Super Priority" Lien and Related Reforms Under the Uniform Common Ownership Act*, 27 Wake Forest L. Rev. 353, 367:

A careful reading of the . . . language reveals that the association's Prioritized Lien, like its Less-Prioritized Lien, may consist not merely of defaulted assessments, but also of fines and, where the statute so specifies, enforcement and attorney fees. The reference in Section 3-116(b) to priority "to the extent of" assessments which would have been due "during the six months immediately preceding an action to enforce the lien" merely limits the maximum amount of all fees or charges for common facilities use or for association services, late charges and fines, and interest which can come with the Prioritized Lien.

The decision of the court in Sunstone was followed in *BA Mortgage, LLC v. Quail Creek Condominium Association, Inc.*, 192 P.2d 447 (Colo. App, 2008).

A comparison of the language of the Colorado statute and the language of the Nevada statute reveals that the two are virtually identical:

<b>CRS 38-33.3-316 Lien for assessments. (2008)</b>	<b>NRS 116.3116 Liens against units for assessments. (2009)</b>
(1) The association . . . has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, <u>fees, charges, late charges, attorney fees, fines, and interest</u> charged pursuant to section 38-33.3-302 (1) (j), (1) (k), and (1) (l), section 38-33.3-313 (6), and section 38-33.3-315 (2) are enforceable as assessments under this article. The amount of the lien shall include all those items set forth in this section from the time such items become due. . . .	. The association has a lien on a unit for . . . any assessment levied against that unit or any fines imposed against the unit's owner from the time the . . . assessment or fine becomes due. Unless the declaration otherwise provides, any . . . <u>fees, charges, late charges, fines and interest</u> charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. . . .

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<p>(2) (a) A lien under this section is prior to all other liens and encumbrances on a unit except:</p> <p>***</p> <p>(b) Subject to paragraph (d) of this subsection (2), a lien under this section is also prior to the security interests described in subparagraph (II) of paragraph (a) of this subsection (2) to the extent of:</p> <p>(I) <u>An amount equal to the common expense assessments based on a periodic budget adopted by the association under section 38-33.3-315 (1) which would have become due, in the absence of any acceleration, during the six months immediately preceding</u> institution by either the association or any party holding a lien senior to any part of the association lien created under this section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien. [Emphasis added.]</p>	<p>2. A lien under this section is prior to all other liens and encumbrances on a unit except:</p> <p>***</p> <p>The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and <u>to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding</u> institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. [Emphasis added.]</p>
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2008 UCIOA. In 2008 NCCUSL proposed the following amendment to 3-116 of UCIOA<sup>4</sup>:

**SECTION 3-116. LIEN FOR ASSESSMENTS; SUMS DUE ASSOCIATION; ENFORCEMENT.**

(a) The association has a statutory lien on a unit for any assessment ~~levied against~~ attributable to that unit . . . Unless the declaration otherwise provides, reasonable attorney's fees and costs, other fees, charges, late charges, fines, and interest charged pursuant to Section 3-102(a)(10), (11), and (12), and any other sums due to the association under the declaration, this act, or as a result of an administrative, arbitration, mediation, or judicial decision are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except:

~~(i)(1)~~ liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which that the association creates, assumes, or takes subject to;

~~(ii)(2)~~ except as otherwise provided in subsection (c), a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent; or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

~~(iii)(3)~~ liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

(c) ~~A~~ The lien under this section is also prior to all security interests described in subsection (b)(2) clause (ii) above to the extent of both the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien, and reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien. . . [Emphasis added.]

<sup>4</sup> The changes noted are to 1994 UCIOA.

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New Comment No. 8 to 3-116 states as follows:

8. Associations must be legitimately concerned, as fiduciaries of the unit owners, that the association be able to collect periodic common charges from recalcitrant unit owners in a timely way. To address those concerns, the section contains these 2008 amendments:

First, subsection (a) is amended to add the cost of the association's reasonable attorneys fees and court costs to the total value of the association's existing 'super lien' – currently, 6 months of regular common assessments. This amendment is identical to the amendment adopted by Connecticut in 1991; see C.G.S. Section 47-258(b).<sup>5</sup> The increased amount of the association's lien has been approved by Fannie Mae and local lenders and has become a significant tool in the successful collection efforts enjoyed by associations in that state. [Emphasis added.]

**Discussion.** The Colorado Court of Appeals and the author of the Wake Forest Law Review article quoted by the court in the *Sunstone* case both concluded that although the assessment portion of the super priority lien is limited to a finite number of months, because the assessment lien itself includes "fees, charges, late charges, attorney fees, fines, and interest," these charges may be included as part of the super priority lien amount. This language is the same as NRS 116.3116, which states that "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." As the *Sunstone* court noted "although the maximum amount of the super priority lien is defined solely by reference to monthly assessments, the lien itself may comprise debts other than delinquent monthly assessments."

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<sup>5</sup> The statutory change noted by the Connecticut Supreme Court in the Hudson House case referred to above.

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The referenced statute, NRS 116.3102, provides that an association has the power to:

(j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners, including, without limitation, any services provided pursuant to NRS 116.310312.

(k) Impose charges for late payment of assessments pursuant to NRS 116.3115.

(l) Impose construction penalties when authorized pursuant to NRS 116.310305.

(m) Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.

(n) Impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

It is immediately apparent that the charges authorized by NRS 116.3102(1)(j) through (n) cover a wide variety of circumstances. The fact that "fees, charges, late charges, fines and interest" that may be included as part of the assessment lien under NRS 116.3116 include amounts unrelated to monthly assessments does not mean, however, that such amounts should not be included in the super lien if they do relate to the applicable super priority monthly assessments. It appears that only those association charges authorized under NRS 116.3102(1) Subsections (k) and a portion of (n) apply to the collection of unpaid assessments, i.e., Subsection (k)'s charges for late payment of

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assessments and Subsection (n)'s charges for preparing any statements of unpaid assessments. Subsection (j)'s charges for use of common elements or providing association services, Subsection (l)'s construction penalties and Subsection (n)'s amendments to the declaration and providing resale information clearly do not relate to the collection of monthly assessments.

The inclusion of the word "fines" authorized by NRS 116.3102(1)(m) as part of the assessment lien presents an additional problem in Nevada. The "fines" referred to in NRS 116.3116/NRS 116.3102(1)(m) are fines authorized by NRS 116.31031. While fines may be imposed for "violations of the governing documents," which, of course, could include non-payment of assessments required by the governing documents, the hearing procedure mandated by NRS 116.31031 prior to the imposition of "fines" refers to an inquiry involving conduct or behavior that violates the governing documents, not the failure to pay assessments. Because "fines" involve conduct or behavior, enforcement of fines are given special treatment under NRS 116.31162:

4. The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association unless:

(a) The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community; or

(b) The penalty is imposed for failure to adhere to a schedule required pursuant to NRS 116.310305.

Thus, to use the words of the *Sunstone* court, the "plain language" of NRS 116.3116, when read in conjunction with NRS 116.3102(1) (j) through (n), supports the conclusion that the only additional amounts that can be included as part of the super priority lien in Nevada are "charges for late payment of

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assessments pursuant to NRS 116.3115" and "reasonable charges for the preparation and recordation of . . . any statements of unpaid assessments." NRS 116.3102(1)(k),(n). Note that the reference in Subsection (k) to NRS 116.3115 appears to be solely for the purpose of identifying what is meant by the word "assessment," though NRS 116.3115(3) provides for the payment of interest on "Any assessment for common expenses or installment thereof that is 60 days or more past due...."

**Conclusion.** The super priority language contained in UCIOA 3-116 reflected a change in the traditional common law principle that granted first priority to a mortgage lien recorded prior to the date a common expense assessment became delinquent. The six month priority rule contained in UCIOA 3-116 established a compromise between the interests of the common interest community and the lending community. The argument has been advanced that limiting the super priority to a finite amount, i.e., UCIOA's six months of budgeted common expense assessments, is necessary in order to preserve this compromise and the willingness of lenders to continue to lend in common interest communities. The state of Connecticut, in 1991, NCCUSL, in 2008, as well as "Fannie Mae and local lenders"<sup>6</sup> have all concluded otherwise.

Accordingly, both a plain reading of the applicable provisions of NRS 116.3116 and the policy determinations of commentators, the state of Connecticut and lenders themselves support the conclusion that associations should be able to include specified costs of collecting as part of the association's super priority lien. We reach a similar conclusion in finding that Nevada law

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<sup>6</sup> See New Comment No. 8 to UCIOA 3-116(2008) quoted above.



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authorizes the collection of "charges for late payment of assessments" as a portion of the super lien amount.

In 2009, Nevada enacted NRS 116.310313, which provides as follows:

**NRS 116.310313 Collection of past due obligation; charge of reasonable fee to collect.**

1. An association may charge a unit's owner reasonable fees to cover the costs of collecting any past due obligation. The Commission shall adopt regulations establishing the amount of the fees that an association may charge pursuant to this section.

2. The provisions of this section apply to any costs of collecting a past due obligation charged to a unit's owner, regardless of whether the past due obligation is collected by the association itself or by any person acting on behalf of the association, including, without limitation, an officer or employee of the association, a community manager or a collection agency.

3. As used in this section:

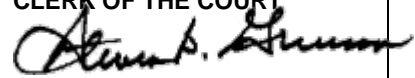
(a) "Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court.

(b) "Obligation" means any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner pursuant to any provision of this chapter or the governing documents.

Since Nevada law specifically authorizes an association to recover the "costs of collecting" a past due obligation and, further, limits those amounts, we conclude that a reasonable interpretation of the kinds of "charges" an association

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may collect as a part of the super priority lien include the "costs of collecting" authorized by NRS 116.310313. Accordingly, the following amounts may be included as part of the super priority lien amount, to the extent the same relate to the unpaid 6 or 9 months of super priority assessments: (a) interest permitted by NRS 116.3115, (b) late fees or charges authorized by the declaration in accordance with NRS 116.3102(1)(k), (c) charges for preparing any statements of unpaid assessments pursuant to NRS 116.3102(1)(n) and (d) the "costs of collecting" authorized by NRS 116.310313.



**RIS**

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*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  
RECONSIDERATION**

**Date of hearing: November 6, 2018**

**Time of hearing: 9:00 a.m.**

Thornburg Mortgage Securities Trust 2007-3 replies supporting its motion for reconsideration of the order denying its motion for summary judgment based on new case law.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

*Bank of America* instructs Thornburg's superpriority tender voids an HOA sale based on the extinguish superpriority lien. This newly decided precedent makes Saticoy's claim equity should apply irrelevant. *Bank of America* now requires summary judgment enter in Thornburg's favor.

**II. ARGUMENT**

BANA's tender is evidenced in Miles Bauer's affidavit (Ex. I) and Red Rock's collection file (Ex. G). BANA, through Miles Bauer, contacted Red Rock to obtain a payoff ledger. Ex. I-1. Red Rock received the letter on December 27, 2011. Ex. G, at RRF000578-579. On January 26, 2012,

**JA1691**

**AKERMAN LLP**

1635 VILLAGE CENTER CIRCLE, SUITE 200  
LAS VEGAS, NEVADA 89134  
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 Red Rock responded with a ledger indicating the total amount due was \$9,255.44. *Id.*, at  
2 RRFS000569. The superpriority amount of the HOA's lien was \$2,025 (\$225.00 x 9) for the  
3 assessments coming due December 1, 2010 through August 1, 2011. Ex. G, RRFS0004-7. There  
4 were no nuisance and/or abatement charges. *Id.* On February 10, 2012, Miles Bauer sent a \$2,025  
5 check to Red Rock paying the super-priority amount. Ex. I-4 & I-5. Red Rock received it on  
6 February 10, 2012. *See* Ex. G, at RRFS000533-536. Red Rock rejected the payment without  
7 explanation. Ex. I-4. BANA's tender preserved Thornburg's deed of trust.

8 **A. *Shadow Wood* does not apply.**

9 To escape *Bank of America's* bind effect, Saticoy turns to "the *Shadow Wood* factors"  
10 arguing this court must consider "1. The price paid; 2. The presence of fraud, oppression, or  
11 unfairness; 3. The failure of the complaining party to act to protect its interest prior to the sale; [and]  
12 4. The interests of a bona fide purchaser" in determining the sufficiency of Thornburg's tender. *Opp.*  
13 at 2; *see also Shadow Wood Homeowners Ass'n v. New York Community Bancorp, Inc.*, 132 Nev. 49,  
14 366 P.3d 1105 (2016). *Shadow Wood's* equitable considerations are irrelevant because of *Bank of*  
15 *America* holding, Thornburg's tender extinguished the superpriority lien by operation of law. *Bank of*  
16 *America*, at \* 6.

17 In *Bank of America*, SFR, like Saticoy here, cited *Shadow Wood* asserting equity entitled it to  
18 unencumbered title to the property. *Id.* The court noted SFR's *bona fide* purchaser status was  
19 "irrelevant when a defect in the foreclosure proceedings renders the sale void." *Id.*, citing *Henke v.*  
20 *First S. Props, Inc.*, 586 S.W.2d 617, 620 (Tex. App. 1979). *Bank of America* concluded "after a  
21 valid tender of the superpriority portion of an HOA lien, a foreclosure sale on the entire lien is void  
22 as to the superpriority portion, because it cannot extinguish the first deed of trust". *Id.* Saticoy's  
23 reliance on *Shadow Wood* is misplaced. The sale did not extinguish Thornburg's deed of trust.

24 **B. *Bank of America* Controls**

25 Saticoy incorrectly argues *Bank of America* is distinguishable because BANA's tender  
26 created an assignment, the letter was conditional, and Red Rock's rejection was justified. *Opp.* at 6.

27 The HOA's lien was not assigned. Saticoy's argument—that BANA's tender assigned the  
28 HOA's superpriority lien to BANA—ignores *Bank of America's* holding that "[t]endering

1 superpriority portion of an HOA lien does not create, alienate, assign, or surrender an interest in  
2 land. Rather, it *preserves* a pre-existing interest, which does not require recording." *Bank of*  
3 *America*, at \*4 (emphasis in original). Saticoy cannot escape that conclusion.

4 The letter accompanying the check was not impermissibly conditional. *Bank of America's*  
5 letter is identical to the letter here.<sup>1</sup> After reviewing the letter, the Court held the letter only  
6 "included a condition, [Bank of America] had a right to insist on...the letter stated that acceptance  
7 of the tender would satisfy the superiority (sic) portion of the lien, preserving Bank of America's  
8 interest in the property." *Id.*, at \*3. This condition was Bank of America's "legal right."

9 The tender did not fail because it "omit[ed] the abatement language in NRS 116.3116(2)(c)."  
10 Opp. at 9. The letter's failure to reference maintenance or nuisance abatement charges is irrelevant.  
11 *Bank of America* confirmed BANA's tender was valid, even absent that reference, because "the HOA  
12 did not indicate that the property had any charges for maintenance or nuisance abatement." *Bank of*  
13 *America*, at \*2. Here, as in *Bank of America*, there were no maintenance or nuisance abatement  
14 charges included in the lien. Mot., at Ex. G, RRFS0004-7.

15 The rejection was not justified, and Red Rock made no objection justifying its rejection **at**  
16 **the time**. "A person to whom a tender is made must, at the time, specify the objections to it, or they  
17 are waived." *First Sec. Bank of Utah, N.A. v. Maxwell*, 659 P.2d 1078, 1081 (Utah 1983); *accord*  
18 *Hossom v. City of Long Beach*, 83 Cal. App. 2d 745, 750, 189 P.2d 787, 791 (Cal. App. 1948)  
19 ("[T]he creditor is required to specify his objections to a tender and if he fails to do so he is  
20 precluded from objecting afterwards.") (internal punctuation omitted); *Lee v. Peters*, 250 S.W.3d  
21 783, 787 (Mo. Ct. App. 2008) ("An objection to a tender, to be available to a creditor, must be timely  
22 made, and the grounds of the objection specified, otherwise it is waived."); *Hohn v. Morrison*, 870  
23 P.2d 513, 517 (Colo. App. 1993) (adopting rule that "the creditor [must establish] a justifiable and  
24 good faith reason for rejection of the tender"); *Blackford v. Judith Basin Cty.*, 98 P.2d 872, 876  
25 (Mont. 1940) ("[O]bjections to a tender are waived unless specified at the time."); *see also Sellwood*

26  
27  
28 <sup>1</sup> *Bank of America's* letter is attached at **Ex. A**, Document No. 16-31428 at 206-208. The letter in this case is attached to Thornburg's motion at Ex. I.

1 *v. Equitable Life Ins. Co. of Iowa*, 42 N.W.2d 346, 353 (Minn. 1950) ("[T]he grounds of objection to  
2 a tender must be specified by the creditor.")

3 Saticoy cites no evidence Red Rock's rejection was justified. Its reliance on Red Rock's 2010  
4 letter asserting "[t]he First Mortgage is 'Senior' to the Homeowners Association...Therefore, NRS  
5 116.3102 only applies when someone who is 'Senior' to the Homeowners Association forecloses..."  
6 is misplaced. The 2010 letter provides no justification to reject BANA's 2012 tender or find Red  
7 Rock intended to extinguish Thornburg's deed of trust.

8 **C. *SFR Investments'* timing is irrelevant**

9 Arguing the sale occurred after *SFR Investments* cannot defeat tender. Saticoy, like "the  
10 bank[,] knew what the law was at the time." Opp. at 14:11-12. Saticoy knew, "secured lenders  
11 [would] mostly likely pay the" superpriority and could "pa[y] off the...lien to avert loss of [their]  
12 security." See *SFR Investments Pool 1, LLC v. U.S. Bank*, 130 Nev. 742, 748-750, 334 P.3d 408,  
13 413-414 (2014). Thornburg exercised its right to protect the deed of trust. There is no unfairness to  
14 Saticoy, neither the foreclosure deed, NRS 116, *SFR Investments*, nor the resultant case law  
15 promises Saticoy unencumbered title. "[Saticoy]'s expectation of obtaining free and clear title at an  
16 HOA foreclosure is more akin to a 'unilateral expectation' of a benefit or privilege." *Federal Home*  
17 *Loan Mortgage Corporation, et al. v. SFR Investments Pool 1, LLC*, Case No. 16-15962 (June 25,  
18 2018)(9th Cir.) (citing *Nunez*, 147 F.3d at 872 (quoting *Roth*, 408 U.S. at 577)).

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1   **III.    CONCLUSION**

2           *Bank of America* confirms the superpriority lien was extinguished before the sale through  
3 BANA's tender. Thornburg did all the law required to protect the priority of the deed of trust. *Bank*  
4 *of America* is binding and controls. The court should reconsider its order denying summary  
5 judgment and enter an order declaring Saticoy's interest, if any, is subject to the deed of trust.

6           DATED this 26th day of October, 2018.

7                                   **AKERMAN LLP**

8                                   /s/ Thera A. Cooper Esq.

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 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 26<sup>th</sup> day of October, 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 RECONSIDERATION**, 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:

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**OLYMPIA LAW, P.C.**

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

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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 A**

---

**MILES BAUER AFFIDAVIT**

---

State of California    }  
                              }ss.  
Orange County         }

Affiant being first duly sworn, deposes and says:

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

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

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

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

- Loan Number:        [REDACTED] 7557

Borrower(s):         Armando Carias

Property Address: 3617 Diamond Spur Avenue, North Las Vegas, Nevada 89032

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

6. Based on Miles Bauer's business records, attached as **Exhibit 1** is a copy of a June 5, 2012 letter from Rock K. Jung, Esq., an attorney with Miles Bauer, mailed by first class mail to Sutter Creek Homeowners Association, care of Alessi & Koenig, LLC.

7. Based on Miles Bauer's business records, attached as **Exhibit 2** is a copy of Statement of Account from Alessi & Koenig, LLC dated June 15, 2012 received by Miles Bauer in response to the June 5, 2012 letter identified above.

8. Based on Miles Bauer's business records, attached as **Exhibit 3** is a copy of a June 28, 2012 letter from Mr. Jung to Alessi & Koenig, LLC enclosing a check for \$720.00.

9. Based on Miles Bauer's business records, on June 29, 2012, Alessi & Koenig, LLC confirmed receipt of the June 28, 2012 letter and receipt of the \$720.00 check. A copy of the confirmation of receipt from Miles Bauer's business records (which correctly identifies the check amount, reference number and Miles Bauer matter number, but inadvertently misidentifies the subject property) is attached as **Exhibit 4**.

///

///

///

///

///

9. Based on Miles Bauer's business records, the \$720.00 check was returned to Miles Bauer. A copy of a screenshot containing the relevant case management note confirming the check was returned is attached as Exhibit 5.

FURTHER DECLARANT SAYETH NOT.

Date: 1/14/15 AK

Declarant Adam Kendis

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

State of California

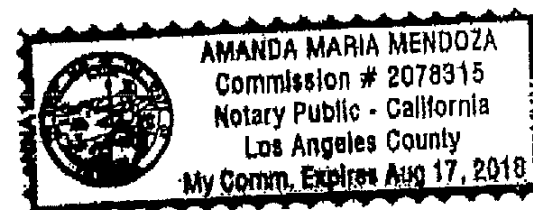
County of Orange

Subscribed and sworn to (or affirmed) before me on this 14<sup>th</sup> day of January, 2015,

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

the person who appeared before me.

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



# EXHIBIT 1

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



MILES, BAUER, BERGSTROM & WINTERS, LLP  
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FRED TIMOTHY WINTERS  
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Also Admitted in the District of  
Columbia & Virginia  
TAMI S. CROSBY  
L. BRYANT JAQUEZ  
WAYNE A. RASH  
VY T. PHAM  
HADI R. SEYED-ALI  
BRIAN H. TRAN  
ANNA A. GHAJAR  
CORI D. JONES  
CATHERINE K. MASON  
CHRISTINE A. CHUNG  
HANH T. NGUYEN  
S. SHELLY RAIEZADEH  
SHANNON C. WILLIAMS  
ABTIN SHAKOURI  
LAWRENCE R. BOIVIN  
RICK J. NEHORAOPP  
BRIAN M. LUNA

June 5, 2012

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

SENT VIA FIRST CLASS MAIL

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

Dear Sirs:

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

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

The association has a lien on a unit for:

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

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

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

3617 Diamond Spur Avenue, North Las Vegas, NV 89032

Page two of two

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

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

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

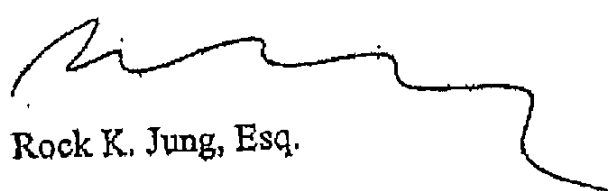
Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated April 4, 2012. For purposes of calculating the nine-month period,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

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

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

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP

  
Rock K. Jung, Esq.

# EXHIBIT 2



Jun. 15. 2012 1:29PM

No. 0252 P. 1/6

*Carias*

**ADDITIONAL OFFICES**

AGOURA HILLS, CA  
PHONE: 818-735-9800

RENO NV  
PHONE: 775-626-2323

DIAMOND BAR CA  
PHONE: 909-843-6590



*A Multi-Jurisdictional Law Firm*

9500 West Flamingo Road, Suite 205  
Las Vegas, Nevada 89147  
Telephone: 702-222-4033  
Facsimile: 702-222-4043  
[www.alessikoenig.com](http://www.alessikoenig.com)

DAVID ALESSI \*  
THOMAS BAYARD \*  
ROBERT KOENIG \*\*  
RYAN KERBOW \*\*\*  
HUONG LAM \*\*\*\*

\* Admitted to the California Bar

\*\* Admitted to the California, Nevada  
and Colorado Bar

\*\*\* Admitted to the Nevada and California Bar

\*\*\*\* Admitted to the Nevada Bar

Via Fax

6/15/2012

MILES, BAUER, BERGSTROM & WINTERS, LLP  
ATTN: Rock K. Jung  
2200 Paseo Verde Parkway, Suite 250  
Henderson, NV 89052  
Fax: (702) 369-4955

Re: 3617 DIAMOND SPUR AVE/ Sutter Creek Homeowners Association

Mr. Jung,

The Commission for Common Interest Communities and Condominium Hotels (the "Commission") released Advisory Opinion No. 2010-01 which specifically addresses the issue of whether or not collection costs are included in the super-priority amount. In the opinion, the Commission concluded that associations may collect, as part of the super priority lien, the costs of collecting as authorized by NRS 116.310313. The Commission also amended NAC 116 establishing provisions concerning fees charged by an association or a person acting on behalf of an association to cover the costs of collecting a past due obligation of a unit's owner.

Furthermore, the nine-month super-priority is not triggered until the beneficiary under the first deed of trust forecloses. As such, please be advised that Alessi & Koenig, LLC, on behalf of the HOA, will continue the foreclosure process unless \$2,930.00 is paid pursuant to the attached demand letter. This amount includes all past due obligations, plus collection costs and fees.

Regards,

Ryan Kerbow, Esq.

Licensed in Nevada.

Jun. 15. 2012 1:29PM

No. 0252 P. 2/6

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

\* Admitted to the California Bar

\*\* Admitted to the California, Nevada  
and Colorado Bars

\*\*\* Admitted to the Nevada and California Bar



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**ADDITIONAL OFFICES IN**

AGOURA HILLS, CA  
PHONE: 818-735-9600

RENO NV  
PHONE: 775-626-2323

&  
DIAMOND BAR CA  
PHONE: 909-461-4300

**FACSIMILE COVER LETTER**

To:	Miles, Bauer, Bergstrom & Winters	Re:	3617 DIAMOND SPUR AVE/HO #30455
From:		Date:	Friday, June 15, 2012
Fax No.:		Pages:	1, including cover
		HO #:	30455

Dear Miles, Bauer, Bergstrom & Winters:

This cover will serve as an amended demand on behalf of Suner Creek Homeowners Association for the above referenced escrow; property located at 3617 DIAMOND SPUR AVE, NO LAS VEGAS, NV. The total amount due through July 15, 2012 is \$2,930.00. The breakdown of fees, interest and costs is as follows:

Pre NOD	\$90.00
Demand Fee	\$150.00
Notice of Delinquent Assessment Lien - Nevada	\$325.00
Notice of Default	\$395.00
Release of Lien (Upon payment in full)	\$30.00
<b>Total</b>	<b>\$990.00</b>
1. Attorney and/or Trustees fees:	\$990.00
2. Notary, Recording, Copies, Mailings, and PACER	\$250.00
3. Ledger Through July 15, 2012	\$930.00
4. RPIR-GI Report	\$85.00
5. Title Research (10-Day Mailings per NRS 116.31163)	\$275.00
6. Management Company Advanced Audit Fee	\$175.00
7. Management Account Setup Fee	\$225.00
8. Publishing and Posting of Trustee Sale	\$0.00
10. Conduct Foreclosure Sale	\$0.00
11. Capital Contribution	\$0.00
12. Progress Payments:	\$0.00
<b>Sub-Total:</b>	<b>\$2,930.00</b>
<b>Less Payments Received:</b>	<b>\$0.00</b>
<b>Total Amount Due:</b>	<b>\$2,930.00</b>

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

JA1706

Jun. 15. 2012 1:29PM

No. 0252 P. 3/6

DAVID ALESSI\*

THOMAS BAYARD\*

ROBERT KOENIG\*\*

RYAN KERBOW\*\*\*

\* Admitted to the California Bar

\*\* Admitted to the California, Nevada  
and Colorado Bars

\*\*\* Admitted to the Nevada and California Bar



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**ADDITIONAL OFFICES IN**

AGOURA HILLS, CA  
PHONE: 818-735-5600

RENO NV  
PHONE: 775-626-2323

DIAMOND BAR CA  
PHONE: 909-461-4300

**FACSIMILE COVER LETTER**

Please have a check in the amount of \$2,930.00 made payable to the Alessi & Koenig, LLC and mailed to the above listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

JA1707

Jun. 15. 2012 1:30PM

No. 0252... P. 4/6

AR2381

Sutter Creek HOA  
FINANCIAL TRANSACTIONS - 06/12/12

3617 Diamond Spur Ave  
Armando A. Carlos

Unit ID: 3617D5  
STATUS: 51 - Alessi&Keonig  
PREPAID BAL: 0.00

TXN		PAYMENTS/TRXN DESCR				CHARGES/PAYMENT DISTR			
BALANCE	PAYMT	AMT	CHECK #	DEP DT	CODE	N/A	DESCRIPTION	AMOUNT	DUE
DATE									
110510	160.00		ck11692	111610	PP		Credit-Prepaid	(160.00)	
(160.00)									
110810			EXPENSE ADJ		PP		Credit-Prepaid	(10.00)	
(170.00)									
120110			APPLY CHARGES		A1		ASSESSMENT	75.00	
(95.00)									
120110			APPLY PREPAYMNT		A1		ASSESSMENT	(75.00)	
(95.00)									
121310	75.00		mo171319	121410	PP		Credit-Prepaid	(75.00)	
(170.00)									
010111			APPLY CHARGES		A1		ASSESSMENT	75.00	
(95.00)									
010111			APPLY PREPAYMNT		A1		ASSESSMENT	(75.00)	
(95.00)									
020111			APPLY CHARGES		A1		ASSESSMENT	75.00	
(20.00)									
020111			APPLY PREPAYMNT		A1		ASSESSMENT	(75.00)	
(20.00)									
030111			APPLY CHARGES		A1		ASSESSMENT	75.00	
55.00									
030111			APPLY PREPAYMNT		A1		ASSESSMENT	(20.00)	
55.00									
031511			APPLY LATE FEE		01		Late Fees	10.00	
65.00									
031711	100.00		mo77423	031811	A1		ASSESSMENT	(55.00)	
(35.00)									
031711					01		Late Fees	(10.00)	
031711					PP		Credit-Prepaid	(35.00)	
031711									
040111			APPLY CHARGES		A1		ASSESSMENT	75.00	
40.00									
040111			APPLY PREPAYMNT		A1		ASSESSMENT	(35.00)	
40.00									
041511			APPLY LATE FEE		01		Late Fees	10.00	
50.00									
050111			APPLY CHARGES		A1		ASSESSMENT	75.00	
125.00									
050411	100.00		mo4184	050611	A1		ASSESSMENT	(100.00)	
25.00									
050411	100.00		mo40295	050611	A1		ASSESSMENT	(15.00)	
(75.00)									
050411					01		Late Fees	(10.00)	
050411					PP		Credit-Prepaid	(75.00)	
050411									

Jun. 15. 2012 1:30PM

No. 0252 P. 5/6

060111	APPLY CHARGES	A1	AR2381 ASSESSMENT	75.00
0.00				
060111	APPLY PREPAYMNT	A1	ASSESSMENT	(75.00)
0.00				
070111	APPLY CHARGES	A1	ASSESSMENT	75.00
75.00				
071511	APPLY LATE FEE	01	Late Fees	10.00
85.00				
080111	APPLY CHARGES	A1	ASSESSMENT	75.00
160.00				
081511	APPLY LATE FEE	01	Late Fees	10.00
170.00				
082511	Action taken: 10 - First Warning			
082511	APPLY ADMIN FEE	03	Admin. Fee	25.00
195.00				
090111	APPLY CHARGES	A1	ASSESSMENT	75.00
270.00				
091511	APPLY LATE FEE	01	Late Fees	10.00
280.00				
091911	300.00 mo288117 092111	A1	ASSESSMENT	(225.00)
(20.00)				
091911		01	Late Fees	(30.00)
091911		03	Admin. Fee	(25.00)
091911		PP	Credit-Prepaid	(20.00)
091911				
100111	APPLY CHARGES	A1	ASSESSMENT	75.00
55.00				
100111	APPLY PREPAYMNT	A1	ASSESSMENT	(20.00)
55.00				
101511	APPLY LATE FEE	01	Late Fees	10.00
65.00				
110111	APPLY CHARGES	A1	ASSESSMENT	75.00
140.00				
111011	Action taken: 10 - First Warning			
111011	APPLY ADMIN FEE	03	Admin. Fee	25.00
165.00				
111511	APPLY LATE FEE	01	Late Fees	10.00
175.00				
120111	APPLY CHARGES	A1	ASSESSMENT	75.00
250.00				
121211	Action taken: 50 - Intent to Lien			
121211	APPLY ADMIN FEE	03	Admin. Fee	50.00
300.00				
121511	APPLY LATE FEE	01	Late Fees	10.00
310.00				
010112	APPLY CHARGES	A1	ASSESSMENT	80.00
390.00				
011712	APPLY LATE FEE	01	Late Fees	10.00
400.00				
020112	APPLY CHARGES	A1	ASSESSMENT	80.00
480.00				
021512	APPLY LATE FEE	01	Late Fees	10.00
490.00				
030112	APPLY CHARGES	A1	ASSESSMENT	80.00
570.00				

Jun. 15. 2012 1:30PM

No. 0252 P. 6/6

031512	APPLY LATE FEE	01	AR2381	Late Fees	10.00
580.00					
040112	APPLY CHARGES	A1		ASSESSMENT	80.00
660.00					
041612	APPLY LATE FEE	01		Late Fees	10.00
670.00					
050112	APPLY CHARGES	A1		ASSESSMENT	80.00
750.00					
051512	APPLY LATE FEE	01		Late Fees	10.00
760.00					
060112	APPLY CHARGES	A1		ASSESSMENT	80.00
840.00					

BALANCE SUMMARY

CHARGE CODE	DESCRIPTION	AMOUNT
A1	ASSESSMENT	685.00
01	Late Fees	80.00
03	Admin. Fee	75.00
	TOTAL:	840.00

# EXHIBIT 3

DOUGLAS E. MILES  
Also Admitted in California &  
Illinois

JEREMY T. BERGSTROM  
Also Admitted in Arizona

GINA M. CORENA

ROCK K. JUNG

KRISTA J. NIELSON

JORY C. GARABEDIAN

THOMAS M. MORLAN

Admitted in California

STEVEN E. STERN

Admitted in Arizona & Illinois

ANDREW H. PASTWICK

Also Admitted in Arizona &  
California

FATERNIO C. JURANI



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Fax: (714) 481-9141

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FRED TIMOTHY WINTERS  
KEENAN E. McCLENAHAN  
MARK T. DOMEYER

Also Admitted in the District of  
Columbia & Virginia

TAMI S. CROSBY  
L. BRYANT JAQUEZ  
WAYNE A. RASH  
VY T. PHAM  
HADI R. SEYED-ALI  
BRIAN H. TRAN  
CORI B. JONES  
CATHERINE K. MASON  
CHRISTINE A. CHUNG  
HANH T. NGUYEN  
S. SHELLY RAISZADEH  
SHANNON C. WILLIAMS  
LAWRENCE R. BOIVIN  
RICK J. NEHORAOFF  
BRIAN M. LUNA

June 28, 2012

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

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

Dear Sir/Madame:

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

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

The association has a lien on a unit for:

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

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

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



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

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

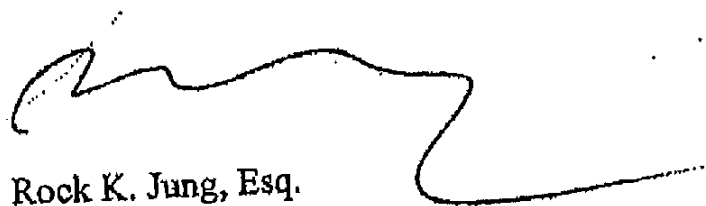
Based on Section 2(b), a portion of your HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that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

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

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

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*

  
Rock K. Jung, Esq.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct  
 Payee: Alessi & Koenig, LLC

Check #: 15746

12-H1128

Initials: SRN

Date: 6/27/2012 Amount: 720.00

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
6/28/2012	30455	To Cure HOA Delinquency	720.00			

Miles, Bauer, Bergstrom & Winters, LLP  
 Trust Account  
 1231 E. Dyer Road, #100  
 Santa Ana, CA 92705  
 Phone: (714) 481-8100

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

12-H1128  
 Loan # 7567

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

Check Valid After 90 Days

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

15746

# EXHIBIT 4

On this day, June 29, 2012, Alessi & Koenig, LLC received: (1) letters accompanying each of the checks listed below that address the purpose of the tender and the effect of accepting said checks and (2) the following checks for the following addresses:

<u>Amount</u>	<u>Address</u>	<u>Ref#</u>	<u>MBBW#</u>
\$1,800.00	4833 Bougainvillea Circle	27731	12-H1105
\$148.50	5286 Marauder Court	27857	12-H1005
\$720.00	211 Crown Imperial Street	30455	12-H1126
\$264.00	1557 Big Valley Way	27482	12-H1121
\$1,845.00	544 Echo Ridge Court	24686	12-H1119
\$474.75	8680 Florisse Court	21311	12-H0971
\$1,305.00	2305 W. Horizon Ridge Pkwy #3311	23911	12-H1104

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

Signature: CP Kettles  
An Employee of Alessi & Koenig, LLC

Date 6-29-12

Print: CP Kettles  
An Employee of Alessi & Koenig, LLC

Date 6-29-12

# EXHIBIT 5

File Edit View Help

Matter ID: 12-H1126 Deed: Carlos, Armando  
BANA v. Carlos HDA

Client (SGL): BANK OF AMERICA, N.A. (CWF)

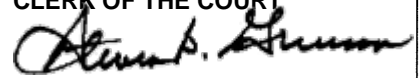
Reports | Notes | Billing | Contacts | Matters | Events | Inquiries | CIVIL | Contract Info | Custom | Deed Info | New Invoice

Date: (all)

1/1/2004 8/23/2004

- 6/6/2013: EMT MRT re: Invoices on attached spreadsheet are still outstanding; pl
- 6/9/2013: REFUND CHECKS- 05/09/13.pdf
- 4/1/2013: EMT MRT w/excel spreadsheet & zipped Invoices for 03/29/13
- 3/24/2013: EMF RKJ re: closing file (prop sold at HOA sale)
- 3/21/2013: TDU6 recorded 2/26/13
- 3/1/2013: PROPERTY SOLD TO 3RD PARTY, NEW DEED RECORDED.
- 2/22/2013: PROPERTY SOLD TO 3RD PARTY AT HOA SALE; F/U 3/1
- 1/26/2013: REJECTED FILE; FU 2/21 MONITOR 2/20 SALE DATE
- 12/12/2012: REJECTED FILE; FU 1/23 MONITOR
- 9/12/2012: 12-H1126, scanned items from physical file, PDF
- 8/29/2012: EMF CLNT re: invoice submitted for payment processing
- 7/18/2012: EMT CLNT re: sent invoice
- 7/17/2012: EMF RKJ re: Status of Payoff Funds (Rejected), 12-H1126, 3617 Diamond
- 7/16/2012: 7/16 CHECK RETURNED; FU 8/21 MONITOR EX PARTE
- 6/29/2012: 8/29 CHECK SENT TO HOA; FU 7/13 SEE IF CHECK WAS
- 6/26/2012: EMF RKJ re: Payoff Funds re: 12-H1126 / 3617 Diamond Spur Ave / Elisab
- 6/18/2012: 6/18 EMT CLIENT HOA UPDATE WITH PD ATTACHED; FU
- 6/18/2012: EMF RKJ re: status update w/po & figures
- 6/5/2012: 6/5 EMT CLIENT WITH INITIAL LETTERS ATTACHED; FU
- 6/5/2012: EMF RKJ re: initial letters to borrower and HOA
- 6/1/2012: EMF AWB re: New Referral
- 6/1/2012: EMF RKJ re: Confirmation of Referral (Carlos)
- 6/1/2012: RCVD REFERRAL; OPENED 6/1/12

Print



**ORD**  
MELANIE D. MORGAN, ESQ.  
Nevada Bar No. 8215  
THERA A. COOPER, ESQ.  
Nevada Bar No. 13468  
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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

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER GRANTING  
THORNBURG MORTGAGE  
SECURITIES TRUST 2007-3'S  
MOTION FOR SUMMARY  
JUDGMENT**

AND ALL RELATED ACTIONS

The court having considered Thornburg Mortgage Securities Trust 2007-3 (**Thornburg**)'s motion for reconsideration, the opposition thereto, and the argument of counsel converts the motion into a motion for summary judgment and makes the following findings of fact, conclusion of law and order **GRANTING** summary judgment in Thornburg's favor.<sup>1</sup>

<sup>1</sup> The Court denied the parties' competing motions for summary judgment by oral order on July 3, 2018. The order denying the motions for summary judgment had not been entered when Thornburg moved to reconsider based on *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 134 Nev. Adv. Op. 72, \*2 (Nev. Sept. 13, 2018).

**JA1719**

1     **I. FINDINGS OF FACT**

2             1. Frank Timpa executed a deed of trust securing a \$3,780,000 loan to purchase the  
3 property located at 34 Innisbrook Ave, Las Vegas, Nevada on June 2, 2006. The deed of trust lists  
4 Countrywide Home Loans, Inc. as the lender and Mortgage Electronic Registration System, Inc.  
5 (**MERS**) as beneficiary and lender's nominee and was recorded on June 6, 2006. *Id.*

6             2. Section 9 of the deed of trust provides if "there is a...lien which may attain priority  
7 over the [deed of trust]...then Lender may do and pay for whatever is reasonable or appropriate to  
8 protect Lender's interest in the property." *Id.* The deed of trust's planned unit development rider  
9 (**PUD rider**) provides "[i]f Borrower does not pay PUD dues and assessments when due, then  
10 Lender may pay them." *Id.* The loan securing the deed of trust matures on July 1, 2046 and has an  
11 unpaid balance of \$6,279,233.20.

12            3. On June 9, 2010, a corporate assignment of deed of trust was recorded assigning the  
13 beneficial interest in the deed of trust to Thornburg.

14            4. The property is within the Spanish Trail Master Association (the **HOA**) and is subject  
15 to its declaration of covenants, conditions, and restrictions recorded March 7, 1984 (the **CC&Rs**).

16            5. Art. IV, Section 6, "Subordination to First Mortgages," provides:

17  
18            The lien of the assessments provided for herein shall be prior to all other liens recorded  
19 subsequent to the recordation of the Notice of delinquent Assessment, except that the lien of  
20 the assessment provided for herein, shall be subordinate to the lien of any first Mortgage  
21 given for value, and the sale or transfer of any Lot pursuant to the first Mortgage foreclosure  
22 shall extinguish the lien of such assessments as to payments which became due prior to such  
23 sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments  
24 thereafter becoming due or from the lien thereon.

25            6. Art. IX Section 1, permits "Mortgagees [to], jointly or severally, pay taxes or other  
26 charges which are in default and which may or have become a charge against the Association  
27 property, unless such taxes or other charges are separately assessed against the Owners, in which  
28 case, the rights of Mortgages shall be governed by the provisions of their Mortgages..."

...

...



1           7.     Art. X Section 3, provides:

2  
3           A breach of any of the covenants, conditions, restrictions or other provisions of this  
4           Declaration shall not affect or impair the lien or charge of any bona fide Mortgage made in  
5           good faith and for value on any lot provided however, that any subsequent owner of the lot  
6           shall be bound by the provisions of this Declaration, whether such Owner's title was acquired  
7           by foreclosure or by a trustee's sale or otherwise.

8           8.     On August 4, 2011, Red Rock Financial Services (**Red Rock**), on behalf of the HOA,  
9           recorded a lien for delinquent assessments indicating borrower owed \$5,543.92 (the **Lien**). The Lien  
10          indicated it was recorded "in accordance with" the CC&Rs.

11          9.     At the time the Lien was recorded, the HOA's assessments were \$225.00 per month.  
12          There were no nuisance abatement charges. The superpriority amount of the HOA's lien was \$2,025  
13          (\$225.00 x 9) for the assessments coming due December 1, 2010 through August 1, 2011.

14          10.    From July 9, 2013 through December 13, 2013, borrower made payments totaling  
15          \$2,350. Red Rock accepted the payments and applied the payments to the delinquent assessments  
16          coming due December 1, 2010 through August 1, 201.<sup>2</sup>

17          11.    On December 6, 2011, Red Rock recorded a notice of default and election to sell  
18          pursuant to the lien for delinquent assessments asserting the HOA was owed \$8,312.52.

19          12.    On December 23, 2011, BAC Home Loan Servicing (**BANA**), then the loan servicer,  
20          through its counsel Miles, Bauer, Bergstorm & Winters (**Miles Bauer**) sent correspondence to Red  
21          Rock seeking to determine the superpriority amount and offered to "pay that sum upon adequate  
22          proof." Red Rock received the letter on December 27, 2011.

23          13.    On January 26, 2012, Red Rock responded with a ledger indicating the total amount  
24          due was \$9,255.44.

25          14.    On February 10, 2012, Miles Bauer, by courier sent correspondence to Red Rock  
26          enclosing a \$2,025 check. Red Rock received the check on February 10, 2012. Red Rock rejected the  
27          payment without explanation at the time of the rejection.

28          ...

<sup>2</sup> Throughout the collection process Timpa paid in excess of \$10,000 toward the HOA's lien. Timpa's final payment of \$500.00 occurred on October 14, 2014, mere weeks before the HOA's sale.

1           15. Then on February 12, 2012, after rejecting BANA's payment, Red Rock sent  
2 correspondence to Thornburg asserting the Red Rock's belief that the HOA's lien was junior to the  
3 deed of trust.

4           16. Red Rock recorded a notice of foreclosure sale on September 15, 2014 stating the  
5 HOA would sell the property on October 8, 2014 and the amount then due was \$20,309.95. The  
6 notice asserted the sale would "be made without covenant or warrant, express or implied  
7 regarding...title or possession, encumbrance, obligations to satisfy any secured or unsecured liens."

8           17. On November 10, 2014, a foreclosure deed recorded indicating the HOA sold the  
9 property to Saticoy Bay LLC Series 34 Innisbrook on November 7, 2014 for \$1,201,000.

10          18. At the time of the HOA's sale the property was worth \$2,000,000.

11          19. Since the sale Saticoy has leased the property and obtained rental income.

## 12       **II. CONCLUSIONS OF LAW**

13           1. "Summary judgment is appropriate...when the pleadings, depositions, answers to  
14 interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that  
15 no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter  
16 of law." *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005). "While the pleadings and other  
17 evidence must be construed in the light most favorable to the nonmoving party, that party has the  
18 burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts  
19 to defeat a motion for summary judgment." *Id.* at 1031 (*quoting Matsushita Elec. Indus. Co. v.*  
20 *Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are  
21 material and will preclude summary judgment; other factual disputes are irrelevant." *Id.* Nevada  
22 courts follow the federal summary judgment standard, not the "slightest doubt" standard previously  
23 applicable before *Wood*. *Id.* at 1031, 1037.

24           2. Parties must prove their claims and affirmative defenses by a preponderance of the  
25 evidence. *See Nev. J.I. 2EV.1.* Under Nevada law, "[t]he term 'preponderance of the evidence'  
26 means such evidence as, when weighed with that opposed to it, has more convincing force, and from  
27 which it appears that the greater probability of truth lies therein." *Nev. J.I. 2EV.1; Corbin v. State*,  
28 111 Nev. 378, 892 P.2d 580 (1995) (regarding entrapment, "[p]reponderance of the evidence means

1 such evidence as, when weighed with that opposed to it, has more convincing force and the greater  
2 probability of truth.").

3 3. Nevada law draws no distinction between circumstantial and direct evidence.  
4 *Deveroux v. State*, 96 Nev. 388, 391 (1980); Nev. J.I. 2EV.3 ("The law makes no distinction  
5 between the weight to be given to either direct or circumstantial evidence. Therefore, all of the  
6 evidence in the case, including circumstantial evidence, should be considered . . .").

7 4. *Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP, f/k/a*  
8 *Countrywide Home Loans Servicing, LP v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 134 Nev.  
9 Adv. Op. 72, \*2 (Nev. Sept. 13, 2018) confirms Thornburg is entitled to summary judgment.  
10 Thornburg submitted admissible evidence BANA tendered the full super-priority amount before the  
11 sale. Pursuant to *Bank of America's* binding precedent, Saticoy's interest, if any, is subject to the  
12 deed of trust.

13 5. "[T]he superpriority lien granted by NRS 116.3116(2) does not include an amount for  
14 collection fees and foreclosure costs incurred; rather it is limited to an amount equal to the common  
15 expense assessments due during the nine months before foreclosure." *Horizon at Seven Hills*  
16 *Homeowners Association, Inc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, at 13, 2016 WL  
17 1704199 at \*6 ; *See Bank of America*, \*4.

18 6. A mortgagee's pre-foreclosure tender of the superpriority amount protects the deed of  
19 trust. *SFR Investments*, 334 P.3d 408, 414 ("[A]s junior lienholder, [the holder of the first deed of  
20 trust] could have paid off the [HOA] lien to avert loss of its security[.]"); *id.*, at 413 ("[S]ecured  
21 lenders will most likely pay the [9] months' assessments demanded by the association rather than  
22 having the association foreclose on the unit.") (emphasis added).

23 7. BANA's tender is evidenced in Miles Bauer's (Thornburg's Motion at Ex. I) and Red  
24 Rock's business records (Thornburg's Motion at Ex. G) eliminating any question of fact regarding  
25 delivery of the check. The records were properly authenticated by affidavits.

26 8. *Bank of America* concluded BANA's check and letter – like the check and letter here  
27 – were not impermissibly conditional. *Bank of America* at \* 7. BANA was not required to record the  
28 tender (*id.* at \* 10) or "keep the tender good" (*id.* at \* 11). Sending a check for the full super-priority

1 amount extinguished the super-priority lien. *Id.* \* 2. SFR's purported *bona fide* purchaser status was  
2 irrelevant. *Id.* at \* 13. SFR purchased the property subject to the deed of trust. *Id.* \* 14.

3 9. The court finds Saticoy is a *bona fide* purchaser, but that status is "irrelevant when a  
4 defect in the foreclosure proceedings renders the sale void." *Id.*, citing *Henke v. First S. Props, Inc.*,  
5 586 S.W.2d 617, 620 (Tex. App. 1979). "[A]fter a valid tender of the superpriority portion of an  
6 HOA lien, a foreclosure sale on the entire lien is void as to the superpriority portion, because it  
7 cannot extinguish the first deed of trust." *Id.*

8 **JUDGMENT**

9 The Court having made its Findings of Fact and Conclusions of Law:

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

12 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED**, Saticoy purchased an  
13 interest in the Property, located at 34 Innisbrook Ave, Las Vegas, Nevada subject to the deed of trust  
14 which remains a first position encumbrance against the Property;

15 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that the deed of trust  
16 recorded on June 12, 2006 remains a first position lien against the Property and is superior to the  
17 interest conveyed in the Foreclosure Deed;

18 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that all remaining claims  
19 not specifically mentioned, including all claims in Thornburg's counterclaim and crossclaims and  
20 Saticoy's complaint, are dismissed with prejudice; and

21 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that the lis pendens  
22 recorded June 16, 2015, as Instrument No. 20150616-0000991 is hereby expunged;

23 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that any party may record  
24 this Findings of Fact, Conclusions of Law, and Judgment in the Property's records; and

25 ...

26 ...

27 ...

28 ...

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

3 DATED November 30, 2018.

4   
DISTRICT COURT JUDGE

5 Respectfully submitted by:

6 **AKERMAN LLP**

7   
8 **MELANIE D. MORGAN, ESQ.**

Nevada Bar No. 8215

9 **THERA A. COOPER, ESQ.**

Nevada Bar No. 13468

10 1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

11 *Attorneys for Thornburg Mortgage Securities Trust 2007-3*

12 Reviewed by::

13 **MICHAEL F. BOHN, ESQ., LTD.**

14 

15 **MICHAEL F. BOHN, ESQ.**

Nevada Bar No. 1641

16 **ADAM R. TRIPPIEDI, ESQ.**

Nevada Bar No. 12294

17 2260 Corporate Circle, Suite 480

18 Henderson, NV 89074

19 *Attorneys for Saticoy Bay LLC Series 34*  
*Innisbrook*

20 **KOCH & SCOW LLC**

21   
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24 11500 S. Eastern Ave., Suite 210

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30 **DONALD H. WILLIAMS, ESQ.**

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31 **DREW STARBUCK, ESQ.**

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Las Vegas, NV 89101

*Attorneys for Republic Services, Inc.*


1 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that Thornburg shall have  
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3 DATED \_\_\_\_\_, 2018.

4   
DISTRICT COURT JUDGE

5 Respectfully submitted by:

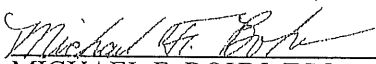
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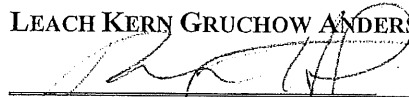
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15 Approved as to form and content:

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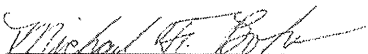
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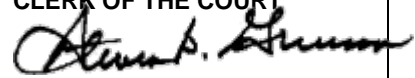
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*Attorneys for defendant, counterclaimant, and counter-  
defendant Thornburg Mortgage Securities Trust 2007-3*

**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

**NOTICE OF ENTRY OF FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND  
ORDER GRANTING THORNBURG  
MORTGAGE SECURITIES TRUST  
2007-3'S MOTION FOR SUMMARY  
JUDGMENT**

AND ALL RELATED ACTIONS

///

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JA1729

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that a **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND**  
3 **ORDER GRANTING THORNBURG MORTGAGE SECURITIES TRUST 2007-3'S**  
4 **MOTION FOR SUMMARY JUDGMENT** has been entered by this Court on the 3<sup>rd</sup> day of  
5 December, 2018, in the above-captioned matter. A copy of said Order is attached hereto as  
6 **Exhibit A.**

7  
8 DATED: DECEMBER 5, 2018  
9

10 **AKERMAN LLP**

11 /s/ Thera A. Cooper

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19 *Trust 2007-3*  
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28

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 5<sup>th</sup> day of December, 2018, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING 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:

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**OLYMPIA LAW**

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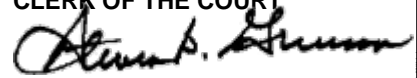
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/s/ Christine Weiss

An employee of AKERMAN LLP

# **EXHIBIT A**

# **EXHIBIT A**



**ORD**  
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**CLARK COUNTY, NEVADA**

SATICOY BAY LLC SERIES 34  
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Defendants.

Case No.: A-14-710161-C

Division: XXVI

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER GRANTING  
THORNBURG MORTGAGE  
SECURITIES TRUST 2007-3'S  
MOTION FOR SUMMARY  
JUDGMENT**

AND ALL RELATED ACTIONS

The court having considered Thornburg Mortgage Securities Trust 2007-3 (**Thornburg**)'s motion for reconsideration, the opposition thereto, and the argument of counsel converts the motion into a motion for summary judgment and makes the following findings of fact, conclusion of law and order **GRANTING** summary judgment in Thornburg's favor.<sup>1</sup>

<sup>1</sup> The Court denied the parties' competing motions for summary judgment by oral order on July 3, 2018. The order denying the motions for summary judgment had not been entered when Thornburg moved to reconsider based on *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 134 Nev. Adv. Op. 72, \*2 (Nev. Sept. 13, 2018).

**JA1733**

1     **I. FINDINGS OF FACT**

2             1. Frank Timpa executed a deed of trust securing a \$3,780,000 loan to purchase the  
3 property located at 34 Innisbrook Ave, Las Vegas, Nevada on June 2, 2006. The deed of trust lists  
4 Countrywide Home Loans, Inc. as the lender and Mortgage Electronic Registration System, Inc.  
5 (**MERS**) as beneficiary and lender's nominee and was recorded on June 6, 2006. *Id.*

6             2. Section 9 of the deed of trust provides if "there is a...lien which may attain priority  
7 over the [deed of trust]...then Lender may do and pay for whatever is reasonable or appropriate to  
8 protect Lender's interest in the property." *Id.* The deed of trust's planned unit development rider  
9 (**PUD rider**) provides "[i]f Borrower does not pay PUD dues and assessments when due, then  
10 Lender may pay them." *Id.* The loan securing the deed of trust matures on July 1, 2046 and has an  
11 unpaid balance of \$6,279,233.20.

12            3. On June 9, 2010, a corporate assignment of deed of trust was recorded assigning the  
13 beneficial interest in the deed of trust to Thornburg.

14            4. The property is within the Spanish Trail Master Association (the **HOA**) and is subject  
15 to its declaration of covenants, conditions, and restrictions recorded March 7, 1984 (the **CC&Rs**).

16            5. Art. IV, Section 6, "Subordination to First Mortgages," provides:

17  
18            The lien of the assessments provided for herein shall be prior to all other liens recorded  
19 subsequent to the recordation of the Notice of delinquent Assessment, except that the lien of  
20 the assessment provided for herein, shall be subordinate to the lien of any first Mortgage  
21 given for value, and the sale or transfer of any Lot pursuant to the first Mortgage foreclosure  
22 shall extinguish the lien of such assessments as to payments which became due prior to such  
23 sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments  
24 thereafter becoming due or from the lien thereon.

25            6. Art. IX Section 1, permits "Mortgagees [to], jointly or severally, pay taxes or other  
26 charges which are in default and which may or have become a charge against the Association  
27 property, unless such taxes or other charges are separately assessed against the Owners, in which  
28 case, the rights of Mortgages shall be governed by the provisions of their Mortgages..."

...

...

1           7.     Art. X Section 3, provides:

2  
3           A breach of any of the covenants, conditions, restrictions or other provisions of this  
4           Declaration shall not affect or impair the lien or charge of any bona fide Mortgage made in  
5           good faith and for value on any lot provided however, that any subsequent owner of the lot  
6           shall be bound by the provisions of this Declaration, whether such Owner's title was acquired  
7           by foreclosure or by a trustee's sale or otherwise.

8           8.     On August 4, 2011, Red Rock Financial Services (**Red Rock**), on behalf of the HOA,  
9           recorded a lien for delinquent assessments indicating borrower owed \$5,543.92 (the **Lien**). The Lien  
10          indicated it was recorded "in accordance with" the CC&Rs.

11          9.     At the time the Lien was recorded, the HOA's assessments were \$225.00 per month.  
12          There were no nuisance abatement charges. The superpriority amount of the HOA's lien was \$2,025  
13          (\$225.00 x 9) for the assessments coming due December 1, 2010 through August 1, 2011.

14          10.    From July 9, 2013 through December 13, 2013, borrower made payments totaling  
15          \$2,350. Red Rock accepted the payments and applied the payments to the delinquent assessments  
16          coming due December 1, 2010 through August 1, 201.<sup>2</sup>

17          11.    On December 6, 2011, Red Rock recorded a notice of default and election to sell  
18          pursuant to the lien for delinquent assessments asserting the HOA was owed \$8,312.52.

19          12.    On December 23, 2011, BAC Home Loan Servicing (**BANA**), then the loan servicer,  
20          through its counsel Miles, Bauer, Bergstorm & Winters (**Miles Bauer**) sent correspondence to Red  
21          Rock seeking to determine the superpriority amount and offered to "pay that sum upon adequate  
22          proof." Red Rock received the letter on December 27, 2011.

23          13.    On January 26, 2012, Red Rock responded with a ledger indicating the total amount  
24          due was \$9,255.44.

25          14.    On February 10, 2012, Miles Bauer, by courier sent correspondence to Red Rock  
26          enclosing a \$2,025 check. Red Rock received the check on February 10, 2012. Red Rock rejected the  
27          payment without explanation at the time of the rejection.

28          ...

<sup>2</sup> Throughout the collection process Timpa paid in excess of \$10,000 toward the HOA's lien. Timpa's final payment of \$500.00 occurred on October 14, 2014, mere weeks before the HOA's sale.

1           15. Then on February 12, 2012, after rejecting BANA's payment, Red Rock sent  
2 correspondence to Thornburg asserting the Red Rock's belief that the HOA's lien was junior to the  
3 deed of trust.

4           16. Red Rock recorded a notice of foreclosure sale on September 15, 2014 stating the  
5 HOA would sell the property on October 8, 2014 and the amount then due was \$20,309.95. The  
6 notice asserted the sale would "be made without covenant or warrant, express or implied  
7 regarding...title or possession, encumbrance, obligations to satisfy any secured or unsecured liens."

8           17. On November 10, 2014, a foreclosure deed recorded indicating the HOA sold the  
9 property to Saticoy Bay LLC Series 34 Innisbrook on November 7, 2014 for \$1,201,000.

10          18. At the time of the HOA's sale the property was worth \$2,000,000.

11          19. Since the sale Saticoy has leased the property and obtained rental income.

## 12       **II. CONCLUSIONS OF LAW**

13           1. "Summary judgment is appropriate...when the pleadings, depositions, answers to  
14 interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that  
15 no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter  
16 of law." *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005). "While the pleadings and other  
17 evidence must be construed in the light most favorable to the nonmoving party, that party has the  
18 burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts  
19 to defeat a motion for summary judgment." *Id.* at 1031 (*quoting Matsushita Elec. Indus. Co. v.*  
20 *Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are  
21 material and will preclude summary judgment; other factual disputes are irrelevant." *Id.* Nevada  
22 courts follow the federal summary judgment standard, not the "slightest doubt" standard previously  
23 applicable before *Wood*. *Id.* at 1031, 1037.

24           2. Parties must prove their claims and affirmative defenses by a preponderance of the  
25 evidence. *See Nev. J.I. 2EV.1.* Under Nevada law, "[t]he term 'preponderance of the evidence'  
26 means such evidence as, when weighed with that opposed to it, has more convincing force, and from  
27 which it appears that the greater probability of truth lies therein." *Nev. J.I. 2EV.1; Corbin v. State*,  
28 111 Nev. 378, 892 P.2d 580 (1995) (regarding entrapment, "[p]reponderance of the evidence means



1 such evidence as, when weighed with that opposed to it, has more convincing force and the greater  
2 probability of truth.").

3 3. Nevada law draws no distinction between circumstantial and direct evidence.  
4 *Deveroux v. State*, 96 Nev. 388, 391 (1980); Nev. J.I. 2EV.3 ("The law makes no distinction  
5 between the weight to be given to either direct or circumstantial evidence. Therefore, all of the  
6 evidence in the case, including circumstantial evidence, should be considered . . .").

7 4. *Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP, f/k/a*  
8 *Countrywide Home Loans Servicing, LP v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 134 Nev.  
9 Adv. Op. 72, \*2 (Nev. Sept. 13, 2018) confirms Thornburg is entitled to summary judgment.  
10 Thornburg submitted admissible evidence BANA tendered the full super-priority amount before the  
11 sale. Pursuant to *Bank of America's* binding precedent, Saticoy's interest, if any, is subject to the  
12 deed of trust.

13 5. "[T]he superpriority lien granted by NRS 116.3116(2) does not include an amount for  
14 collection fees and foreclosure costs incurred; rather it is limited to an amount equal to the common  
15 expense assessments due during the nine months before foreclosure." *Horizon at Seven Hills*  
16 *Homeowners Association, Inc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, at 13, 2016 WL  
17 1704199 at \*6 ; *See Bank of America*, \*4.

18 6. A mortgagee's pre-foreclosure tender of the superpriority amount protects the deed of  
19 trust. *SFR Investments*, 334 P.3d 408, 414 ("[A]s junior lienholder, [the holder of the first deed of  
20 trust] could have paid off the [HOA] lien to avert loss of its security[.]"); *id.*, at 413 ("[S]ecured  
21 lenders will most likely pay the [9] months' assessments demanded by the association rather than  
22 having the association foreclose on the unit.") (emphasis added).

23 7. BANA's tender is evidenced in Miles Bauer's (Thornburg's Motion at Ex. I) and Red  
24 Rock's business records (Thornburg's Motion at Ex. G) eliminating any question of fact regarding  
25 delivery of the check. The records were properly authenticated by affidavits.

26 8. *Bank of America* concluded BANA's check and letter – like the check and letter here  
27 – were not impermissibly conditional. *Bank of America* at \* 7. BANA was not required to record the  
28 tender (*id.* at \* 10) or "keep the tender good" (*id.* at \* 11). Sending a check for the full super-priority

1 amount extinguished the super-priority lien. *Id.* \* 2. SFR's purported *bona fide* purchaser status was  
2 irrelevant. *Id.* at \* 13. SFR purchased the property subject to the deed of trust. *Id.* \* 14.

3 9. The court finds Saticoy is a *bona fide* purchaser, but that status is "irrelevant when a  
4 defect in the foreclosure proceedings renders the sale void." *Id.*, citing *Henke v. First S. Props, Inc.*,  
5 586 S.W.2d 617, 620 (Tex. App. 1979). "[A]fter a valid tender of the superpriority portion of an  
6 HOA lien, a foreclosure sale on the entire lien is void as to the superpriority portion, because it  
7 cannot extinguish the first deed of trust." *Id.*

### 8 JUDGMENT

9 The Court having made its Findings of Fact and Conclusions of Law:

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

12 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED**, Saticoy purchased an  
13 interest in the Property, located at 34 Innisbrook Ave, Las Vegas, Nevada subject to the deed of trust  
14 which remains a first position encumbrance against the Property;

15 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that the deed of trust  
16 recorded on June 12, 2006 remains a first position lien against the Property and is superior to the  
17 interest conveyed in the Foreclosure Deed;

18 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that all remaining claims  
19 not specifically mentioned, including all claims in Thornburg's counterclaim and crossclaims and  
20 Saticoy's complaint, are dismissed with prejudice; and

21 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that the lis pendens  
22 recorded June 16, 2015, as Instrument No. 20150616-0000991 is hereby expunged;

23 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that any party may record  
24 this Findings of Fact, Conclusions of Law, and Judgment in the Property's records; and

25 ...

26 ...

27 ...

28 ...

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

3 DATED November 30, 2018.

4   
DISTRICT COURT JUDGE

5 Respectfully submitted by:

6 **AKERMAN LLP**

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3 DATED \_\_\_\_\_, 2018.

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DISTRICT COURT JUDGE

5 Respectfully submitted by:

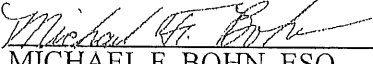
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*Attorneys for Republic Services, Inc.*


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

3 DATED \_\_\_\_\_, 2018.

4   
DISTRICT COURT JUDGE

5 Respectfully submitted by:

6 AKERMAN LLP


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15 Approved as to form and content:

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18 /s/   
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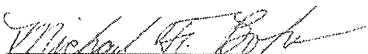
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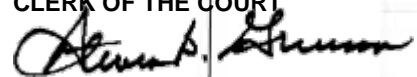
  
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and as trustee of the Timpa Trust*

**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

**MADELAINE TIMPA AND TIMPA  
TRUST'S VERIFIED ANSWER TO RED  
ROCK FINANCIAL SERVICES'  
COUNTERCLAIM FOR INTERPLEADER  
AND MADELAINE TIMPA'S CLAIM TO  
SURPLUS FUNDS**

AND ALL RELATED ACTIONS

**I. VERIFIED ANSWER OF MADELAINE TIMPA AND TIMPA TRUST TO RED  
ROCK FINANCIAL SERVICES' COUNTERCLAIM FOR INTERPLEADER**

Madelaine Timpa, individually and as trustee of the Timpa Trust (collectively, "Answering Defendant")<sup>1</sup> answers the Counterclaim for Interpleader filed by counter-

<sup>1</sup>Madelaine Timpa's husband Frank Timpa -- both individually and as trustee of the Timpa Trust -- was also named as a defendant and counter-defendant in this action. Frank Timpa is deceased.

1 defendant/counterclaimant Red Rock Financial Services, LLC ("Red Rock"), and admits, denies,  
2 and alleges as follows:

- 3
- 4 1. In response to paragraphs 11, 12, and 16, Answering Defendant does not have sufficient  
5 knowledge or information upon which to base a belief as to the truth of the allegations  
6 contained therein and therefore Answering Defendant denies each and every allegation  
7 contained therein.
- 8 2. In response to paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 18, 19, and 20, Answering  
9 Defendant ADMITS each and every allegation contained therein.
- 10 3. In response to paragraph 17, Answering Defendant DENIES each and every allegation  
11 contained therein.
- 12 4. Answering Defendant denies each and every allegation not specifically admitted, denied,  
13 or otherwise qualified herein.  
14

15 **AFFIRMATIVE DEFENSES**

16 **FIRST AFFIRMATIVE DEFENSE**

- 17 1. Under Nevada Revised Statute §40.462(2(d), Madelaine Timpa is entitled to receive the  
18 excess proceeds remaining after the foreclosure sale of the real property located at 34  
19 Innisbrook Avenue, Las Vegas, NV 89113.  
20

21 **SECOND AFFIRMATIVE DEFENSE**

- 22 2. Under Nevada Revised Statute §40.462, Saticoy Bay LLC Series 34 Innisbrook is not  
23 entitled to receive the excess proceeds remaining after the foreclosure sale of the real  
24 property located at 34 Innisbrook Avenue, Las Vegas, NV 89113.  
25

26 / / /

27 / / /



1 **THIRD AFFIRMATIVE DEFENSE**

- 2 3. Other than Madelaine Timpa, Timpa Trust, Republic Services Inc., and Thornburg  
3 Mortgage Securities Trust 2007-3, no other parties have filed an answer to Red Rock's  
4 Counterclaim for Interpleader.  
5

6 **FOURTH AFFIRMATIVE DEFENSE**

- 7 4. Other than Madelaine Timpa, no other parties have filed a claim to the excess proceeds  
8 remaining after the foreclosure sale of the real property located at 34 Innisbrook Avenue,  
9 Las Vegas, NV 89113.  
10

11 **FIFTH AFFIRMATIVE DEFENSE**

- 12 5. All other parties, including but not limited to Saticoy Bay LLC Series 34 Innisbrook,  
13 have knowingly and voluntarily waived their rights to receive the excess proceeds  
14 remaining after the foreclosure sale of the real property located at 34 Innisbrook Avenue,  
15 Las Vegas, NV 89113.  
16

17 **SIXTH AFFIRMATIVE DEFENSE**

- 18 6. Madelaine Timpa, Timpa Trust, and Frank Timpa were never served with Red Rock's  
19 Counterclaim for Interpleader.  
20

21 **SEVENTH AFFIRMATIVE DEFENSE**

- 22 7. Madelaine Timpa, Timpa Trust, and Frank Timpa were never defaulted for having failed  
23 to file an answer to Red Rock's Counterclaim for Interpleader.  
24

25 **EIGHTH AFFIRMATIVE DEFENSE**

- 26 8. This Answering Defendant has limited facts available at this time and thus some of the  
27 foregoing Affirmative Defenses may have been plead in accordance with NRCP 8, for  
28 purposes of non-waiver. Furthermore, pursuant to NRCP 11, this Answering Defendant

1 has or may have more affirmative defenses or counterclaims that are not known at this  
2 time or may be uncovered through further discovery wherefore this Answering  
3 Defendant reserves the right to assert any such affirmative defenses or counterclaims so  
4 ascertained at a later date.

5  
6 WHEREFORE, as to Red Rock's Counterclaim for Interpleader, Answering Defendant  
7 prays as follows:

- 8 1. That the Court distribute the excess proceeds to Madelaine Timpa;  
9 2. That Red Rock be reimbursed out of said deposited fund its attorney's fees and  
10 costs in bringing this interpleader action;  
11 3. That Red Rock be dismissed from this action with prejudice following the payment  
12 of the excess proceeds as directed by the Court;  
13 4. For such other and further relief as the Court determines proper.  
14

15 Dated this 31<sup>st</sup> day of January, 2019.

16  
17 Respectfully submitted,

18 /s/ Travis Akin

19 TRAVIS AKIN, ESQ.  
20 Nevada Bar No. 13059  
21 **THE LAW OFFICE OF TRAVIS AKIN**  
22 9480 S. Eastern Ave., Suite 257  
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26 *Attorneys for Madelaine Timpa, individually*  
27 *and as trustee of the Timpa Trust*  
28

1  
2 **II. VERIFIED CLAIM OF MADELAINE TIMPA TO SURPLUS FUNDS**

- 3 1. Madelaine Timpa is making a claim to the excess proceeds remaining after the  
4 foreclosure sale of the real property located at 34 Innisbrook Avenue, Las Vegas,  
5 NV 89113 (hereinafter "Subject Property").
- 6 2. On or about November 7, 2014, the Subject Property was sold via a foreclosure  
7 sale.
- 8 3. After all claims and expenses were deducted, sale of the Subject Property resulted  
9 in excess proceeds in the amount of \$1,168,865.05 (hereinafter "Surplus Funds").
- 10 4. The priority order of the distribution of excess sales proceeds following a non-  
11 judicial foreclosure trustee's sale is governed by Nevada Revised Statute §40.462,  
12 which reads in pertinent part:  
13

14 2. The proceeds of a foreclosure sale must be distributed in the  
15 following order of priority:

16 (a) Payment of the reasonable expenses of taking possession,  
17 maintaining, protecting and leasing the property, the costs and fees  
18 of the foreclosure sale, including reasonable trustee's fees,  
19 applicable taxes and the cost of title insurance and, to the extent  
provided in the legally enforceable terms of the mortgage or lien,  
any advances, reasonable attorney's fees and other legal expenses  
incurred by the foreclosing creditor and the person conducting the  
foreclosure sale.

20 (b) Satisfaction of the obligation being enforced by the  
21 foreclosure sale.

22 (c) Satisfaction of obligations secured by any junior mortgages  
or liens on the property, in their order of priority.

23 (d) **Payment of the balance of the proceeds, if any, to the  
debtor or the debtor's successor in interest.** (Emphasis added.)

24 If there are conflicting claims to any portion of the proceeds, the  
25 person conducting the foreclosure sale is not required to distribute  
26 that portion of the proceeds until the validity of the conflicting  
claims is determined through interpleader or otherwise to the  
person's satisfaction.

27 (Nevada Revised Statute §40.462)  
28

- 1 5. Frank and Madelaine Timpa individually and as trustees of the Timpa Trust are the
- 2 formers owners of the Subject Property.
- 3
- 4 6. Frank Timpa is deceased. At the time of his death, Frank Timpa was married to
- 5 Madelaine Timpa.
- 6
- 7 7. Madelaine Timpa is Frank Timpa's successor-in-interest.
- 8
- 9 8. Saticoy Bay LLC Series 34 Innisbrook ("Saticoy") obtained title to the Subject
- 10 Property by the foreclosure sale conducted on November 7, 2014. Under Nevada
- 11 Revised Statute §40.462, Saticoy is not entitled to receive the Surplus Funds.
- 12
- 13 9. Under Nevada Revised Statute §40.462(2)(c), Republic Services is entitled to
- 14 receive the Surplus Funds to satisfy its lien.
- 15
- 16 10. Under Nevada Revised Statute §40.462(2)(d), Madelaine Timpa is entitled to
- 17 receive the Surplus Funds.
- 18
- 19 11. Madelaine Timpa is the only party entitled to receive the Surplus Funds.
- 20
- 21 12. As of this date, no other party has filed a claim to the Surplus Funds with this
- 22 Court.
- 23
- 24 13. Based on the foregoing, Madelaine Timpa respectfully requests that this Court
- 25 disburse the Surplus Funds to Republic Services in the amount necessary to satisfy
- 26
- 27
- 28

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

1 its lien and the balance to Madelaine Timpa.

2 Dated this 31<sup>st</sup> day of January, 2019

3 Respectfully submitted,

4 /s/ Travis Akin

5 TRAVIS AKIN, ESQ.

6 Nevada Bar No. 13059

7 **THE LAW OFFICE OF TRAVIS AKIN**

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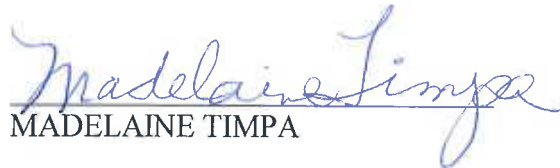
12 *Attorneys for Madelaine Timpa, individually*  
13 *and as trustee of the Timpa Trust*

14 **VERIFICATION OF MADELAINE TIMPA**

15 The undersigned declares, under penalty of perjury under the laws of the State of Nevada:

- 16 1. That I have read the foregoing VERIFIED ANSWER TO COUNTERCLAIM FOR  
17 INTERPLEADER AND CLAIM TO SURPLUS FUNDS and that the same is true of my  
18 own knowledge, except for matters stated therein on information and belief, and as for  
19 those matters, I believe them to be true.

20 Dated this 31st day of January, 2019

21   
22 MADELAINE TIMPA

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies on January 31, 2019, a true and correct copy of the above  
3 and foregoing MADELAINE TIMPA AND TIMPA TRUST'S VERIFIED ANSWER TO RED  
4 ROCK FINANCIAL SERVICES' COUNTERCLAIM FOR INTERPLEADER AND  
5 MADELAINE TIMPA'S CLAIM TO SURPLUS FUNDS was served to the following at their last  
6 known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:  
7

8        **BY MAIL:** N.R.C.P. 5(b), I deposited by first class United States  
9 mailing, postage prepaid at Henderson Nevada;

10        **BY FAX:** E.D.C.R. 7.26(a), I served via facsimile at the  
11 telephone number provided for such transmissions.

12        **BY MAIL AND FAX:** N.R.C.P 5(b), I deposited by first class  
13 United States mail, postage prepaid in Henderson, Nevada; and via  
14 facsimile pursuant to E.D.C.R. 7.26(a)

15   X   **BY E-MAIL AND/OR ELECTRONIC MEANS:** N.R.C.P. 5(b)(2)(D)  
16 and addresses (s) having consented to electronic service, I via e-mail or  
17 other electronic means to the e-mail address(es) of the addressee(s).

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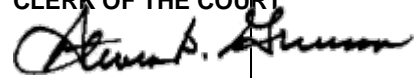
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17 /s/ Travis Akin  
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*Attorneys for TIMPA TRUST*  
*U/T/D MARCH 3, 1999*

**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

Department No.: XXVI

**HEARING REQUESTED**

**TIMPA TRUST'S MOTION FOR  
SUMMARY JUDGMENT**

AND ALL RELATED ACTIONS



COMES NOW, claimant TIMPA TRUST U/T/D MARCH 3, 1999, by and through its attorneys Bryan Naddafi, Esq. and Travis Akin, Esq., and, pursuant to Rule 56 of the Nevada Rules of Civil Procedure, hereby files this Motion for Summary Judgment.

This Motion is based upon the pleadings and papers on file herein, the attached exhibits, the attached Points and Authorities, and any oral arguments the Court may wish to entertain at a hearing on this matter.

DATED this 25<sup>th</sup> day of June 2019.

**AVALON LEGAL GROUP LLC**

/s/ Bryan Naddafi

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*Attorneys for TIMPA TRUST*

*U/T/D MARCH 3, 1999*

1 **POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The instant action involved the non-judicial foreclosure sale of real property commonly  
4 known as 34 Innisbrook Ave., Las Vegas, NV 89113 (hereafter “Subject Property”) which was  
5 sold pursuant to Nevada Revised Statutes (hereafter “NRS”) 116.3116. At the time of the sale,  
6 the Subject Property belonged to claimant TIMPA TRUST U/T/D MARCH 3, 1999 (hereafter  
7 “Timpa Trust”). On September 15, 2014, SATICOY BAY LLC SERIES 34 INNISBROOK  
8 (hereafter “Saticoy”) purchased the Subject Property at the NRS 116.3116 non-judicial  
9 foreclosure sale (“hereafter “Foreclosure Sale”). RED ROCK FINANCIAL SERVICES  
10 (hereafter “Trustee”) conducted the Foreclosure Sale for the benefit of homeowner association  
11 SPANISH TRAIL MASTER ASSOCIATION (hereafter “HOA”), which was owed dues by  
12 Timpa Trust, the owner of the Subject Property. At the Foreclosure Sale, Saticoy tendered an  
13 amount in excess of the debt owed by Timpa Trust to HOA. The proceeds from the Foreclosure  
14 Sale paid off the debt owed by Timpa Trust to HOA along with other associated fees, and the  
15 remaining proceeds (hereafter “Surplus Proceeds”) have been ordered to be deposited by the  
16 Trustee with this Court. This Court has already decided that, as a result of the Foreclosure Sale,  
17 Saticoy purchased and now owns the Subject Property subject to a Deed of Trust held for the  
18 benefit of THORNBURG MORTGAGE SECURITIES TRUST 2007-3 (hereafter “Thornburg”).  
19  
20  
21

22 The only issue now remaining before this Court is who is entitled to the Surplus Proceeds  
23 pursuant to NRS 116.31164(7)(b).<sup>1</sup> As the owner of the Subject Property at the time of the  
24 Foreclosure Sale, Timpa Trust has made a claim to the Surplus Proceeds. As a matter of law,  
25

26  
27 <sup>1</sup> At the time of the Foreclosure Sale, the operative statute was numbered as NRS 116.31164(3)(c). The statute,  
28 which was in place since 2005, has since been renumbered as NRS 116.31164(7)(b) but reads the same. For  
purposes of this motion, Timpa Trust will refer to the statute by its current numbering, NRS 116.31164(7)(b).

1 Timpa Trust is entitled to the Surplus Proceeds, and Thornburg and Saticoy are not entitled to  
2 any portion of the Surplus Proceeds. Thornburg has no claim to the Surplus Proceeds as its  
3 interest in the Subject Property was not subordinate to the HOA's lien, and Saticoy has no claim  
4 as it was neither a subordinate lien holder nor owner of the Subject Property at the time of the  
5 Foreclosure Sale. The Court therefore should issue an order finding that as a matter of law Timpa  
6 Trust is entitled to receive the Surplus Proceeds, and/or that Thornburg and Saticoy are not  
7 entitled to receive the Surplus Proceeds.  
8

9 **II. STATEMENT OF UNDISPUTED FACTS**

10 **Undisputed Fact Number 1:**

11 On or about July 18, 2006, Timpa Trust became the record holder of title to the Subject  
12 Property, via the recording of a document titled "Grant, Bargain, Sale Deed" with the Office of  
13 the County Recorder Clark County, Nevada (hereafter "Recorded Timpa Trust Deed"). The  
14 Timpa Trust Deed was recorded as instrument number 200607180000604. Attached hereto as  
15 **Exhibit 1** is a true and correct copy of the Recorded Timpa Trust Deed, which is a certified copy  
16 of a public record presumed to be authentic pursuant to NRS 52.125.  
17

18 **Undisputed Fact Number 2:**

19 On or about August 4, 2011, the Trustee recorded a Lien for Delinquent Assessments  
20 (hereafter "HOA Lien") with the Office of the County Recorder Clark County, Nevada. The  
21 HOA Lien was recorded as instrument number 201108040002324. Attached hereto as **Exhibit**  
22 **2** is a true and correct copy of the recorded HOA Lien, which is a certified copy of a public record  
23 presumed to be authentic pursuant to NRS 52.125.  
24

25 \\  
26 \\  
27  
28

1 Undisputed Fact Number 3:

2 The HOA Lien specifically references Timpa Trust as the owner of the Subject Property.  
3 See Exhibit 2.

4 Undisputed Fact Number 4:

5 On or about November 20, 2011, the Trustee recorded a Notice of Default and Election  
6 to Sell Pursuant to the Lien for Delinquent Assessments (hereafter "HOA Notice of Default")  
7 with the Office of the County Recorder Clark County, Nevada. The HOA Notice of Default was  
8 recorded as instrument number 201112060001106. Attached hereto as **Exhibit 3** is a true and  
9 correct copy of the recorded HOA Notice of Default, which is a certified copy of a public record  
10 presumed to be authentic pursuant to NRS 52.125.  
11

12 Undisputed Fact Number 5:

13 The HOA Notice of Default makes specific reference to the HOA Lien (Exhibit 2) and to  
14 the fact that Timpa Trust is the record owner of title of the Subject Property. See Exhibit 3.  
15

16 Undisputed Fact Number 6:

17 On or about September 15, 2014, the Trustee recorded a Notice of Foreclosure Sale Under  
18 the Lien for Delinquent Assessments (hereafter "Notice of HOA Sale") with the Office of the  
19 County Recorder Clark County, Nevada. The Notice of HOA Sale was recorded as instrument  
20 number 201409150001527. Attached hereto as **Exhibit 4** is a true and correct copy of the  
21 recorded Notice of HOA Sale, which is a certified copy of a public record presumed to be  
22 authentic pursuant to NRS 52.125.  
23

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28

1 Undisputed Fact Number 7:

2       The Notice of HOA Sale makes specific reference to the HOA Lien (Exhibit 2), the HOA  
3 Notice of Default (Exhibit 3), and to the fact that Timpa Trust is the record owner of title of the  
4 Subject Property. See Exhibit 4.  
5

6 Undisputed Fact Number 8:

7       On November 7, 2014, the Subject Property was sold at a non-judicial foreclosure sale as  
8 a result of the dues owed by Timpa Trust to HOA, as reflected in the HOA Lien (Exhibit 2), the  
9 HOA Notice of Default (Exhibit 3), and the Notice of HOA Sale (Exhibit 4). Attached hereto as  
10 **Exhibit 5** is a true and correct copy of the recorded Foreclosure Deed (hereafter “Foreclosure  
11 Deed”), which is a certified copy of a public record presumed to be authentic pursuant to NRS  
12 52.125.  
13

14 Undisputed Fact Number 9:

15       On or about November 10, 2014, the Foreclosure Deed was recorded by the Trustee with  
16 the Office of the County Recorder Clark County, Nevada as instrument number  
17 201411100002475. See Exhibit 5.  
18

19 Undisputed Fact Number 10:

20       Pursuant to the Foreclosure Deed, Saticoy became the record holder of title to the Subject  
21 Property on November 10, 2014. See Exhibit 5.  
22

23 Undisputed Fact Number 11:

24       On December 3, 2018, approximately four (4) years after the non-judicial foreclosure of  
25 the Subject Property, this Court entered Findings of Fact, Conclusions of Law, and Order  
26 Granting Thornburg Mortgage Securities Trust 2007-3’s Motion for Summary Judgment  
27  
28

(hereafter “December 2018 Court Order”). Attached hereto as **Exhibit 6** is a true and correct copy of the December 2018 Court Order.<sup>2</sup>

Undisputed Fact Number 12:

Saticoy owns the Subject Property subject to a Deed of Trust (hereafter “Surviving Deed of Trust”) for which Thornburg is the beneficiary. See Exhibit 6, page 6.

Undisputed Fact Number 13:

The Surviving Deed of Trust was recorded on June 12, 2006. It remains a first position lien against the Subject Property and is superior to the interest conveyed in the Foreclosure Deed. See Exhibit 6, page 6.

Undisputed Fact Number 14:

On June 19, 2019, the Court ordered the Trustee to deposit the Surplus Proceeds with the Clerk of the Court by July 11, 2019. Attached hereto as **Exhibit 7** is a true and correct copy of the Court's Order filed on June 19, 2019.

Undisputed Fact Number 15:

On or about May 21, 2015, the Trustee filed a Counterclaim for Interpleader requesting adjudication of any claims to the Surplus Proceeds pursuant to NRCP 22. Attached hereto as **Exhibit 8** is a true and correct copy of Trustee’s Counterclaim for Interpleader (hereafter “Interpleader Complaint”).

\\

\\

2 Timpa Trust respectfully submits as undisputed facts all of the findings/orders in the December 2018 Court Order (see Exhibit 6) as per the law-of-the-case doctrine. *See Recontrust Co. v. Zhang*, 130 Nev. 1, 7-8, 317 P.3d 814, 818 (2014) ("The law-of-the-case doctrine refers to a family of rules embodying the general concept that a court involved in later phases of a lawsuit should not re-open questions decided (i.e., established as law of the case) by that court or a higher one in earlier phases.") (internal quotation marks omitted).

1 Undisputed Fact Number 16:

2 Neither HOA nor the Trustee have any claim to the Surplus Proceeds. See Interpleader  
3 Complaint, ¶ 15.

4 Undisputed Fact Number 17:

5 On July 24, 2018, Saticoy filed a Joint Pre-Trial Memorandum with this Court. Attached  
6 hereto as **Exhibit 9** is a true and correct copy of the Joint Pre-Trial Memorandum filed on July  
7 24, 2018. The Joint Pre-Trial Memorandum was signed by attorneys for Saticoy, Thornburg,  
8 HOA, and the Trustee. See Exhibit 9, page 25. Pasted below is an excerpt from the Joint Pre-  
9 Trial Memorandum under the heading “Issues of Law to be Contested at the Time of Trial”:  
10

11  
12 **8. What Party should receive the excess proceeds of the foreclosure sale that are**  
13 **now being held by RRFS in its counsel’s client trust account.**

- 14 a. Should the Court hold that the foreclosure sale extinguished Thornburg’s  
15 Deed of Trust, the excess proceeds of the sale should be paid to Thornburg.  
16 On the other hand, if the Court holds that Thornburg’s Deed of Trust  
17 survived the foreclosure sale, the excess proceeds should be paid to the  
18 previous homeowners on the Property.

19 Exhibit 9, page 25, lines 9-15.

20 \\  
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1 Undisputed Fact Number 18:

2 In the December 2018 Court Order, the Court held that Thornburg's Deed of Trust  
3 survived the foreclosure sale. Pasted below is an excerpt from the December 2018 Court Order.  
4

5 **JUDGMENT**

6 The Court having made its Findings of Fact and Conclusions of Law:

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

9 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED**, Saticoy purchased an  
10 interest in the Property, located at 34 Innisbrook Ave, Las Vegas, Nevada subject to the deed of trust  
11 which remains a first position encumbrance against the Property;

12 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that the deed of trust  
13 recorded on June 12, 2006 remains a first position lien against the Property and is superior to the  
14 interest conveyed in the Foreclosure Deed;

15 Exhibit 6, page 6, lines 8-17.

16 **III. LEGAL ANALYSIS**

17 **A. SUMMARY JUDGMENT STANDARD**

18 When there is no genuine issue of material fact and the moving party is entitled to  
19 judgment as a matter of law, summary judgment is proper. *See, Charlie Brown Constr. Co. v.*  
20 *Boulder City*, 106 Nev. 497, 499, 797 P.2d 946, 947 (1990) (*citing Witsie v. Baby Grand Corp.*,  
21 105 Nev. 291, 774 P.2d 432, 433 (1989)). A genuine issue of material fact exists where the  
22 evidence is such that a reasonable fact finder could return a verdict for the nonmoving party. *See*  
23 *Valley Bank v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1279 (1989) (*citing Anderson v.*  
24 *Liberty Lobby, Inc.*, 477 U.S. 242 (1986)). The substantive law at issue determines which facts  
25 are material in a given case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct.  
26 2505, 91 L. Ed. 2d 202 (1986). "Only disputes over facts that might affect the outcome of the  
27  
28



1 suit under the governing law will properly preclude the entry of summary judgment.” *Id.* See  
2 also, *id.* at 247-48, 106 5.Ct. at 2510. (“The mere existence of some alleged factual dispute  
3 between the parties will not defeat an otherwise properly supported motion for summary  
4 judgment; the requirement is that there be no genuine issue of material fact.”)

5  
6 A court must accept the nonmoving party’s properly supported factual allegations as true,  
7 and it must draw all reasonable inferences in the nonmoving party’s favor. See *Michaels v.*  
8 *Sudeck*, 107 Nev. 332, 334, 810 P.2d 1212, 1213 (1991). A judge, however, is not required to  
9 divorce herself from reality and “must necessarily bring some real life experiences into the  
10 courtroom.” *Trent v. Trent*, 111 Nev. 309, 313 n.5, 890 P.2d 1309, 1311 n.5 (1995).

11 The nonmoving party “is not entitled to build a case on the gossamer threads of whimsy,  
12 speculation and conjecture.” *Collins v. Union Fed. Sav. & Loan*, 99 Nev. 284, 302, 662 P.2d  
13 610, 621 (1983). “Conclusory statements along with general allegations do not create an issue  
14 of material fact.” *Michaels*, 107 Nev. At 334, 818 P.2d at 1213. Nor is the nonmoving party  
15 entitled to have summary judgment denied “on the mere hope that at trial (it) will be able to  
16 discredit the movant’s evidence . . . .” *Id.* at 334, 818 P.2d at 214 (*quoting Hickman v. Meadow*  
17 *Wood Reno*, 96 Nev. 782, 784, 617 P.2d 71, 872 (1980)) (citation omitted). “The party opposing  
18 such a motion must set forth specific facts showing there is a genuine issue for trial.” *Id.* at 334,  
19 818 P.2d 213-14 (*citing Van Cleave v. Kietz-Mill Minit Mart*, 97 Nev. 67, 70, 624 P.2d 17, 19  
20 (1981)). (“Specific facts, rather than general allegations and conclusions, presenting a genuine  
21 issue of material fact must be shown to preclude summary judgment.”) (*citing Adamson v.*  
22 *Bowker*, 85 Nev. 115, 118-120, 450 P.2d 796, 800-801 (1969)).

25 \\  
26 \\  
27  
28

1                   **B. TIMPA TRUST IS ENTITLED TO SUMMARY JUDGMENT BECAUSE**  
2                   **TIMPA TRUST IS LAWFULLY ENTITLED TO THE SURPLUS**  
3                   **PROCEEDS PURSUANT TO NRS 116.31164(7)**

4                   “Interpleader is an equitable proceeding to determine the rights of rival claimants to  
5                   property held by a third person having no interest therein” and “each claimant is treated as a  
6                   plaintiff and must recover on the strength of his own right or title and not upon the weakness of  
7                   his adversary's.” *Balish v. Farnham*, 92 Nev. 133, 137, 546 P.2d 1297, 1299 (1976). Because  
8                   the Foreclosure Sale took place pursuant to NRS 116.3116, NRS 116.31164 guides the use of the  
9                   proceeds of the sale. Specifically, NRS 116.31164(7)(b) discusses how the Trustee is to utilize  
10                  the proceeds obtained from the Foreclosure Sale and reads as follows:

- 11                   7. After the sale, the person conducting the sale shall:
- 12                   (a) Comply with the provisions of subsection 2 of NRS
- 13                   116.31166; and
- 14                   (b) Apply the proceeds of the sale for the following purposes
- 15                   in the following order:
- 16                   (1) The reasonable expenses of sale;
- 17                   (2) The reasonable expenses of securing possession
- 18                   before sale, holding, maintaining, and preparing the unit for sale,
- 19                   including payment of taxes and other governmental charges,
- 20                   premiums on hazard and liability insurance, and, to the extent
- 21                   provided for by the declaration, reasonable attorney’s fees and
- 22                   other legal expenses incurred by the association;
- 23                   (3) Satisfaction of the association’s lien;
- 24                   (4) Satisfaction in the order of priority of any subordinate
- 25                   claim of record; and
- 26                   (5) Remittance of any excess to the unit’s owner.

27                  NRS 116.31164(7). Here, both the Trustee and HOA have already received the benefit of the  
28                  proceeds of the Foreclosure Sale (Undisputed Fact No. 16), in compliance with NRS  
29                  116.31164(7)(b) subsections (1)-(3). Therefore, the only remaining issues to the distribution of  
30                  the Surplus Proceeds are for the Court to determine if there are junior encumbrances (pursuant  
31                  to NRS 116.31164(7)(b) subsection 4) and who is the unit’s owner (pursuant to NRS  
32                  116.31164(7)(b) subsection 5).

1                                    i. **PURSUANT TO NRS 116.31164(7)(B) SUBSECTION 4, NEITHER**  
2                                    **THORNBURG NOR SATICOY IS ENTITLED TO ANY PORTION**  
3                                    **OF THE SURPLUS PROCEEDS AS SUBORDINATE CLAIMANTS**

4                    Neither Thornburg nor Saticoy can be considered subordinate claimants pursuant to NRS  
5 116.31164(7)(b) subsection 4. As was previously decided in this matter, as a result of the  
6 Foreclosure Sale, Saticoy owns the Subject Property subject to the Deed of Trust for which  
7 Thornburg is the beneficiary. Undisputed Fact No. 12. Thornburg's interest in the Subject  
8 Property is superior to the interest conveyed in the Foreclosure Deed. Undisputed Fact No. 13.  
9 Accordingly, Thornburg has no interest that is subordinate or junior to the HOA's foreclosing  
10 lien. Moreover, because Saticoy's interest in the Subject Property stems from its purchase of the  
11 Subject Property at the Foreclosure Sale, Saticoy is estopped from making a claim as a  
12 subordinate claimant to the HOA's foreclosing lien. Accordingly, neither Thornburg nor Saticoy  
13 can make a claim to the Surplus Proceeds as having subordinate claims of record.  
14

15                                    ii. **PURSUANT TO NRS 116.31164(7)(B) SUBSECTION 5, TIMPA**  
16                                    **TRUST IS ENTITLED TO THE SURPLUS PROCEEDS AS IT WAS**  
17                                    **THE UNIT'S OWNER AT THE TIME OF THE FORECLOSURE**  
                                      **SALE**

18                    Pursuant to NRS 116.31164(7)(b) subsection 5, once reasonable sale expenses, any liens,  
19 and any subordinate claims have been paid, the remaining surplus proceeds should be paid to the  
20 "unit's owner." NRS 116.31164(7)(b) subsection 5. NRS 116.095 defines "unit's owner" as "a  
21 declarant or other person who owns a unit..." NRS. 116.095. A unit is defined as "a physical  
22 portion of the common-interest community designated for separate ownership or occupancy, the  
23 boundaries of which are described pursuant to paragraph (e) of subsection 1 of NRS 116.2105."  
24 NRS 116.093.  
25

26                    Timpa Trust has been the owner of the Subject Property since July 18, 2006. Undisputed  
27 Fact No. 1, Exhibit 1. Moreover, the HOA Lien (Exhibit 2), the HOA Notice of Default (Exhibit  
28

1 3), and the Notice of HOA Sale (Exhibit 4) all identified Timpa Trust as the record holder of title  
2 of the Subject Property. Undisputed Fact No.'s 3, 5, and 7. As the sole owner of the Subject  
3 Property at the time of the Foreclosure Sale, Timpa Trust was the "unit's owner" and is entitled  
4 to the Surplus Proceeds pursuant to NRS 116.31164(7)(b) section (5).  
5

6 While Saticoy became the owner of the Subject Property as a result of the Foreclosure  
7 Sale, it was not the owner of the Subject Property at the time of the Foreclosure Sale on November  
8 7, 2014. Undisputed Fact Nos. 9 and 10. Saticoy, along with Thornburg, HOA, and the Trustee,  
9 already acknowledged that the party who was the owner of the Subject Property at the time of  
10 the Foreclosure Sale should receive the Surplus Proceeds. To wit, pasted below is an excerpt  
11 from the Joint Pre-Trial Memorandum signed by Saticoy, Thornburg, HOA and the Trustee:  
12

13 **8. What Party should receive the excess proceeds of the foreclosure sale that are**  
14 **now being held by RRFS in its counsel's client trust account.**

- 15 a. Should the Court hold that the foreclosure sale extinguished Thornburg's  
16 Deed of Trust, the excess proceeds of the sale should be paid to Thornburg.  
17 On the other hand, if the Court holds that Thornburg's Deed of Trust  
18 survived the foreclosure sale, the excess proceeds should be paid to the  
19 previous homeowners on the Property.

20 Undisputed Fact No. 17, Exhibit 9, page 25, lines 9-15.

21 Clearly, all parties have already agreed that if Thornburg's Deed of Trust did not survive  
22 the Foreclosure Sale (which it clearly did not, as already determined by this Court - Exhibit 6,  
23 page 6, lines 8-17) – then the previous homeowner of the Subject Property should receive the  
24 Surplus Proceeds. Undisputed Fact No. 17. The previous homeowner was Timpa Trust.  
25 Undisputed Fact No.'s 3, 5, and 7.  
26  
27  
28

1 Therefore, as the legal owner of the Subject Property at the time of the Foreclosure Sale,  
2 Timpa Trust requests that this Court disburse the Surplus Proceeds to it pursuant to NRS  
3 116.31164(7)(b) subsection 5.

4 **IV. CONCLUSION**

5  
6 For the foregoing reasons, Timpa Trust respectfully requests that this Court summarily  
7 adjudicate its claim to the Surplus Proceeds pursuant to NRCP 22 and NRS 116.31164. Timpa  
8 Trust was the owner of the Subject Property at the time of the Foreclosure Sale and is entitled to  
9 the Surplus Proceeds pursuant to NRS 116.31164(7)(b). Neither Thornburg nor Saticoy is  
10 entitled to receive any portion of the Surplus Proceeds. Accordingly, Timpa Trust respectfully  
11 requests that the Court enter an Order directing the Clerk of the Court to immediately issue a  
12 check for the entirety of the Surplus Proceeds to Timpa Trust.  
13

14 Dated this 25<sup>th</sup> day of June 2019

15 **AVALON LEGAL GROUP LLC**

16 By: /s/ Bryan Naddafi  
17 BRYAN NADDAFI, ESQ.  
18 Nevada Bar No. 13004  
19 9480 S. Eastern Avenue, Suite 257  
20 Las Vegas, Nevada 89123  
21 Telephone No. (702) 522-6450  
22 Email: [bryan@avalonglg.com](mailto:bryan@avalonglg.com)

23 TRAVIS AKIN, ESQ.  
24 Nevada Bar No. 13059  
25 **THE LAW OFFICE OF TRAVIS AKIN**  
26 8275 S. Eastern Ave.  
27 Las Vegas, NV 89123  
28 Telephone: (702) 510-8567  
Email: [travisakin8@gmail.com](mailto:travisakin8@gmail.com)

*Attorneys for TIMPA TRUST*  
*U/T/D MARCH 3, 1999*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies on June 25th, 2019, a true and correct copy of TIMPA TRUST'S MOTION FOR SUMMARY JUDGMENT was served to the following at their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

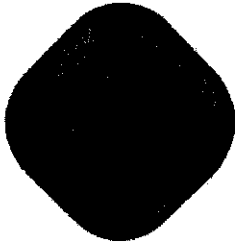
**E-MAIL AND/OR ELECTRONIC MEANS:** N.R.C.P. 5(b)(2)(D) and addresses(s) having consented to electronic service, via e-mail or other electronic means to the e-mail address(es) of the addressee(s).

Akerman LLP	AkermanLAS@akerman.com
Melanie Morgan	melanie.morgan@akerman.com
Jared Sechrist	jared.sechrist@akerman.com
Sean L. Anderson	sanderson@leachjohnson.com
Robin Callaway	rcallaway@lkgllawfirm.com
Patty Gutierrez	pgutierrez@lkgllawfirm.com
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Roger P. Croteau	croteaulaw@croteaulaw.com
Bryan Naddafi	bryan@avalonlg.com
Gregory Walch	greg.walch@lvvwd.com

/s/ Luz Garcia  
An employee of Avalon Legal Group LLC

# EXHIBIT 1

JA1767



**DEBBIE CONWAY**  
**Clark County Recorder**

**CONTACT**  
Office of the County Recorder  
Clark County, Nevada  
(702) 455-4336  
RecWeb@ClarkCountyNV.gov

INST: 200607180000604

**OFFICIAL CLARK COUNTY TITAN SEAL**

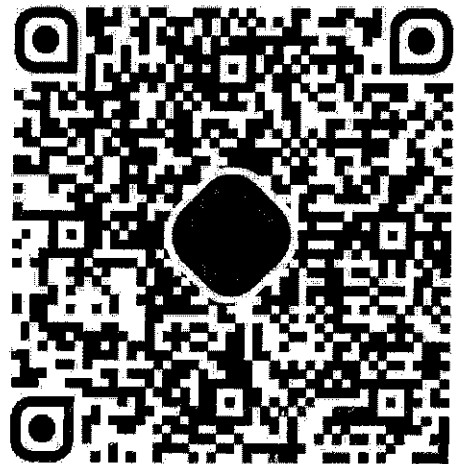
**About this seal:**

<https://clarkcountynv.gov/titanseal>

**Verify digital version:**

<https://titanseal.com/verify>

Make sure there are 6 pages, including this one. At the top of every page it should say: Ethereum ID:  
0x207b9c87048908b9c708c8e7627bed8656c60fab



I, Debbie Conway, hereby certify this document as a true and correct copy of the original on record with the Clark County Recorder's office.

*Debbie Conway*

Debbie Conway, Clark County Recorder

June 21, 2019

Date

Per Nevada Revised Statute 239 Section 6, personal information may be redacted, but in no way affects the legality of the document.

**OFFICIAL USE ONLY:**

<https://etherscan.io/address/0x207b9c87048908b9c708c8e7627bed8656c60fab>

<https://etherchain.org/account/0x207b9c87048908b9c708c8e7627bed8656c60fab>

JA1768



APN# 163-28-614-007

Return to:  
Nevada Title Company  
2500 N. Buffalo #150  
Las Vegas, NV 89128

(5)

30

20060718-0000604

Fee: \$17.00 RPTT: EX#007  
N/C Fee: \$0.00

07/18/2006 09:01:48

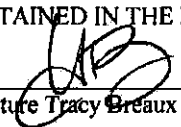
T20060124859

Requestor:  
NEVADA TITLE COMPANY

Frances Deane SOL  
Clark County Recorder Pgs: 5

GRANT, BARGAIN, SALE DEED  
(This cover page must be typed or printed)

THE UNDERSIGNED HEREBY AFFIRMS THAT THERE IS NO SOCIAL SECURITY NUMBER  
CONTAINED IN THE DOCUMENT.

  
Signature Tracy Breaux

THE UNDERSIGNED HEREBY AFFIRMS THAT THERE IS A SOCIAL SECURITY NUMBER  
CONTAINED IN THIS DOCUMENT AS REQUIRED BY  
LAW: \_\_\_\_\_

\_\_\_\_\_  
Signature



CERTIFIED COPY, THIS  
DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE  
RECORDED DOCUMENT MINUS  
ANY REDACTED PORTIONS

JA1769

A.P.N.: 163-28-614-007  
R.P.T.T.: Exempt #7

Escrow #06-04-1186-JLP

Mail tax bill to and when recorded mail to:  
Frank A. Timpa  
34 Innisbrook Ave  
Las Vegas, NV 89113

## GRANT, BARGAIN, SALE DEED

**THIS INDENTURE WITNESSETH**, That **Frank A. Timpa and Madelaine Timpa** husband and wife as joint tenants, for a valuable consideration, the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to **Timpa Trust u/t/d/ March 3, 1999 (Frank Anthony Timpa and Madelaine Timpa, Trustees and any successor Trustee as provided therein)**, all that real property situated in the County of Clark, State of Nevada, bounded and described as follows:

**SEE LEGAL DESCRIPTION ATTACHED HERETO  
AND MADE A PART HEREOF AS EXHIBIT "A".**

**SUBJECT TO:**

1. Taxes for the current fiscal year, not delinquent, including personal property taxes of any former owner, if any;
2. Restrictions, conditions, reservations, rights, rights of way and easements now of record, if any, or any that actually exist on the property.

**TOGETHER WITH** all singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.



CERTIFIED COPY, THIS  
DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE  
RECORDED DOCUMENT MINUS  
ANY REDACTED PORTIONS

JA1770

IN WITNESS WHEREOF, this instrument has been executed this 2nd day of June, 2008

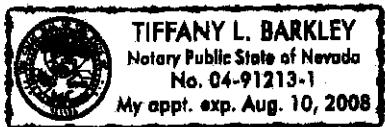
Frank Anthony Timpa, trustee  
Frank Anthony Timpa, Trustee

Madeline Timpa, trustee  
Madeline Timpa, Trustee

State Of NEVADA }  
County of Clark } ss

This instrument was acknowledge before me on June 2, 2008  
by Timpa Trust 4/1d March 3, 1999

Tiffany L. Barkley  
NOTARY PUBLIC  
My Commission Expires: Aug 10, 2008



CERTIFIED COPY, THIS  
DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE  
RECORDED DOCUMENT MINUS  
ANY REDACTED PORTIONS

**EXHIBIT "A"**

**LOT THIRTEEN (13) IN BLOCK ONE (1) OF ESTATES AT SPANISH TRAIL  
UNIT NO. 5, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 40, OF PLATS,  
PAGE 6, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY,  
NEVADA.**



CERTIFIED COPY, THIS  
DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE  
RECORDED DOCUMENT MINUS  
ANY REDACTED PORTIONS

**JA1772**

**State of Nevada****Declaration of Value**

## 1. Assessor Parcel Number(s)

- a) 163-28-614-007  
 b) \_\_\_\_\_  
 c) \_\_\_\_\_  
 d) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

30

## 2. Type of Property:

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

**FOR RECORDER'S OPTIONAL USE ONLY**

Document/Instrument #: \_\_\_\_\_  
 Book: \_\_\_\_\_ Page: \_\_\_\_\_  
 Date of Recording: \_\_\_\_\_  
 Notes: \_\_\_\_\_

## 3. Total Value/Sales Price of Property

\$ N/A

Deed in Lieu of Foreclosure Only (value of property)

N/A

Transfer Tax Value:

\$ N/A

Real Property Transfer Tax Due

\$ -exempt-

4. If Exemption Claimed:

- a. Transfer Tax Exemption, per NRS 375.090, #7  
 Section: \_\_\_\_\_

- b. Explain Reason for  
 Exemption: \_\_\_\_\_

Transfer to spouse, no considerationTransfer to trust, no consideration

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

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

Signature: Frank A. Timpa

Capacity: GRANTOR

Signature: Madelaine Timpa

Capacity: GRANTEE

**SELLER (GRANTOR) INFORMATION****BUYER (GRANTEE) INFORMATION**

(REQUIRED)

(REQUIRED)

Print Name: Frank A. Timpa  
and  
Madelaine Timpa

Print Name: Timpa Trust u/d/ March 3, 1999  
(Frank Anthony Timpa and  
Madelaine Timpa, Trustees and any  
successor Trustee as provided  
therein)

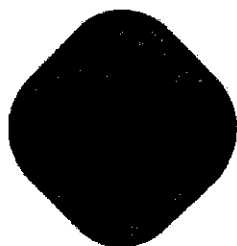
Address: 34 Innisbrook AveAddress: 34 Innisbrook AveCity/State/Zip: Las Vegas, NV 89113City/State/Zip: Las Vegas, NV 89113**COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)**Print Name: Nevada Title CompanyEsc. #: 06-04-1186-JLPAddress: 10000 W Charleston Blvd #180City: Las VegasState: NVZip: 89135

JA1773

0604  
 Debbie Conway  
 RECORDER  
 CERTIFIED COPY, THIS  
 DOCUMENT IS A TRUE AND  
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# EXHIBIT 2

JA1774



**DEBBIE CONWAY**  
**Clark County Recorder**

**CONTACT**  
Office of the County Recorder  
Clark County, Nevada  
(702) 455-4336  
RecWeb@ClarkCountyNV.gov

INST: 201108040002324

**OFFICIAL CLARK COUNTY TITAN SEAL**

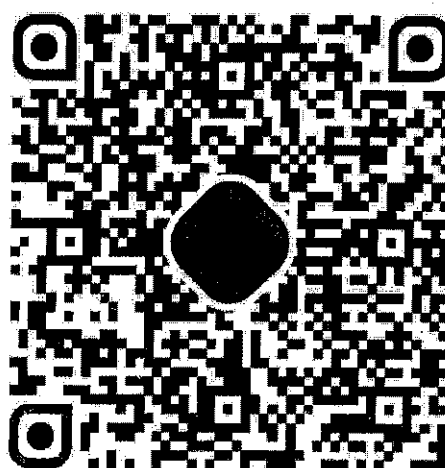
**About this seal:**

<https://clarkcountynv.gov/titanseal>

**Verify digital version:**

<https://titanseal.com/verify>

Make sure there are 2 pages, including this one. At the top of every page it should say: Ethereum ID:  
0x5a2fcd020dc5f9a5f9b065ae28018e86903f19f5



I, Debbie Conway, hereby certify this document as a true and correct copy of the original on record with the Clark County Recorder's office.

*Debbie Conway*

Debbie Conway, Clark County Recorder

June 21, 2019

Date

Per Nevada Revised Statute 239 Section 6, personal information may be redacted, but in no way affects the legality of the document.

**OFFICIAL USE ONLY:**

<https://etherscan.io/address/0x5a2fcd020dc5f9a5f9b065ae28018e86903f19f5>

<https://etherchain.org/account/0x5a2fcd020dc5f9a5f9b065ae28018e86903f19f5>

JA1775

Inst #: 201108040002324

Fee: \$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

Assessor Parcel Number: 163-28-614-007

File Number: R74507

### Accommodation

### 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

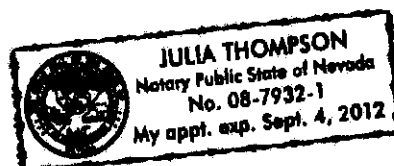
Prepared By Anna Romero, Red Rock Financial Services, on behalf of Spanish Trail Master Association

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.

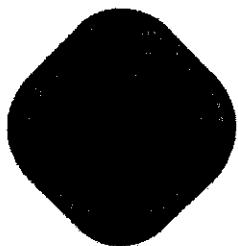
When Recorded Mail To: Red Rock Financial Services  
7251 Amigo Street, Suite 100  
Las Vegas, Nevada 89119  
702-932-6887





# EXHIBIT 3

JA1777



**DEBBIE CONWAY**  
**Clark County Recorder**

**CONTACT**  
Office of the County Recorder  
Clark County, Nevada  
(702) 455-4336  
RecWeb@ClarkCountyNV.gov

INST: 201112060001106

**OFFICIAL CLARK COUNTY TITAN SEAL**

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Make sure there are 2 pages, including this one. At the top of every page it should say: Ethereum ID:  
0xb06d220b6582103cea006ca7632e975b7e77cdee



I, Debbie Conway, hereby certify this document as a true and correct copy of the original on record with the Clark County Recorder's office.

*Debbie Conway*

Debbie Conway, Clark County Recorder

June 21, 2019

Date

Per Nevada Revised Statute 239 Section 6, personal information may be redacted, but in no way affects the legality of the document.

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<https://etherscan.io/address/0xb06d220b6582103cea006ca7632e975b7e77cdee>

<https://etherchain.org/account/0xb06d220b6582103cea006ca7632e975b7e77cdee>

JA1778

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  
Fee: \$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.

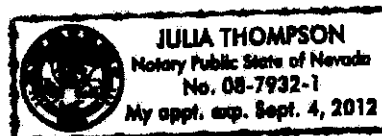
Eungel Watson  
Dated: November 29, 2011  
Prepared By Eungel Watson, Red Rock Financial Services, on behalf of Spanish Trail Master Association

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

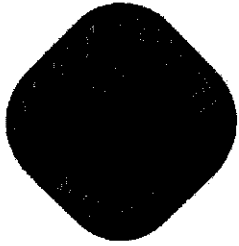


Debbie Conway  
RECORDER



# EXHIBIT 4

JA1780



**DEBBIE CONWAY**  
**Clark County Recorder**

**CONTACT**  
Office of the County Recorder  
Clark County, Nevada  
(702) 455-4336  
RecWeb@ClarkCountyNV.gov

INST: 201409150001527

**OFFICIAL CLARK COUNTY TITAN SEAL**

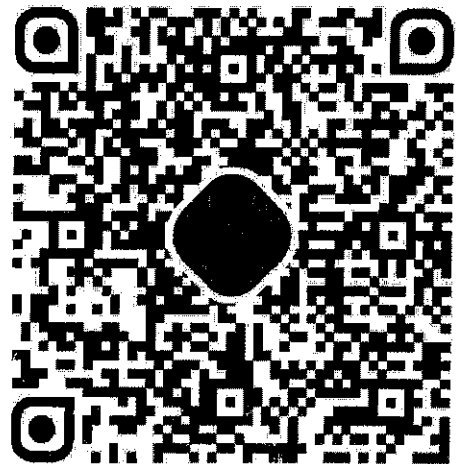
**About this seal:**

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<https://titanseal.com/verify>

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0x1ef074d03c6fd24e5d98a4d249b3633a6366f2ee



I, Debbie Conway, hereby certify this document as a true and correct copy of the original on record with the Clark County Recorder's office.

*Debbie Conway*

Debbie Conway, Clark County Recorder

June 21, 2019

Date

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<https://etherchain.org/account/0x1ef074d03c6fd24e5d98a4d249b3633a6366f2ee>

JA1781

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



*Debbie Conway*  
RECORDER



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.

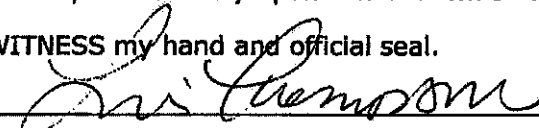
Dated: September 11, 2014

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

STATE OF NEVADA                     )  
COUNTY OF CLARK                 )

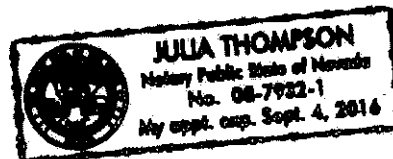
On September 11, 2014, before me, personally appeared Anna Romero, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that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



  
*Debbie Conway*  
RECORDER

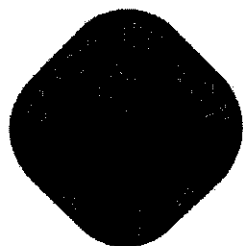
CERTIFIED COPY, THIS  
DOCUMENT IS A TRUE AND  
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JA1783

# EXHIBIT 5

JA1784





**DEBBIE CONWAY**

**Clark County Recorder**

**CONTACT**  
Office of the County Recorder  
Clark County, Nevada  
(702) 455-4336  
RecWeb@ClarkCountyNV.gov

INST: 201411100002475

**OFFICIAL CLARK COUNTY TITAN SEAL**

**About this seal:**

<https://clarkcountynv.gov/titanseal>

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Make sure there are 4 pages, including this one. At the top of every page it should say: Ethereum ID:  
0x2a4e25e7a3117b87c98ada07e25e215c2b3d9b09.



I, Debbie Conway, hereby certify this document as a true and correct copy of the original on record with the Clark County Recorder's office.

*Debbie Conway*

Debbie Conway, Clark County Recorder

June 21, 2019

Date

Per Nevada Revised Statute 239 Section 6, personal information may be redacted, but in no way affects the legality of the document.

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<https://etherscan.io/address/0x2a4e25e7a3117b87c98ada07e25e215c2b3d9b09>

<https://etherchain.org/account/0x2a4e25e7a3117b87c98ada07e25e215c2b3d9b09>

JA1785

Inst #: 20141110-0002475  
Fees: \$18.00 N/C Fee: \$25.00  
RPTT: \$6125.10 Ex: #  
11/10/2014 11:49:45 AM  
Receipt #: 2215809  
Requestor:  
RESOURCES GROUP  
Recorded By: DXI Pgs: 3  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

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: \$6125.10

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.



*Debbie Conway*  
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JA1786

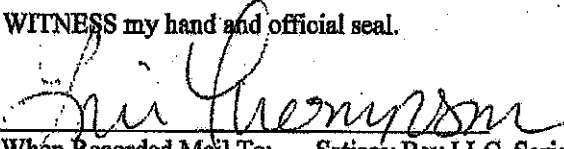
Dated: November 10, 2014

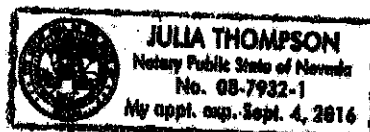
  
By: Christie Marling, employee of Red Rock Financial Services, agent for Spanish Trail Master Association

STATE OF NEVADA )  
COUNTY OF CLARK )

On November 10, 2014, before me, personally appeared Christie Marling, 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: Saticoy Bay LLC, Series 34 Innisbrook  
900 S. Las Vegas Blvd., #810  
Las Vegas, NV 89101



Sept 4 2016



  
Debbie Conway  
RECORDER

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CORRECT COPY OF THE  
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JA1787

# STATE OF NEVADA DECLARATION OF VALUE

## 1. Assessor Parcel Number (s)

- a) 183-28-614-007  
b) \_\_\_\_\_  
c) \_\_\_\_\_  
d) \_\_\_\_\_

## 2. Type of Property:

- |  |  |
|--|--|
| a) <input type="checkbox"/> Vacant Land  | b) <input checked="" type="checkbox"/> Single Fam Res. |
| c) <input type="checkbox"/> Condo/Twnhse | d) <input type="checkbox"/> 2-4 Plex                   |
| e) <input type="checkbox"/> Apt. Bldg.   | f) <input type="checkbox"/> Comm'l/Ind'l               |
| g) <input type="checkbox"/> Agricultural | h) <input type="checkbox"/> Mobile Home                |
| i) <input type="checkbox"/> Other        |  |

### FOR RECORDERS OPTIONAL USE ONLY

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

## 3. Total Value/Sales Price of Property:

Deed in Lieu of Foreclosure Only (value of property) \$ 1,201,000.00  
Transfer Tax Value: \$ 1,201,000.00  
Real Property Transfer Tax Due: \$ 6125.10

## 4. If Exemption Claimed:

- a. Transfer Tax Exemption, per NRS 375.080, Section: \_\_\_\_\_  
b. Explain Reason for Exemption: \_\_\_\_\_

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

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

Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity AGENT  
Signature \_\_\_\_\_ Capacity \_\_\_\_\_

## SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: Red Rock Financial Services  
Address: 4775 West Teco Ave #140  
City: Las Vegas  
State: NV Zip: 89118

## BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: Saticoy Bay LLC, Series 34 Innisbrook  
Address: 900 S. Las Vegas Blvd., #810  
City: Las Vegas  
State: NV Zip: 89101

## COMPANY/PERSON REQUESTING RECORDING

(REQUIRED IF NOT THE SELLER OR BUYER)

Print Name: [Signature] Escrow # \_\_\_\_\_  
Address: 900 S Las Vegas Blvd #810  
City: NV State: NV Zip: 89101

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)



*Debbie Conway*  
RECORDER

CERTIFIED COPY, THIS  
DOCUMENT IS A TRUE AND  
CORRECT COPY OF THE  
RECORDED DOCUMENT MINUS  
ANY REDACTED PORTIONS

JA1788

# EXHIBIT 6

*Steven D. Grierson*

1 **ORD**

2 MELANIE D. MORGAN, ESQ.

3 Nevada Bar No. 8215

4 THERA A. COOPER, ESQ.

5 Nevada Bar No. 13468

6 **AKERMAN LLP**

7 1635 Village Center Circle, Suite 200

8 Las Vegas, Nevada 89134

9 Telephone: (702) 634-5000

10 Facsimile: (702) 380-8572

11 Email: melanie.morgan@akerman.com

12 Email: thera.cooper@akerman.com

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

15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 SATICOY BAY LLC SERIES 34  
18 INNISBROOK,

Case No.: A-14-710161-C

Division: XXVI

19 Plaintiff,

20 vs.

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

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER GRANTING  
THORNBURG MORTGAGE  
SECURITIES TRUST 2007-3'S  
MOTION FOR SUMMARY  
JUDGMENT**

23 Defendants.

24 AND ALL RELATED ACTIONS

25 The court having considered Thornburg Mortgage Securities Trust 2007-3 (**Thornburg**)'s  
26 motion for reconsideration, the opposition thereto, and the argument of counsel converts the motion  
27 into a motion for summary judgment and makes the following findings of fact, conclusion of law  
28 and order **GRANTING** summary judgment in Thornburg's favor.<sup>1</sup>

<sup>1</sup> The Court denied the parties' competing motions for summary judgment by oral order on July 3, 2018. The order denying the motions for summary judgment had not been entered when Thornburg moved to reconsider based on *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 134 Nev. Adv. Op. 72, \*2 (Nev. Sept. 13, 2018).

1     **I. FINDINGS OF FACT**

2             1. Frank Timpa executed a deed of trust securing a \$3,780,000 loan to purchase the  
3 property located at 34 Innisbrook Ave, Las Vegas, Nevada on June 2, 2006. The deed of trust lists  
4 Countrywide Home Loans, Inc. as the lender and Mortgage Electronic Registration System, Inc.  
5 (**MERS**) as beneficiary and lender's nominee and was recorded on June 6, 2006. *Id.*

6             2. Section 9 of the deed of trust provides if "there is a...lien which may attain priority  
7 over the [deed of trust]...then Lender may do and pay for whatever is reasonable or appropriate to  
8 protect Lender's interest in the property." *Id.* The deed of trust's planned unit development rider  
9 (**PUD rider**) provides "[i]f Borrower does not pay PUD dues and assessments when due, then  
10 Lender may pay them." *Id.* The loan securing the deed of trust matures on July 1, 2046 and has an  
11 unpaid balance of \$6,279,233.20.

12            3. On June 9, 2010, a corporate assignment of deed of trust was recorded assigning the  
13 beneficial interest in the deed of trust to Thornburg.

14            4. The property is within the Spanish Trail Master Association (the **HOA**) and is subject  
15 to its declaration of covenants, conditions, and restrictions recorded March 7, 1984 (the **CC&Rs**).

16            5. Art. IV, Section 6, "Subordination to First Mortgages," provides:

17  
18            The lien of the assessments provided for herein shall be prior to all other liens recorded  
19 subsequent to the recordation of the Notice of delinquent Assessment, except that the lien of  
20 the assessment provided for herein, shall be subordinate to the lien of any first Mortgage  
21 given for value, and the sale or transfer of any Lot pursuant to the first Mortgage foreclosure  
22 shall extinguish the lien of such assessments as to payments which became due prior to such  
23 sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments  
24 thereafter becoming due or from the lien thereon.

25            6. Art. IX Section 1, permits "Mortgagees [to], jointly or severally, pay taxes or other  
26 charges which are in default and which may or have become a charge against the Association  
27 property, unless such taxes or other charges are separately assessed against the Owners, in which  
28 case, the rights of Mortgages shall be governed by the provisions of their Mortgages..."

...

...

1           7.     Art. X Section 3, provides:

2  
3           A breach of any of the covenants, conditions, restrictions or other provisions of this  
4           Declaration shall not affect or impair the lien or charge of any bona fide Mortgage made in  
5           good faith and for value on any lot provided however, that any subsequent owner of the lot  
6           shall be bound by the provisions of this Declaration, whether such Owner's title was acquired  
7           by foreclosure or by a trustee's sale or otherwise.

8           8.     On August 4, 2011, Red Rock Financial Services (**Red Rock**), on behalf of the HOA,  
9           recorded a lien for delinquent assessments indicating borrower owed \$5,543.92 (the **Lien**). The Lien  
10           indicated it was recorded "in accordance with" the CC&Rs.

11           9.     At the time the Lien was recorded, the HOA's assessments were \$225.00 per month.  
12           There were no nuisance abatement charges. The superpriority amount of the HOA's lien was \$2,025  
13           (\$225.00 x 9) for the assessments coming due December 1, 2010 through August 1, 2011.

14           10.    From July 9, 2013 through December 13, 2013, borrower made payments totaling  
15           \$2,350. Red Rock accepted the payments and applied the payments to the delinquent assessments  
16           coming due December 1, 2010 through August 1, 201.<sup>2</sup>

17           11.    On December 6, 2011, Red Rock recorded a notice of default and election to sell  
18           pursuant to the lien for delinquent assessments asserting the HOA was owed \$8,312.52.

19           12.    On December 23, 2011, BAC Home Loan Servicing (**BANA**), then the loan servicer,  
20           through its counsel Miles, Bauer, Bergstorm & Winters (**Miles Bauer**) sent correspondence to Red  
21           Rock seeking to determine the superpriority amount and offered to "pay that sum upon adequate  
22           proof." Red Rock received the letter on December 27, 2011.

23           13.    On January 26, 2012, Red Rock responded with a ledger indicating the total amount  
24           due was \$9,255.44.

25           14.    On February 10, 2012, Miles Bauer, by courier sent correspondence to Red Rock  
26           enclosing a \$2,025 check. Red Rock received the check on February 10, 2012. Red Rock rejected the  
27           payment without explanation at the time of the rejection.

28           <sup>2</sup>     Throughout the collection process Timpa paid in excess of \$10,000 toward the HOA's lien. Timpa's  
              final payment of \$500.00 occurred on October 14, 2014, mere weeks before the HOA's sale.



1           15.    Then on February 12, 2012, after rejecting BANA's payment, Red Rock sent  
2 correspondence to Thornburg asserting the Red Rock's belief that the HOA's lien was junior to the  
3 deed of trust.

4           16.    Red Rock recorded a notice of foreclosure sale on September 15, 2014 stating the  
5 HOA would sell the property on October 8, 2014 and the amount then due was \$20,309.95. The  
6 notice asserted the sale would "be made without covenant or warrant, express or implied  
7 regarding...title or possession, encumbrance, obligations to satisfy any secured or unsecured liens."

8           17.    On November 10, 2014, a foreclosure deed recorded indicating the HOA sold the  
9 property to Saticoy Bay LLC Series 34 Innisbrook on November 7, 2014 for \$1,201,000.

10          18.    At the time of the HOA's sale the property was worth \$2,000,000.

11          19.    Since the sale Saticoy has leased the property and obtained rental income.

## 12    II.    CONCLUSIONS OF LAW

13          1.    "Summary judgment is appropriate...when the pleadings, depositions, answers to  
14 interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that  
15 no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter  
16 of law." *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005). "While the pleadings and other  
17 evidence must be construed in the light most favorable to the nonmoving party, that party has the  
18 burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts  
19 to defeat a motion for summary judgment." *Id.* at 1031 (*quoting Matsushita Elec. Indus. Co. v.*  
20 *Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are  
21 material and will preclude summary judgment; other factual disputes are irrelevant." *Id.* Nevada  
22 courts follow the federal summary judgment standard, not the "slightest doubt" standard previously  
23 applicable before *Wood*. *Id.* at 1031, 1037.

24          2.    Parties must prove their claims and affirmative defenses by a preponderance of the  
25 evidence. *See Nev. J.I. 2EV.1.* Under Nevada law, "[t]he term 'preponderance of the evidence'  
26 means such evidence as, when weighed with that opposed to it, has more convincing force, and from  
27 which it appears that the greater probability of truth lies therein." *Nev. J.I. 2EV.1; Corbin v. State*,  
28 111 Nev. 378, 892 P.2d 580 (1995) (regarding entrapment, "[p]reponderance of the evidence means

1 such evidence as, when weighed with that opposed to it, has more convincing force and the greater  
2 probability of truth.").

3 3. Nevada law draws no distinction between circumstantial and direct evidence.  
4 *Deveroux v. State*, 96 Nev. 388, 391 (1980); Nev. J.I. 2EV.3 ("The law makes no distinction  
5 between the weight to be given to either direct or circumstantial evidence. Therefore, all of the  
6 evidence in the case, including circumstantial evidence, should be considered . . .").

7 4. *Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP, f/k/a*  
8 *Countrywide Home Loans Servicing, LP v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 134 Nev.  
9 Adv. Op. 72, \*2 (Nev. Sept. 13, 2018) confirms Thornburg is entitled to summary judgment.  
10 Thornburg submitted admissible evidence BANA tendered the full super-priority amount before the  
11 sale. Pursuant to *Bank of America's* binding precedent, Saticoy's interest, if any, is subject to the  
12 deed of trust.

13 5. "[T]he superpriority lien granted by NRS 116.3116(2) does not include an amount for  
14 collection fees and foreclosure costs incurred; rather it is limited to an amount equal to the common  
15 expense assessments due during the nine months before foreclosure." *Horizon at Seven Hills*  
16 *Homeowners Association, Inc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, at 13, 2016 WL  
17 1704199 at \*6 ; *See Bank of America*, \*4.

18 6. A mortgagee's pre-foreclosure tender of the superpriority amount protects the deed of  
19 trust. *SFR Investments*, 334 P.3d 408, 414 ("[A]s junior lienholder, [the holder of the first deed of  
20 trust] could have paid off the [HOA] lien to avert loss of its security[.]"); *id.*, at 413 ("[S]ecured  
21 lenders will most likely pay the [9] months' assessments demanded by the association rather than  
22 having the association foreclose on the unit.") (emphasis added).

23 7. BANA's tender is evidenced in Miles Bauer's (Thornburg's Motion at Ex. I) and Red  
24 Rock's business records (Thornburg's Motion at Ex. G) eliminating any question of fact regarding  
25 delivery of the check. The records were properly authenticated by affidavits.

26 8. *Bank of America* concluded BANA's check and letter – like the check and letter here  
27 – were not impermissibly conditional. *Bank of America* at \* 7. BANA was not required to record the  
28 tender (*id.* at \* 10) or "keep the tender good" (*id.* at \* 11). Sending a check for the full super-priority

1 amount extinguished the super-priority lien. *Id.* \* 2. SFR's purported *bona fide* purchaser status was  
2 irrelevant. *Id.* at \* 13. SFR purchased the property subject to the deed of trust. *Id.* \* 14.

3 9. The court finds Saticoy is a *bona fide* purchaser, but that status is "irrelevant when a  
4 defect in the foreclosure proceedings renders the sale void." *Id.*, citing *Henke v. First S. Props, Inc.*,  
5 586 S.W.2d 617, 620 (Tex. App. 1979). "[A]fter a valid tender of the superpriority portion of an  
6 HOA lien, a foreclosure sale on the entire lien is void as to the superpriority portion, because it  
7 cannot extinguish the first deed of trust." *Id.*

### 8 JUDGMENT

9 The Court having made its Findings of Fact and Conclusions of Law:

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

12 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED**, Saticoy purchased an  
13 interest in the Property, located at 34 Innisbrook Ave, Las Vegas, Nevada subject to the deed of trust  
14 which remains a first position encumbrance against the Property;

15 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that the deed of trust  
16 recorded on June 12, 2006 remains a first position lien against the Property and is superior to the  
17 interest conveyed in the Foreclosure Deed;

18 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that all remaining claims  
19 not specifically mentioned, including all claims in Thornburg's counterclaim and crossclaims and  
20 Saticoy's complaint, are dismissed with prejudice; and

21 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that the lis pendens  
22 recorded June 16, 2015, as Instrument No. 20150616-0000991 is hereby expunged;

23 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that any party may record  
24 this Findings of Fact, Conclusions of Law, and Judgment in the Property's records; and

25 ...

26 ...

27 ...

28 ...

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

3 DATED November 30 2018.

4   
DISTRICT COURT JUDGE

5 Respectfully submitted by:

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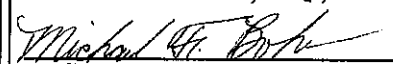
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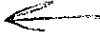
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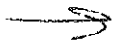
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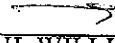
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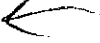
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
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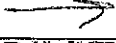
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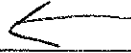
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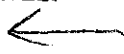
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3 DATED \_\_\_\_\_, 2018.

4   
DISTRICT COURT JUDGE

5 Respectfully submitted by:

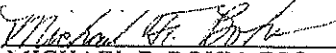
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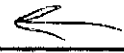
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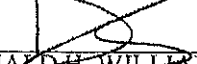
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# EXHIBIT 7





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**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

Department No.: XXVI

AND ALL RELATED ACTIONS

**ORDER**

A hearing having been held on the 11<sup>th</sup> day of June, 2019 at 9:00 a.m., on Saticoy Bay LLC, Series 34 Innisbrook's Motion to Reinstate Statistically Closed Case filed on May 10, 2019, with appearances by Bryan Naddafi and Travis Akin on behalf of Timpa Trust, Melanie Morgan on behalf of Thornburg Mortgage Securities Trust 2007-3, and Ryan Hastings on behalf of Spanish Trail Master Association. The Court having trailed the matter towards the end of its 9:00 a.m. docket, with there being no appearance by Roger Croteau, the attorney for

1 moving party Saticoy Bay LLC, Series 34 Innisbrook, and no appearance by Steven Scow on  
2 behalf of Red Rock Financial Services LLC, with the Court being advised that Mr. Scow was  
3 appearing on an unrelated matter in another courtroom. The Court, having considered the  
4 moving papers, there being no opposition, and the representations of counsel present at the  
5 hearing, and for good cause appearing:  
6

7 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Saticoy Bay LLC,  
8 Series 34 Innisbrook's Motion to Reinstate Statistically Closed Case is GRANTED, and the  
9 matter is reinstated.

10 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the remaining  
11 outstanding issue on this matter requiring adjudication is the interpleader of the surplus funds  
12 remaining from the non-judicial foreclosure sale of real property commonly known as 34  
13 Innisbrook Ave., Las Vegas, NV 89113 (hereafter "Surplus Funds").  
14

15 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Red Rock  
16 Financial Services is directed to deposit the Surplus Funds within thirty (30) days of the date of  
17 this hearing with the Clerk of the Court, thereby making the deadline Thursday, July 11, 2019.  
18

19 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that an evidentiary  
20 hearing on the claims in interpleader of the Surplus Funds is set for this Court's October 14,  
21 2019 trial stack.

22 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that any of the  
23 parties/claimants may proceed via written motion for summary adjudication pursuant to  
24 N.R.C.P. 56 with regard to their claims in interpleader of the Surplus Funds.  
25

26 DATED this 8<sup>th</sup> day of June 2019  
27  
28

  
DISTRICT COURT JUDGE

1 Respectfully submitted by:

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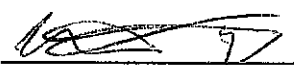
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11 *Successor Co-Trustees to the Timpa Trust*

12 Reviewed by:

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20 *Securities Trust 2007-3*

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*Attorney for Todd Timpa and Stuart Timpa,*  
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1 Respectfully submitted by:

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# EXHIBIT 8

  
CLERK OF THE COURT

1 CCAN  
2 DAVID R. KOCH  
3 Nevada Bar No. 8830  
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16 Attorneys for Counter-Defendant/Counterclaimant  
17 Red Rock Financial Services

18 EIGHTH DISTRICT COURT  
19 CLARK COUNTY, NEVADA

20 SATICOY BAY LLC SERIES 34 INNISBROOK,

21 Plaintiff,

22 vs.

23 THORNBURG MORTGAGE SECURITIES  
24 TRUST 2007-3; RECONSTRUCT COMPANY,  
25 N.A. a division of BANK OF AMERICA;  
26 FRANK TIMPA and MADELAINE TIMPA,  
27 individually and as trustees of the TIMPA  
28 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, LLC, an unknown

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

RED ROCK FINANCIAL  
SERVICES' ANSWER TO  
THORNBURG MORTGAGE  
SECURITIES TRUST 2007-3  
COUNTERCLAIM; AND RED  
ROCK FINANCIAL SERVICES'  
COUNTERCLAIM FOR  
INTERPLEADER (NRCP 22)

1 through X; and ROE CORPORATIONS I  
2 through X, inclusive,

3 Counter-Defendants.

4 RED ROCK FINANCIAL SERVICES,

5 Counterclaimant,

6 vs.

7 THORNBURG MORTGAGE SECURITIES  
8 TRUST 2007-3; COUNTRYWIDE HOME  
9 LOANS, INC.; ESTATES WEST AT SPANISH  
10 TRAILS; MORTGAGE ELECTRONIC  
11 REGISTRATION SYSTEM, INC.; REPUBLIC  
12 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,

13 Counter-Defendants.

14  
15 RED ROCK FINANCIAL SERVICES ("Red Rock") answers the Counterclaim filed  
16 by Thornburg Mortgage Securities Trust 2007-3 ("Thornburg"), and admits, denies, and  
17 alleges as follows:

18 I.

19 PARTIES

20 1. In response to paragraphs 1, 3 and 7, Red Rock is without sufficient  
21 information to form a belief as to the truth of the allegations of these paragraphs and on  
22 that basis denies the allegations.

23 2. In response to paragraph 2, Red Rock states the document referenced  
24 speaks for itself, and Red Rock is without sufficient information or knowledge to for a  
25 belief as to the remaining allegations in this paragraph and on that basis denies the  
26 allegations.

27 3. Red Rock admits the allegations of paragraphs 4 through 6.  
28



4. In response to paragraph 8, Red Rock states this paragraph sets forth a legal conclusion to which no response is necessary. To the extent a response is required, Red Rock denies the allegations of this paragraph.

## II.

## JURISDICTION AND VENUE

5. In response to paragraphs 9 through 12, Red Rock states these paragraphs constitute a legal conclusion to which no response is required.

### III.

## FACTUAL BACKGROUND

6. In response to paragraphs 13 and 15, Red Rock is without sufficient information to form a belief as to the truth of the allegations of these paragraphs and on that basis Red Rock denies the allegations.

7. In response to paragraphs 14, 16, 17, 18, 19, 20, and 22, Red Rock states the documents referenced therein speak for themselves, and Red Rock is without sufficient information or knowledge to for a belief as to the remaining allegations in these paragraphs and on that basis Red Rock denies the allegations.

8. In response to paragraph 21, Red Rock admits that there was a foreclosure sale on November 7, 2014. Red Rock is without sufficient information or knowledge to form a belief as to the remaining allegations in this paragraph and on that basis Red Rock denies the allegations.

9. In response to paragraphs 23 and 24, Red Rock states these paragraphs set forth legal conclusions to which no responses are necessary. To the extent responses are required, Red Rock denies the allegations of these paragraphs.

10. Red Rock denies the allegations of paragraph 25.

11. In response to paragraph 26, Red Rock states this paragraph sets forth legal conclusions to which no responses are necessary. To the extent a response is required, Red Rock denies the allegations.

12. Red Rock denies the allegations of paragraph 27.

1           13.     In response to paragraph 28, Red Rock is without sufficient information to  
2 form a belief as to the truth of the allegations of this paragraph and on that basis Red  
3 Rock denies the allegations.

4           14.     In response to paragraphs 29 and 30, Red Rock states the documents  
5 referenced therein speak for themselves, and Red Rock denies any further allegations in  
6 these paragraphs.

7           15.     In response to paragraph 31, Red Rock admits that it received the letter  
8 attached as Exhibit 9 and denies the remaining allegations in the paragraph.

9           16.     In response to paragraph 32, Red Rock states this paragraph sets forth  
10 legal conclusions to which no responses are necessary. To the extent a response is  
11 required, Red Rock denies the allegations.

12          17.     Red Rock denies the allegations of paragraphs 33 through 41.

13          18.     In response to paragraphs 42 and 43, Red Rock states these paragraphs set  
14 forth legal conclusions to which no responses are necessary. To the extent a response is  
15 required, Red Rock denies the allegations.

16          19.     Red Rock denies the allegations of paragraphs 44 and 45.

17          20.     In response to paragraph 46, Red Rock states this paragraph sets forth  
18 legal conclusions to which no responses are necessary. To the extent a response is  
19 required, Red Rock denies the allegations.

20          21.     Red Rock denies the allegations of paragraphs 47 and 48.

21          22.     In response to paragraphs 49 and 50, Red Rock states these paragraphs set  
22 forth legal conclusions to which no responses are necessary. To the extent a response is  
23 required, Red Rock denies the allegations.

24          23.     In response to paragraphs 51 and 52, Red Rock is without sufficient  
25 information to form a belief as to the truth of the allegations of these paragraphs and on  
26 that basis Red Rock denies the allegations.

27          24.     Red Rock denies the allegations of paragraphs 53, 54, 55, 56, and 57.  
28

1           25.     In response to paragraph 58, Red Rock states the content of the CC&Rs  
2 speak for themselves, and no response is required.

3           26.     In response to paragraphs 59 and 61, Red Rock states that Mortgage  
4 Protection Clauses do not circumvent the Nevada Statutes, and Red Rock denies the  
5 allegations contain in theses paragraphs.

6           27.     In response to paragraph 60, Red Rock is without sufficient information to  
7 form a belief as to the truth of the allegations of this paragraph and on that basis Red  
8 Rock denies the allegations.

9           28.     Red Rock denies the allegations of paragraphs 61, 62, and 63.

10          29.     In response to paragraphs 64, 65, and 66, Red Rock is without sufficient  
11 information to form a belief as to the truth of the allegations of these paragraphs and on  
12 that basis Red Rock denies the allegations.

13          30.     Red Rock denies the allegations of paragraph 67.

14                   **FIRST CAUSE OF ACTION**

15           **(Quiet Title/Declaratory Relief Pursuant to NRS 30.010 et seq. and NRS 40.010 et seq.**  
16                   **versus SATICOY, HOA, and all fictitious Defendants)**

17          31.     In response to paragraph 68, Red Rock repeats and reasserts its responses  
18 to paragraphs 1 through 67 of the Counterclaim as though fully set forth herein.

19          32.     In response to paragraphs 69, 70, 71, and 72, Red Rock states these  
20 paragraphs set forth legal conclusions to which no response is necessary. To the extent  
21 responses are required, Red Rock is without sufficient knowledge or information to form  
22 a belief and on that basis denies the allegations in these paragraphs.

23          33.     In response to paragraphs 73, Red Rock is without sufficient information to  
24 form a belief as to the truth of the allegations of this paragraph and on that basis denies  
25 the allegations.

26          34.     Red Rock denies the allegations of paragraphs 74, 75, 76, 77, and 78.  
27  
28

1 **SECOND CAUSE OF ACTION**

2 **(Permanent and Preliminary Injunction versus SATICOY)**

3 35. Red Rock states that this Second Cause of Action, paragraphs 79 through  
4 87, is not applicable to it, therefore, no response is required to these allegations.

5 **THIRD CAUSE OF ACTION**

6 **(Wrongful Foreclosure versus the HOA, the HOA Trustee, and fictitious Defendants)**

7 36. In response to paragraph 88, Red Rock repeats and reasserts its responses  
8 to paragraph 1 through 87 of the Counterclaim as though fully set forth herein.

9 37. Red Rock denies the allegations of paragraphs 89 through 99.

10 **FOURTH CAUSE OF ACTION**

11 **(Negligence versus HOA, the HOA Trustee, and fictitious Defendants)**

12 38. In response to paragraph 100, Red Rock repeats and reasserts its responses  
13 to paragraph 1 through 99 of the Counterclaim as though fully set forth herein.

14 39. In response to paragraph 101, Red Rock states this paragraph states legal  
15 conclusions to which no response is necessary. To the extent a response is required, Red  
16 Rock is without sufficient knowledge or information to form a belief and on that basis  
17 denies the allegations in this paragraph.

18 40. Red Rock denies the allegations of paragraphs 102 through 106.

19 **FIFTH CAUSE OF ACTION**

20 **(Negligence Pro Se versus HOA, the HOA Trustee, and fictitious Defendants)**

21 41. In response to paragraph 107, Red Rock repeats and reasserts its responses  
22 to paragraph 1 through 106 of the Counterclaim as though fully set forth herein.

23 42. In response to paragraph 108, Red Rock states the Chapter and statutes  
24 reference speak for themselves and no response is necessary. To the extent a response is  
25 required, Red Rock denies the allegations of this paragraph.

26 43. Red Rock denies the allegations of paragraphs 109 and 110.

27 44. In response to paragraphs 111 and 112, Red Rock states this paragraph  
28 states legal conclusions to which no response is necessary. To the extent a response is

1 required, Red Rock is without sufficient knowledge or information to form a belief and  
2 on that basis denies the allegations in this paragraph.

3 45. Red Rock denies the allegations of paragraphs 113 through 116.

4 **SIXTH CAUSE OF ACTION**

5 **(Breach of Contract versus HOA, the HOA Trustee, and fictitious Defendants)**

6 46. In response to paragraph 117, Red Rock repeats and reasserts its responses  
7 to paragraph 1 through 116 of the Counterclaim as though fully set forth herein.

8 47. In response to paragraph 118, Red Rock is without sufficient knowledge or  
9 information to form a belief and on that basis denies the allegations in this paragraph.

10 48. Red Rock denies the allegations of paragraphs 119 through 121.

11 **SEVENTH CAUSE OF ACTION**

12 **(Misrepresentation versus HOA)**

13 49. In response to paragraph 122, Red Rock repeats and reasserts its responses  
14 to paragraphs 1 through 121 of the Counterclaim as though fully set forth in full herein.

15 50. In response to paragraph 123, Red Rock states this paragraph states legal  
16 conclusions to which no response is necessary. To the extent a response is required, Red  
17 Rock is without sufficient knowledge or information to form a belief and on that basis  
18 denies the allegations in this paragraph.

19 51. In response to paragraph 124, Red Rock is without sufficient knowledge or  
20 information to form a belief and on that basis denies the allegations in this paragraph.

21 52. Red Rock denies the allegations of paragraphs 125 through 131.

22 **EIGHTH CAUSE OF ACTION**

23 **(Unjust Enrichment versus SATICOY, HOA, HOA Trustee, and fictitious Defendants)**

24 53. In response to paragraph 132, Red Rock repeats and reasserts its responses  
25 to paragraphs 1 through 131 of the Counterclaim as though fully set forth in full herein.

26 54. Red Rock denies the allegations of paragraphs 133 through 140.

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**NINTH CAUSE OF ACTION**

**(Breach of the Covenant of Good Faith and Fair Dealing versus the HOA and HOA  
Trustee, and the fictitious Defendants)**

55. In response to paragraph 141, Red Rock repeats and reasserts its responses to paragraphs 1 through 140 of the Counterclaim as though fully set forth in full herein.

56. In response to paragraphs 142 and 143, Red Rock states these paragraphs state legal conclusions to which no responses are necessary. To the extent responses are required, Red Rock is without sufficient knowledge or information to form a belief and on that basis denies the allegations in these paragraphs.

57. Red Rock denies the allegations of paragraphs 144 through 147.

**TENTH CAUSE OF ACTION**

**(In the Alternative-Application for Deficiency Judgment/Breach of  
Contract versus Timpa)**

58. Red Rock states that this cause of action, paragraphs 148 through 160, is not applicable to it, therefore, no response is required.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Counterclaimant Thornburg Mortgage Securities Trust 2007-3's counterclaim fails to state a claim for which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Counterclaimant Thornburg Mortgage Securities Trust 2007-3's unclean hands preclude any of the relief requested.

**THIRD AFFIRMATIVE DEFENSE**

Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred by the doctrines of estoppel, laches, and waiver.

1 **FOURTH AFFIRMATIVE DEFENSE**

2 Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred  
3 by the applicable statute of limitations.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has acquiesced to  
6 any of the conduct and usage alleged in its Counterclaim.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has failed to  
9 mitigate its damages, if any.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 Counterclaimant Thornburg Mortgage Securities Trust 2007-3's damages, if any,  
12 are caused by its own actions or from the acts of others not parties to this action.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has failed to join an  
15 indispensable party, in that other parties are wholly or at least partly caused  
16 Counterclaimant's harm and complete relief may not be granted in their absence.

17 **NINTH AFFIRMATIVE DEFENSE**

18 Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred  
19 by the voluntary payment doctrine.

20 **TENTH AFFIRMATIVE DEFENSE**

21 Counterclaimant Thornburg Mortgage Securities Trust 2007-3 knowingly and  
22 voluntarily waived its rights to obtain any or all of the relief sought in its Counterclaim.

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has no contract with  
25 this answering counter-defendant.

26 **TWELFTH AFFIRMATIVE DEFENSE**

27 Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has no fiduciary  
28 relationship with this answering counter-defendant.

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred  
3 by the economic loss doctrine.

4 **FOURTEENTH AFFIRMATIVE DEFENSE**

5 Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has no special  
6 relationship with this answering counter-defendant.

7 **FIFTEENTH AFFIRMATIVE DEFENSE**

8 This answering counter-defendant has limited facts available at this time and thus  
9 some of the foregoing Affirmative Defenses may have been plead in accordance to NRCP  
10 8, for purposes of non-waiver. Furthermore, pursuant to NRCP 11, this answering  
11 counter-defendant has or may have more affirmative defenses or counterclaims that are  
12 not known at this time but may be uncovered through further discovery wherefore, this  
13 answering counter-defendant reserves the right to assert any such affirmative defenses or  
14 Counterclaims so ascertained at a later date.

15 WHEREFORE, as to the Thornburg Mortgage Securities Trust 2007-3's  
16 Counterclaim, Red Rock prays as follows:

17 1. That Counterclaimant Thornburg Mortgage Securities Trust 2007-3 take  
18 nothing by way of its Counterclaim.

19 2. That judgment be rendered in favor of Red Rock;

20 3. That Counterclaimant Thornburg Mortgage Securities Trust 2007-3  
21 compensate Red Rock for reasonable fees and costs incurred in defending this action; and

22 4. For any other such relief that the Court deems just and proper.

23  
24 Dated: May 21, 2015.

**KOCH & SCOW, LLC**

25 By: /s/ Steven B. Scow  
26 Steven B. Scow  
27 *Attorneys for Red Rock Financial Services*  
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1           8.     Counter-Defendant Republic Services, ("Republic") is an unknown entity,  
2     which at all times material herein, was doing business in Clark County, Nevada.

3           9.     Counter-defendant Las Vegas Valley Water District ("LVVWD") is a  
4     political subdivision of the State of Nevada, which at all times material herein, was doing  
5     business in Clark County, Nevada.

6           10.    Countrywide, MERS, Sub HOA, Republic, and LVVWD are joined to this  
7     proceeding as Counterclaim defendants pursuant to *Lund v. Eighth Jud. Dist. Ct.*, 255 P.3d  
8     280 (2011) and NRCP 13(h).

9           11.    Red Rock is unaware currently of the true names and capacities of those  
10    defendants sued herein as DOES 1-100 and therefore sues said counter-defendants by  
11    such fictitious names. Plaintiff will seek leave of the court to amend this Counterclaim to  
12    allege the true names and capacities of said defendants when the same have been  
13    ascertained.

14          12.    Red Rock is informed and believes, and thereon alleges, that each of the  
15    cross-defendants sued herein, including those named as DOES, are the agents, servants,  
16    employees, predecessor entities, successor entities, parent entities, totally owned or  
17    controlled entities, or had some legal relationship of responsibility for, the other cross-  
18    defendants, and in doing the things herein alleged, acted within the course and scope  
19    and authority of such agency, employment, ownership or other relationship and with the  
20    full knowledge and consent of the other defendants, or are in some other manner legally  
21    responsible for the acts as alleged herein. Additionally, with respect to all corporate  
22    entity cross-defendants, the officers and directors of such entities ratified and affirmed all  
23    contracts of its employees, agents, directors and/or officers.

24                                   **GENERAL ALLEGATIONS**

25          13.    Red Rock is a debt collection company, which works on behalf of  
26    homeowner associations to collect debts secured by real property, including delinquent  
27    homeowner assessments. When a property owner becomes delinquent to the  
28    homeowners association, Red Rock is contracted to collect the debt. These efforts include

1 attempts to collect the debt directly from the property owner, but when the property  
2 owner does not pay after an extended period, the process leads to a non-judicial  
3 foreclosure action pursuant to Nevada law.

4 14. Here, Red Rock was contracted by the Master Association to collect debts  
5 for unpaid homeowners assessments owed to the Master Association by counter-  
6 defendants Frank Timpa and Madeline Timpa individually and as trustees of the Timpa  
7 Trust for the property located at 34 Innisbrook Avenue, Las Vegas, NV 89113 ("the  
8 Subject property"). Red Rock's efforts resulted in a foreclosure sale of the Subject  
9 Property on November 7, 2014.

10 15. In connection with the foreclosure sale, the Master Association was paid the  
11 money it was owed, and Red Rock was paid its fees and costs incurred in collecting the  
12 debt as allowed by contract and Nevada law. After paying these costs, Red Rock was left  
13 with funds of \$1,168,865.05. Red Rock has no further direct interest in such funds. These  
14 funds have been deposited into counsel's attorney-client trust account and \$5,000 has  
15 been withheld for costs, expenses, and fees to commence this interpleader action. The  
16 remainder will be deposited into Court or disbursed as ordered by this Court.

17 **CAUSE OF ACTION**

18 **(Interpleader Against All Cross-Defendants [NRCP 22])**

19 16. Red Rock repeats and realleges all previous allegations as if fully set forth  
20 herein.

21 17. Public records in Clark County, Nevada indicate that there are several liens  
22 and other debts secured by the subject property in this action. These debts exceed the  
23 amount to be deposited with the Court. Red Rock does not know the current status of  
24 such debts, nor does it have knowledge how the funds should be distributed to the  
25 various cross-defendants. Red Rock is therefore faced with potential for multiple  
26 liability.

27 18. Red Rock requests that the Court determine how such funds should be  
28 distributed.

19. Red Rock has incurred attorneys' fees and costs in preparing, filing and prosecuting this action and will apply and account for those attorneys' fees and costs through the amount withheld, and will seek any further reimbursement from the amount to be deposited with the Court per Nevada law, including NRS 116.31164(3)(c).

20. Red Rock requests that, after the parties have been served or at such other appropriate time, that it be dismissed from this interpleader action, as it has no direct interest in the interpleaded funds other than payment of its costs and fees for bringing the instant action.

## PRAAYER

WHEREFORE, Red Rock prays for relief as follows:

1. That the court determine how the deposited funds should be distributed and order distribution of said funds;

2. That Red Rock be reimbursed out of said deposited funds its attorneys fees and costs in bringing this interpleader action;

3. That Red Rock be dismissed from this action with prejudice following payment of the excess proceeds as directed by the Court; and

4. For such other and further relief as the court determines proper.

Dated: May 21, 2015.

**KOCH & SCOW, LLC**

By: /s/ Steven B. Scow  
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Steven B. Scow (Nevada Bar No. 9906)  
Robert L. English (Nevada Bar No. 3504)  
11500 S. Eastern Ave., Suite 210  
Henderson, Nevada 89052  
*Attorneys for Red Rock Financial Services*

**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 21, 2015, I caused the foregoing document entitled: **RED ROCK FINANCIAL SERVICES' ANSWER to BANK OF AMERICA'S COUNTERCLAIM and RED ROCK FINANCIAL SERVICES' FIRST AMENDED COUNTERCLAIM FOR INTERPLEADER** 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 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:

**Akerman LLP**

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Executed on May 21, 2015 at Henderson, Nevada.

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

# EXHIBIT 9



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Attorney for plaintiff/counterdefendant

Saticoy Bay LLC Series 34 Innisbrook

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

SATICOY BAY LLC SERIES 34  
INNISBROOK,

Plaintiff,

vs.

THORNBURG MORTGAGE SECURITIES  
TRUST 2007-3; 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, 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

**JOINT PRE-TRIAL MEMORANDUM**

1 Plaintiff/Counterdefendant, Saticoy Bay LLC Series 34 Innisbrook; defendant Thornburg  
2 Mortgage Securities Trust 2007-3; counter-defendant Spanish Trail Master Association; and  
3 counter-defendant Red Rock Financial Services LLC, by and through their respective counsel,  
4 jointly submit this amended memorandum pursuant to EDCR 2.67 as follows.

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

6 **a. Nature of the Dispute**

7 This is an HOA post-foreclosure quiet title and damages action. On November 7, 2014, the  
8 Spanish Trail Master Association ("**Spanish Trail**"), through its agent, Red Rock Financial  
9 Services LLC ("**RRFS**") conducted a foreclosure sale on the subject property located at 34  
10 Innisbrook Ave, Las Vegas, Nevada (the "**Property**"). The subject foreclosure sale was conducted  
11 pursuant to NRS 116.3116, *et seq.* (2011). Saticoy Bay LLC Series 34 Innisbrook ("**Saticoy Bay**"  
12 or "**plaintiff**") was the winning bidder at the foreclosure sale by bidding \$1,201,000.00. On  
13 November 10, 2014, a foreclosure deed was recorded, transferring title to the property to Saticoy  
14 Bay.

15 On June 12, 2006, a deed of trust securing a loan for \$3,780,000.00 was recorded as an  
16 encumbrance against the Property. On June 9, 2010, a "corporation assignment of deed of trust  
17 Nevada" was recorded, whereby the deed of trust was assigned to defendant Thornburg Mortgage  
18 Securities Trust 2007-3 ("**Thornburg**" or "**defendant**").

19 Plaintiff claims through this quiet title action that Thornburg's first deed of trust was  
20 extinguished by the Spanish Trail's foreclosure sale. Thornburg contends the Deed of Trust  
21 survived the sale because prior to the HOA foreclosure sale, the servicer of the loan secured by the  
22 Deed of Trust, Bank of America, tendered payment of its calculation of the super-priority amount  
23 of Spanish Trail's lien by delivering the same to RRFS. RRFS rejected the payment and sent a  
24 letter to BANA's counsel, Miles Bauer, stating that it was RRFS' position that payment of the  
25 super-priority portion of the lien did not become due unless and until the holder of a first deed of  
26 trust foreclosed. Thornburg maintains this tender extinguished the super-priority lien and plaintiff  
27 thus purchased the Property subject to the deed of trust. Alternatively, Thornburg maintains RRFS'



1 rejection of the tender resulted in a void sale. Thornburg further contends the former homeowners,  
2 the Timpas, made payments credited to the portion of Timpa's assessment account constituting the  
3 superpriority amount sufficient to extinguish the super-priority lien prior to the foreclosure sale. As  
4 an alternative to the bank and homeowner tender arguments, Thornburg contends the sale is void on  
5 equitable grounds.

6 If plaintiff is unsuccessful in its quiet title claims against Thornburg and Thornburg's deed  
7 of trust is found to have survived the foreclosure, plaintiff, in the alternative, contends Spanish Trail  
8 and RRFS had a duty to inform the public, at or prior to the foreclosure sale, of Thornburg's tender.  
9 Because Spanish Trail and RRFS failed to inform the public of the tender, plaintiff alleges Spanish  
10 Trail and RRFS are liable to plaintiff for all damages it has suffered as a result of Thornburg's deed  
11 of trust remaining as an encumbrance against the property.

## 12 **II. CLAIMS FOR RELIEF**

### 13 **a. Plaintiff's claims for relief**

- 14 1. Quiet Title against all defendants;
- 15 2. Declaratory Relief against all defendants;
- 16 3. Writ of Restitution against Frank and Madelaine Timpa individually and as trustees of the  
17 Timpa Trust;
- 18 4. Negligent Misrepresentation against the HOA and RRFS; and
- 19 5. Unjust Enrichment against the HOA and RRFS.

### 20 **b. Defendant/Counterclaimant Thornburg's claims for relief**

- 21 1. Quiet Title/Declaratory Relief against all counter and cross defendants;
- 22 2. Permanent and Preliminary Injunction against plaintiff;
- 23 3. Wrongful Foreclosure against the HOA, RRFS, and fictitious defendants;
- 24 4. Negligence against the HOA, RRFS, and fictitious defendants;
- 25 5. Negligence Per Se against the HOA, RRFS, and fictitious defendants;
- 26 6. Breach of Contract against the HOA and RRFS;
- 27 7. Misrepresentation against the HOA, RRFS, and fictitious defendants;

8. Unjust Enrichment against plaintiff; the HOA, RRFS, and fictitious defendants; and
9. Breach of the Covenant of Good Faith and Fair Dealing against the HOA, RRFS, and fictitious defendants.

**c. Counterdefendant/Counterclaimant RRFS' claim for relief**

1. Interpleader against all cross-defendants.

**III. AFFIRMATIVE DEFENSES**

**a. Defendant Thornburg (affirmative defenses to plaintiff's complaint)**

1. Plaintiffs Complaint fails to state a claim against Thornburg upon which relief can be granted.
2. Plaintiff took title of the Property subject to Thornburg's first priority Deed of Trust, thereby forestalling any enjoinder/extinguishment of Thornburg's interest in the Property.
3. Plaintiff, at all material times, calculated, knew and understood the risks inherent in the situations, actions, omissions, and transactions upon which they now base their various claims for relief, and with such knowledge, plaintiff undertook and thereby assumed such risks and is consequently barred from all recovery by such assumption of risk.
4. The HOA lien foreclosure sale by which plaintiff took its interest was commercially unreasonable if it eliminated Defendant's Deed of Trust, as PJ contends. The sales price, when compared to the outstanding balance of First Note and Deed of Trust and the fair market value of the Property, demonstrates that the sale was not conducted in good faith as a matter of law. The circumstances of sale of the property violated the HOA's obligation of good faith under NRS 116.1113 and duty to act in a commercially reasonable manner.
5. Thornburg alleges that the plaintiff's claims are barred by the equitable doctrines of laches, unclean hands, equitable estoppel, and failure to do equity.
6. Plaintiff asserts that any acceptance of any portion of possible excess proceeds does not "satisfy" the amount due and owing on the Loan and would not constitute a waiver of its rights under the Loan and Deed of Trust, or statute.
7. Thornburg asserts that by reason of plaintiff's acts and omissions, plaintiff has waived its rights and is estopped from asserting the claims against Thornburg.
8. To the extent that plaintiff's interpretation of NRS 116.3116 is accurate, the statute and Chapter 116 as a whole are void for vagueness, ambiguity, and violation of due process.
9. A senior deed of trust beneficiary cannot be deprived of its property interest in violation of the Procedural Due Process Clause of the 14 Amendment of the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.
10. The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Due Process Clause of the Nevada Constitution and United States Constitution.

1 11. The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Supremacy Clause of the United States Constitution.

2 12. The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Property Clause of the United States Constitution.

3 13. Plaintiff alleges that the plaintiff's claims are barred in whole or in part because of the plaintiff's failure to take reasonable steps to mitigate the damages, if any, in this case.

4 14. The HOA Sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Contracts Clause of both the United States Constitution and the Nevada Constitution.

5 15. Thornburg reserves the right to assert additional affirmative defenses in the event discovery and/or investigation indicates that additional affirmative defenses are applicable

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9 **b. Plaintiff/counterdefendant Saticoy Bay (affirmative defenses to defendant/counterclaimant Thornburg's counterclaims)**

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

11 2. Counterclaimant has failed to mitigate its damages.

12 3. Counterclaimant is guilty of laches and unclean hands.

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

14 5. Counterclaimant's claims are barred by the applicable statute of limitations.

15 6. Counterclaimant's claims are barred by the doctrine of estoppel.

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

17 8. Counterclaimant failed to exercise due care in its business dealings.

18 9. Counterclaimant's claims are barred by the doctrine of waiver.

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

20 11. Counterclaimant ratified the alleged acts of this answering counterdefendant.

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

22 13. The HOA Sale was conducted pursuant to statute and therefore extinguished counterclaimant's security interest in the property

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

- 1 15. Counterdefendant is a bona fide purchaser without knowledge of the claims of  
2 counterclaimant.
- 3 16. Counterclaimant has failed to include indispensable parties to this action.
- 4 17. Counterclaimant's claims are barred by the voluntary payment doctrine.
- 5 18. Counterclaimant lacks standing to prosecute this action.
- 6 19. Counterdefendant has good title pursuant to NRS 116.31164
- 7 20. The foreclosure sale was conducted pursuant to statute which is commercially reasonable as  
8 a matter of law.
- 9 21. Counterdefendant reserves the right to add additional affirmative defenses as new  
10 information currently not known or available to counterdefendant becomes known or  
11 knowable during the pendency of this action.

12 **c. Counterdefendant Spanish Trail (affirmative defenses to**  
13 **defendant/counterclaimant Thornburg's counterclaims)**

- 14 1. The Counterclaim fails to state a claim against this Association upon which relief can be  
15 granted.
- 16 2. The Association alleges that the occurrence referred to in the Counterclaim, and all injuries  
17 and damages, if any, resulting therefrom, were caused by the acts or omissions of a third  
18 party or parties over whom this Association has no control.
- 19 3. All risks and dangers involved in the factual situation described in the Counterclaim were  
20 open, obvious and known to the Bank, and said Bank voluntarily assumed said risks and  
21 dangers.
- 22 4. The Association is informed, believes, and thereon alleges that the claims of the Bank are  
23 reduced, modified and/or barred by the Doctrine of Laches.
- 24 5. The Association is informed, believes, and thereon alleges that the claims of the Bank are  
25 reduced, modified and/or barred by the Doctrine of Unclean Hands.
- 26 6. The Bank is barred from relief on the grounds that they have acted in bad faith.
- 27 7. The Association is informed, believes, and thereon alleges that the claims of the Bank are  
28 reduced, modified and/or barred by the Doctrine of Waiver.
8. 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.
9. 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).
10. The Bank is barred from relief on the grounds that they have failed to mitigate their  
damages.

11. The Association performed no acts or omissions that would warrant the imposition of any damages, including exemplary or punitive damages.
12. The Bank, by its own acts and conduct, waived and abandoned any and all claims as alleged herein against the Association.
13. The Association denies each and every allegation of the Bank not specifically admitted or otherwise pled herein.
14. The Bank suffered no damages as a result of the events underlying the allegations contained in the Counterclaim.
15. 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.
16. The Bank lacks standing.
17. The Banks' claims are barred by applicable statutes of limitations and/or repose.
18. The Bank failed to name necessary and indispensable parties.
19. 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.

**d. Counterdefendant Spanish Trail (affirmative defenses to plaintiff Saticoy Bay's Claims)**

1. The Complaint fails to state a claim against this Association upon which relief can be granted.
2. 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.
3. 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.
4. The Association is informed, believes, and thereon alleges that the claims of Saticoy are reduced, modified and/or barred by the Doctrine of Laches.
5. 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.
6. Saticoy is barred from relief on the grounds that they have acted in bad faith.
7. The Association is informed, believes, and thereon alleges that the claims of Saticoy are reduced, modified and/or barred by the Doctrine of Waiver.

1 8. That is has become necessary for the Association to retain the law firm of Leach Johnson  
2 Song & Gruchow, to defend and litigate this action, and the Association is therefore entitled  
3 to reasonable attorneys' fees.

4 9. Saticoy is barred from recovering any special damages herein for failure to specifically  
5 allege the kind of special damage claimed, pursuant to NRCP 9(g).

6 10. Saticoy is barred from relief on the grounds that they have failed to mitigate their damages.

7 11. The Association performed no acts or omissions that would warrant the imposition of any  
8 damages, including exemplary or punitive damages.

9 12. Saticoy, by its own acts and conduct, waived and abandoned any and all claims as alleged  
10 herein against the Association.

11 13. The Association denies each and every allegation of Saticoy not specifically admitted or  
12 otherwise pled herein.

13 14. Saticoy suffered no damages as a result of the events underlying the allegations contained in  
14 the Complaint.

15 15. The Association was required by Nevada law and the CC&Rs to hire a third-party to collect  
16 past due assessments of its unit owners.

17 16. Saticoy lacks standing.

18 17. Saticoy's claims are barred by applicable statutes of limitations and/or repose.

19 18. Saticoy failed to name necessary and indispensable parties.

20 19. Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been  
21 alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon  
22 the filing of the Association's Answer, and therefore, the Association reserves the right to  
23 amend its Answer to allege additional affirmative defenses is subsequent investigation  
24 warrants.

25 **e. Counterdefendant RRFs (affirmative defenses to defendant/counterclaimant**  
26 **Thornburg's counterclaims)**

27 1. Counterclaimant Thornburg Mortgage Securities Trust 2007-3's counterclaim fails to state a  
28 claim for which relief can be granted.

1. Counterclaimant Thornburg Mortgage Securities Trust 2007-3's unclean hands preclude any  
of the relief requested.

3. Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred by the  
doctrines of estoppel, laches, and waiver.

4. Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred by the  
applicable statute of limitations.

5. Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has acquiesced to any of the  
conduct and usage alleged in its Counterclaim.

6. Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has failed to mitigate its damages, if any.
7. Counterclaimant Thornburg Mortgage Securities Trust 2007-3's damages, if any, are caused by its own actions or from the acts of others not parties to this action.
8. Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has failed to join an indispensable party, in that other parties are wholly or at least partly caused Counterclaimant's harm and complete relief may not be granted in their absence.
9. Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred by the voluntary payment doctrine.
10. Counterclaimant Thornburg Mortgage Securities Trust 2007-3 knowingly and voluntarily waived its rights to obtain any or all of the relief sought in its Counterclaim.
11. Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has no contract with this answering counter-defendant.
12. Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has no fiduciary relationship with this answering counter-defendant.
13. Counterclaimant Thornburg Mortgage Securities Trust 2007-3's claims are barred by the economic loss doctrine
14. Counterclaimant Thornburg Mortgage Securities Trust 2007-3 has no special relationship with this answering counter-defendant.
15. This answering counter-defendant has limited facts available at this time and thus some of the foregoing Affirmative Defenses may have been plead in accordance to NRCP 8, for purposes of non-waiver. Furthermore, pursuant to NRCP 11, this answering counter-defendant has or may have more affirmative defenses or counterclaims that are not known at this time but may be uncovered through further discovery wherefore, this answering counter-defendant reserves the right to assert any such affirmative defenses or Counterclaims so ascertained at a later date.

**f. Defendant/counterdefendant Thornburg (affirmative defenses to RRFS' counterclaim)**

1. Red Rock's counterclaim fails to state a claim against Thornburg upon which relief can be granted..
2. The Property remains subject to Counter-Defendant's first priority Deed of Trust, thereby forestalling any enjoinderment/extinguishment of Counter-Defendant's interest in the Property.
3. Red Rock, at all material times, calculated, knew and understood the risks inherent in the situations, actions, omissions, and transactions upon which they now base their various claims for relief, and with such knowledge, Red Rock undertook and thereby assumed such risks and is consequently barred from all recovery by such assumption of risk.
4. The HOA lien foreclosure sale by which plaintiff took its interest was commercially unreasonable if it eliminated Defendant's Deed of Trust, as plaintiff contends. The sales price, when compared to the outstanding balance of First Note and Deed of Trust and the fair market value of the Property, demonstrates that the sale was not conducted in good faith

as a matter of law. The circumstances of sale of the property violated the HOA's obligation of good faith under NRS 116.1113 and duty to act in a commercially reasonable manner.

5. Counter-Defendant alleges that Red Rock's claims are barred by the equitable doctrines of laches, unclean hands, equitable estoppel, and failure to do equity.
6. Counter-Defendant asserts that any acceptance of any portion of possible excess proceeds does not "satisfy" the amount due and owing on the Loan and would not constitute a waiver of its rights under the Loan and Deed of Trust, or statute.
7. Counter-Defendant asserts that by reason of plaintiff's acts and omissions, plaintiff has waived its rights and is estopped from asserting the claims against Thornburg.
8. To the extent that Red Rock's interpretation of NRS 116.3116 is accurate, the statute and Chapter 116 as a whole are void for vagueness and ambiguity.
9. A senior deed of trust beneficiary cannot be deprived of its property interest in violation of the Procedural Due Process Clause of the 14 Amendment of the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.
10. The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Due Process Clause of the Nevada Constitution and United States Constitution.
11. The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Supremacy Clause of the United States Constitution.
12. The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Property Clause of the United States Constitution.
13. Counter-Defendant alleges that Red Rock's claims are barred in whole or in part because of the Red Rock's failure to take reasonable steps to mitigate the damages, if any, in this case.
14. Counter-Defendant alleges that it tendered payment of the super-priority portion of the HOA liens to the HOA and/or its agents.
15. The HOA Sale is void or otherwise does not operate to extinguish the first Deed of Trust pursuant to the Contracts Clause of both the United States Constitution and the Nevada Constitution.
16. Counter-Defendant reserves the right to assert additional affirmative defenses in the event discovery and/or investigation indicates that additional affirmative defenses are applicable.

#### **IV. CLAIMS TO BE ABANDONED**

The court dismissed Thornburg's claims against RRFS and Spanish Trail for quiet title/declaratory relief, negligence per se, breach of contract, and breach of the covenant of good faith and fair dealing, without prejudice, by order entered November 3, 2017.

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1 **V. EXHIBITS**

2 **a. Plaintiff's Exhibits**

- 3 1. Declaration of Restrictions for Estates West at Spanish Trail [TMST001-033];  
4 2. Master Declaration of Restrictions for Spanish Trail [TMST034-0066];  
5 3. Quitclaim Deed recorded July 25, 1997 [TMST069];  
6 4. Deed of Trust recorded June 12, 2005 [TMST123-149];  
7 5. Corporation Assignment of Deed of Trust recorded June 9, 2010 [TMST171];  
8 6. Pre-Lien Letter and Proof of Mailing [RRFS000676-000680];  
9 7. Lien for Delinquent Assessments recorded August 4, 2011 [TMST177];  
10 8. Notice of Default and Election to Sell under pursuant to the Lien for Delinquent  
11 Assessments recorded December 6, 2011 [TMST178];  
12 9. Proof of mailing of Notice of Default and Election to Sell under pursuant to the Lien for  
13 Delinquent Assessments recorded December 6, 2011 [RRFS000580-000604];  
14 10. Notice of Foreclosure Sale recorded September 15, 2014 [TMST179-180];  
15 11. Proof of mailing of Notice of Foreclosure Sale [RRFS000190-000234];  
16 12. Affidavit of posting of Notice of Foreclosure Sale [RRFS000184-000186];  
17 13. Affidavit of publication of Notice of Foreclosure Sale [RRFS000139];  
18 14. Foreclosure Deed recorded November 10, 2014 [TMST181-183]; and  
19 15. Brunson Jiu Rebuttal Report [Innisbrook000002-000047].

20 **b. Defendant Thornburg's Exhibits**

- 21 1. CC&R's TMST001-033;  
22 2. Release of Memorandum of Option to Repurchase TMST067-TMST068  
23 3. Quit Claim Deed TMST069  
24 4. Certificate of Trust Timpa Trust TMST070-TMST077  
25 5. Grant, Bargain, Sale Deed TMST078  
26 6. Quitclaim Deed TMST079  
27 7. Grant, Bargain, Sale Deed TMST080  
28 8. Order and Judgement TMST081-TMST082

9. Amended Judgment on Arbitration Award Nunc Pro Tunc TMST083-TMST084
10. Grant, Bargain, Sale Deed TMST085-TMST087
11. Grant, Bargain, Sale Deed TMST088-TMST089
12. Grant, Bargain, Sale Deed TMST090-TMST093
13. Grant, Bargain, Sale Deed TMST094-TMST097
14. Declaration of Homestead TMST098-TMST099
15. Grant, Bargain, Sale Deed TMST100-TMST103
16. Grant, Bargain, Sale Deed TMST104-TMST108
17. Declaration of Homestead TMST109-TMST112
18. Grant, Bargain, Sale Deed TMST113-TMST116
19. Grant, Bargain, Sale Deed TMST117-TMST122
20. Deed of Trust TMST123-TMST149
21. Grant, Bargain, Sale Deed TMST150-TMST155
22. Grant, Bargain, Sale Deed TMST161-TMST162
23. Notice of Default and Election to Sell Under the Deed of Trust TMST161-TMST162
24. Substitution of Trustee Nevada TMST163
25. Nevada Notice of Trustee's Sale TMST164-TMST166
26. Rescission of Election to Declare Default Nevada TMST167-TMST168
27. Notice of Default/Election to Sell Under Deed of Trust TMST169-TMST170
28. Corporation Assignment of Deed of Trust Nevada TMST171
29. Certificate of Foreclosure Mediation Program TMST172
30. Nevada Notice of Trustee's Sale TMST173-TMST174
31. 12/29/2010 Rescission of Election to Declare Default Nevada TMST175-TMST176
32. Lien for Delinquent Assessments TMST177
33. Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments TMST178
34. Notice of Foreclosure Sale TMST179-TMST180
35. Foreclosure Deed TMST181-TMST183

- 1 36. Request for Notice TMST184
- 2 37. Substitution of Trustee TMST185-TMST186
- 3 38. Spanish Trail Master Association's collection file TMST187-1050
- 4 39. Residential Appraisal Report TMST1051-TSMT1075
- 5 40. R. Scott Dugan's Curriculum Vitae TMST1076-TSMT1079
- 6 41. R. Scott Dugan's Record of Testimony TMST1080
- 7 42. R. Scott Dugan's Fee Schedule TMST1081
- 8 43. 12/23/2011 MBBW Letter to Frank A. Timpa TMST1082-TSMT1083
- 9 44. 12/23/2011 MBBW Letter to Estates West at Spanish Trail to
- 10 45. Red Rock Financial Services TMST1084-TMST1085
- 11 46. 1/26/2012 Red Rock Financial Services' Response to Payoff Request re: Estates West at Spanish Trail TMST1086-TMST1091
- 12 47. 1/26/2012 Red Rock Financial Services' Response to Payoff Request re: Spanish Trail Master Association TMST1092-TMST1096
- 13 48. 2/9/2012 MBBW Letter to Red Rock Financial Services with copy of Check #13298 TMST1097-TMST1099
- 14 49. 2/9/2012 MBBW Letter to Red Rock Financial Services with copy of Check #13325 TMST1100-TMST1102
- 15 50. 1/12/2017 Declaration of Julia Thompson in Support of Red Rock Financial Services, LLC's Limited Opposition to Motion for Summary Judgment (Case Number A- 14-704704-C) TMST1103- TMST1108
- 16 51. Adjustable Rate Note TMST1109-TMST1113
- 17 52. Foreclosure Notices TMST1114-TMST1198
- 18 53. Fidelity National Title Insurance Co. Policy of Title Insurance TMST1199-TMST1212
- 19 54. Correspondence regarding tender TMST1213-TMST1224
- 20 55. Correspondence regarding servicing TMST1225-TMST1227
- 21 56. Correspondence regarding tender TMST1228-TMST1256
- 22 57. Correspondence regarding servicing TMST1257-TMST1264
- 23 58. Second Amendment to the Master Declaration of Restrictions for Spanish Trail TMST1265-TMST1290

59. Declaration of Annexation – Estates West No. 1- Phase 1 (Master Association) TMST1291-TMST1295
60. Master Declaration of Restrictions for Spanish Trail TMST1296-TMST1329
61. Miles Bauer Affidavits TMST1330-TMST1354
62. Letter from Red Rock Financial Services to Miles Bauer in Response to Payoff Request TMST1355-TMST1359
63. Letter from Miles Bauer and Check to Satisfy Superpriority Portion of Spanish Trail Master Association's Lien with copy of Check #13298 TMST1360-TMST1362
64. Transcript of Bench Trial held October 29, 2014 (Telegraph Rd. Trust vs. Bank of America, N.A., et al. – Case number A-13-687041-C) TMST1363-TMST1477
65. Deposition Transcript of Eddie Haddad taken on March 15, 2016 (LN Management LLC Series, 3422 Flats vs. James A. Barr, Bank of America, N.A., and Does 1 through 10, inclusive – Case Number A-14-694747-C) TMST1478-TMST1489
66. Request for Notice TMST1490
67. Substitution of Trustee TMST1491-TMST1492
68. Notice of Claim of Lien TMST1493
69. Request for Notice Pursuant to NRS116.31168 TMST1494-TMST1496
70. Notice of Lis Pendens TMST1497-TMST1501
71. Notice of Claim of Lien TMST1502
72. Re-Recorded Notice of Claim of Lien #201604220000525 Correcting End Date of Lien to 6/30/16 TMST1503-TMST1504
73. Notice of Claim of Lien TMST1505
74. Notice of Claim of Lien TMST1506
75. Notice of Lis Pendens TMST1507-TMST1516
76. Discharge and Release of Notice of Lis Pendens TMST1517-TMST1518
77. Release of Lien TMST1519
78. Release of Lien TMST1520
79. Release of Lien TMST1521
80. Release of Lien TMST1522
81. Release of Lien TMST1523
82. Release of Lien TMST1524

83. Release of Lien TMST1525
84. Release of Lien TMST1526
85. Release of Lien TMST1527
86. Release of Lien TMST1528
87. Release of Lien TMST1529
88. Release of Lien TMST1530
89. Release of Lien TMST1531
90. Release of Lien TMST1532
91. Bankruptcy Petition of Paradise Harbor Place Trust Dated September 2, 2012, Case No. 12-20213-btb TMST1533-TMST001573
92. Miles Bauer Affidavit dated January 30, 2018 TMST1574-TMST1595
93. Deposition Transcript of Julia Thompson for Red Rock Financial Services, LLC Dated January 18, 2018, Case No. 2:17-cv-01804-JCM-CWH, *Bank of New York Mellon v. The Vinings Homeowners Association et al* TMST1596-TMST2086
94. Deposition Transcript of Julia Thompson for Red Rock Financial Services, LLC Dated January 25, 2018, Case No. A-14-710161-C TMST2544-TMST3519
95. Proof of delivery of check from Miles, Bauer, Bergstrom & Winters, LLP to Red Rock Financial Services TMST2087-TMST2088
96. Deposition testimony of Eddie Haddad, as 30(b)(6) Representative for LN Management LLC Series 3422 Flats in Clark County District Court Case No. A-14-694747-C TMST2089-TMST2143
97. Transcript of Bench Trial in Clark County District Court Case No. A-13-687041-C TMST2144-TMST2258
98. Transcript of hearing on Order to Show Cause in United States District Court District of Nevada Case No. 2:16-CV-0609-JCM-NJK TMST2259-TMST2288
99. Reporter's Transcript of Bench Trial in Clark County District Court Case No. A-13-690942-C TMST2289-TMST2515
100. Transcript of Bench Trial in Clark County District Court Case No. A-14-703140-C TMST3520-TMST3760
101. Miles, Bergstrom & Winters, LLP Affidavit TMST2516-TMST2540 Pay off statement TMST2541-TMST2543
102. Red Rock Collection And Foreclosure File for 34 Innisbrook Avenue RRFS 00001-RRFS 00690.

///

1                   c.     **Red Rock Financial Services**

- 2           1.     Red Rock collection and foreclosure file for 34 Innisbrook Avenue RRFS00001 to  
3                 RRFS00690  
4           2.     Red Rock Letter to Miles Bauer, Berstrom & Winters LLP dated April 10, 2010  
               RRFS00691

5                   d.     **Spanish Trail Master Association**

- 6           1.     All documents produced by the HOA [HOA0001-HOA0880]  
7           2.     All documents produced by Thornburg [TMST0001-TMST1489]; and  
8           3.     Red Rock collection and foreclosure file for 34 Innisbrook Avenue RRFS00001 to  
               RRFS00690.

9     **VI.    AGREEMENTS REGARDING EVIDENCE**

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

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

14           The Parties anticipate the submission of Joint Stipulated Facts prior to trial which will  
15           reduce the number of witnesses called to present testimony at the time of trial.

16           The Parties reserve the right to offer any and all discovery responses provided by any party  
17           in this matter.

18           The Parties reserve the right to offer any and all documents disclosed by any party to this  
19           action, including, without limitation, the documents disclosed in the Pretrial Disclosures of all  
20           parties pursuant to N.R.C.P. 16.1(a)(3).

21     **VII.   WITNESSES**

22                   a.     **Plaintiff's Witnesses**

- 23           1.     Iyad "Eddie" Haddad, person most knowledgeable for Saticoy Bay LLC Series 34  
24                 Innisbrook  
25                 c/o the Law Offices of Michael F. Bohn, Esq., Ltd.  
26                 2260 Corporate Cir, Suite 480  
               Henderson, Nevada 89074  
27           2.     Person Most Knowledgeable for Red Rock Financial Services, LLC

1 c/o Koch & Scow LLC  
2 11500 S. Eastern Ave, Suite 210  
Henderson, Nevada 89052

3 3. Person Most Knowledgeable for Spanish Trail Master Association  
4 c/o Leach Johnson Song & Gruchow  
5 8945 W.Russell Rd, Suite 330  
Las Vegas, NV 89148

6 4. Michael L. Brunson, MNAA, SRA  
7 Brunson Jiu, LLC  
8 10161 Park Run Drive #150  
Las Vegas, NV 89145

9 **b. Defendant Thornburg's Witnesses**

10 1. Simon Ward-Brown, Alan Blunt, Aaryn Richardson, Edward Hyne or other corporate  
11 representative(s) for  
12 Thornburg Mortgage Securities Trust 2007-3  
13 c/o AKERMAN LLP  
1635 Village Center Circle, Suite 200  
Las Vegas, Nevada 89134

14 2. Eddie Haddad, Rebecca Henson, and/or other corporate representative(s)  
15 for Saticoy Bay LLC Series 34 Innisbrook  
16 c/o LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.  
2260 Corporate Circle  
Henderson, Nevada 89074

17 3. Corporate representative(s) for  
18 Recontrust Company, N.A. a division of Bank of America  
19 c/o Secretary of State  
202 N. Carson St.  
Carson City, NV 89701

21 4. Madelaine Timpa, individually and as Trustee of the Timpa Trust  
22 c/o Bryan Naddafi, Esq.  
23 Olympia Law, P.C.  
9480 S. Eastern Ave.  
Las Vegas, NV 89123

24 5. Julia Thompson and/or other corporate representative(s)  
25 for Red Rock Financial Services  
26 c/o KOCH & SCOW LLC  
27 11500 S. Eastern Ave, Suite 210  
Henderson, NV 89052

- 1 6. Shawn Look, Matt Labrie, Jessica Woodbridge, Diane Deloney or another corporate  
2 representative for Countrywide Home Loans, Inc.  
3 c/o The Corporation Trust Company of Nevada  
4 311 S. Division St.  
5 Carson City, NV 89703
- 6 7. Lisa Parry or other corporate representative(s) for  
7 Spanish Trail Master Association  
8 c/o Sean L. Anderson, Esq.  
9 LEACH JOHNSON SONG & GRUCHOW  
10 8945 W. Russell Road, Suite 330  
11 Las Vegas, NV 89148
- 12 8. Doug Miles or other corporate representative(s)  
13 for MILES, BAUER & WINTERS LLP  
14 f/k/a MILES, BAUER BERGSTROM & WINTERS, LLP  
15 1231 E. Dyer Road, Suite 100  
16 Santa Ana, California 92705
- 17 9. Rock K. Jung  
18 WRIGHT, FINLAY & ZAK, LLP  
19 7785 W. Sahara Avenue, Suite 200  
20 Las Vegas, Nevada 89117  
21 Telephone: (702) 475-7694
- 22 10. Andrew Pastwick  
23 LAW OFFICE OF ANDREW PASTWICK  
24 1810 E. Sahara Avenue, Suite 120  
25 Las Vegas, Nevada 89104
- 26 11. Shawn Look, Matt Labrie, Jessica Woodbridge, Diane Deloney or other corporate  
27 representative(s) for Bank of America, N.A.  
28 c/o AKERMAN LLP  
800 Samoset Drive  
Mail Code DE5-024-02-08  
Newark, Delaware 19713
12. Simon Ward-Brown, Alan Blunt, Aaryn Richardson, Edward Hyne or other corporate  
representative(s) for Nationstar  
Mortgage LLC  
c/o AKERMAN LLP  
1635 Village Center Circle, Suite 200  
Las Vegas, Nevada 89134  
Telephone: (702) 634-5000



13. Sean L. Anderson  
Leach Johnson Song & Gruchow  
8945 W. Russel Road, Suite 330  
Las Vegas, NV 89148

14. Doug Miles or other corporate representative(s)  
for MILES, BAUER & WINTERS LLP  
f/k/a MILES, BAUER BERGSTROM & WINTERS, LLP  
575 Anton Boulevard, Suite 300  
Santa Ana, California 92626

15. R. Scott Dugan  
R. SCOTT DUGAN APPRAISAL COMPANY, INC.  
8930 West Tropicana Avenue, Suite 1  
Las Vegas, Nevada 89147

**c. Red Rock Financial Services**

1. Julia Thompson and/or other corporate representative of Red Rock  
Financial Services, LLC  
c/o Steven B. Scow, Esq.  
Koch & Scow LLC  
11500 S. Eastern Ave., Suite 210  
Henderson, NV 89052

2. Eddie Haddad and/or other corporate representatives for Saticoy Bay LLC  
Series 34 Innisbrook  
c/o Michael F. Bohn, Esq.  
Gerald L. Tan, Esq.  
Law Offices of Michael F. Bohn, Esq., LTD.  
2260 Corporate Circle  
Henderson, NV 89074

3. 30(b)(6) Designee for Thornburg Mortgage Securities Trust 2007-3  
c/o Melanie Morgan, Esq.  
Thera Cooper, Esq.  
Akerman LLP  
1635 Village Center Circle, Suite 200  
Las Vegas, NV 89134

4. 30(b)(6) Designee for Reconstruct Company, N.A.  
a division of Bank of America.  
c/o Secretary of State  
202 N. Carson St.  
Carson City, NV 89701

- 1 5. Frank Timpa, individually and as Trustee of the Timpa Trust  
2 c/o Bryan Naddafi, Esq.  
3 Olympia Law, P.C.  
4 9480 S. Eastern Ave.  
5 Las Vegas, NV 89123
- 6 6. Madelaine Timpa, individually and as Trustee of the Timpa Trust  
7 c/o Bryan Naddafi, Esq.  
8 Olympia Law, P.C.  
9 9480 S. Eastern Ave.  
10 Las Vegas, NV 89123
- 11 7. 30(b)(6) Designee for Spanish Trail Master Association  
12 c/o Sean L. Anderson  
13 Leach Johnson Song & Gruchow  
14 8945 W. Russell Road, Suite 330  
15 Las Vegas, NV 89148
- 16 8. 30(b)(6) Designee for Estates West at Spanish Trails  
17 c/o ASA Ashcraft  
18 7495 W. Mission Hills Dr.  
19 Las Vegas, NV 89113
- 20 9. 30(b)(6) Designee for Mortgage Electronic Registration  
21 c/o Carmelia Martin  
22 1818 Library Street, Ste. 300  
23 Reston, VA 20190
- 24 10. 30(b)(6) Designee for at Republic Services  
25 c/o Donald H. Williams, Esq.  
26 612 S. 10<sup>th</sup> St  
27 Las Vegas, NV 89101
- 28 11. 30(b)(6) Designee for at Las Vegas Valley Water District  
c/o Gregory J. Walch, Esq.  
1001 S. Valley View Blvd. M/S 480  
Las Vegas, NV 89153
12. 30(b)(6) Designee for at Countrywide Home Loans, Inc.  
c/o The Corporation Trust Company of Nevada  
311 S. Division St.  
Carson City, NV 89703
13. Chris Yergensen  
6224 W. Desert Inn Rd.  
Las Vegas, NV 89146

1                   **d.     Spanish Trail Master Association**

2                   1.     30(b)(6) Designee for Spanish Trail Master Association  
3                   c/o LEACH JOHNSON SONG & GRUCHOW  
4                   8945 W. Russell Road, Suite 330  
5                   Las Vegas, NV 89148

6                   2.     30(b)(6) Designee for Saticoy Bay LLC Series 34 Innis Brook  
7                   c/o LAW OFFICES OF MICHAEL F. BORN, LTD.  
8                   2260 Corporate Cir, Suite 480  
9                   Henderson, Nevada 89074

10                  3.     30(b)(6) Designee for Red Rock Financial Services, LLC  
11                  c/o KOCH & SCOW LLC  
12                  11500 S. Eastern Ave, Suite 210  
13                  Henderson, NV 89052

14                  4.     30(b)(6) Designee for Thornburg Mortgage Securities Trust 2007-3  
15                  c/o WRIGHT, FINLA Y & ZAK, LLP  
16                  7785 W. Sahara Ave, Suite 200  
17                  Las Vegas, NV 89117

18                  5.     Frank Timpa, Individually and as Trustee of the Timpa Trust  
19                  c/o LAW OFFICES OF P. STERLING KERR, P.C.  
20                  2450 St. Rose Parkway, Suite 120  
21                  Henderson, NV 89074

22                  6.     Madeline Timpa, Individually and as Trustee of the Timpa Trust  
23                  c/o LAW OFFICES OF P. STERLING KERR, P.C.  
24                  2450 St. Rose Parkway, Suite 120  
25                  Henderson, NV 89074

26                  7.     30(b)(6) Designee for Mortgage Electronic Registration  
27                  c/o Carmelia Martin  
28                  1818 Library Street, Suite 300  
                    Reston, VA 20190

                    8.     30(b)(6) Designee for Reconstruct Company, N.A.,  
                    a division of Bank of America  
                    c/o Secretary of State  
                    202 N. Carson Street  
                    Carson City, NV 89701

                    9.     30(b)(6) Designee for Countrywide Home Loans, Inc.  
                    c/o The Corporation Trust Company of Nevada

311 S. Division Street  
Carson City, NV 89703

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

**1. Whether the HOA possessed and foreclosed on a superpriority lien extinguishing Thornburg's Deed of Trust or whether the sale should be subject to Thornburg's Deed of Trust because Thornburg tendered the super-priority amount for the Property by sending correspondence to RRFS including a check equal to the super-priority amount.**

a. It is Thornburg's position that Bank of America's letter and check to the HOA which included an amount equal to the super-priority amount extinguished the HOA's super-priority lien prior to the foreclosure sale as a matter of law.

b. It is plaintiff's position that the HOA's lien that was foreclosed upon contained a super-priority portion, which extinguished the first deed of trust held by Thornburg. The tender was ineffective because Thornburg did not record the tender; the tender was not unconditional; plaintiff was a bona fide purchaser; the HOA and/or RRFS had a good faith basis to reject the tender; the tender was not "kept good"; and even if the tender was effective, the tender would only entitle Thornburg to be equitably subrogated to the HOA's lien.

**2. Whether the prior homeowner's payments on the HOA's lien extinguished the superpriority amount and preserved the priority of the deed of trust.**

a. It is Thornburg's position the Nevada Supreme Court confirmed a homeowner can pay the super priority amount of an HOA's lien. *Saticoy Bay LLC Series 5141 Golden Hill v. JP Morgan Chase Bank National Association*, Case No. 7146 (December 22, 2017)(Rehearing denied Feb. 26, 2018) (Unpublished). Here, Red Rock accepted and applied borrower's payments to the super priority portion of the HOA's lien.

1 b. It is plaintiff's position that there is no proof the payments made by the  
2 former owner were applied to the super-priority portion of the lien and thus  
3 the HOA foreclosure was conducted with a super-priority lien in place, which  
4 extinguished Thornburg's deed of trust. Further, the *Saticoy Bay LLC Series*  
5 *5141 Golden Hill v. JP Morgan Chase Bank National Association* is an  
6 unpublished opinion which is not a binding interpretation of NRS 116.  
7 Finally, under NRS 116, Thornburg cannot rely upon payments made by the  
8 former owner of the property to extinguish the super-priority lien.

9 **3. Whether the HOA's foreclosure sale can be set aside due to an inadequate price**  
10 **and fraud, oppression, or unfairness.**

11 a. It is Thornburg's position that the price plaintiff paid for the property  
12 combined with evidence of unfairness and oppression, requires the sale to be  
13 set aside on equitable grounds. Evidence of unfairness and oppression  
14 includes, but is not limited to, RRFS' wrongful rejection of the tender, the  
15 HOA's promise within its CC&Rs it would not take action to defeat or render  
16 invalid the security of the holder of a first deed of trust recorded against the  
17 property, RRFS and the HOA's determination of the amount of the opening  
18 bid, and RRFS' refusal to provide the dollar amount of the HOA's super-  
19 priority lien combined with its representation to Bank of America that the  
20 super-priority portion of the lien does not become due unless and until the  
21 holder of a first deed of trust forecloses.

22 b. It is plaintiff's position that the sale was conducted in good faith and that  
23 there was no fraud, oppression or unfairness which brought about or  
24 accounted for the low purchase price.

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

26 a. It is Thornburg's position that plaintiff's purported bona fide purchaser status  
27 is irrelevant. That status cannot revive the extinguished super-priority lien.

1 The plaintiff cannot take title greater than the title the HOA could legally  
2 convey, i.e. title subject to the first deed of trust. Even if a party's equitable  
3 status as a purported bona fide purchaser could revive a lien that had been  
4 extinguished as a matter of law, plaintiff cannot meet its burden of proving it  
5 is a bona fide purchaser.

- 6 b. It is plaintiff's position that plaintiff is a bona fide purchaser because it paid  
7 valuable consideration for the property and had no notice of any prior equity  
8 or issue including the tender.

9 **5. Whether Thornburg is entitled to equitable relief against plaintiff.**

- 10 a. It is Thornburg's position BANA's tender or the homeowner's payments of  
11 amounts exceeding the super-priority portion of the HOA's lien protected the  
12 deed of trust's priority as a matter of law, and the court need not reach equity.  
13 But, to the extent the court reaches equity Thornburg is entitled to equitable  
14 relief.
- 15 b. It is plaintiff's position that Thornburg has no right to equitable relief against  
16 plaintiff because any damages Thornburg may have sustained as result of an  
17 alleged wrongful foreclosure can be compensated with money damages and  
18 because plaintiff is a bona fide purchaser.

19 **6. Whether the foreclosure deed establishes conclusive presumptions that plaintiff**  
20 **obtained title free and clear of the first position deed of trust**

- 21 a. It is Thornburg's position the deed recitals are not conclusive.
- 22 b. It is plaintiff's position that the deed recitals are conclusive in the absence of  
23 grounds for equitable relief and that because defendant Thornburg is not  
24 entitled to equitable relief, the deed recitals are indeed conclusive.

25 **7. Whether the HOA and/or RRFS had a duty to inform the public of the tender,**  
26 **and whether the HOA and/or RRFS breached that duty.**

- 1 a. It is plaintiff's position that, if the Court finds Thornburg's deed of trust  
2 survived the foreclosure sale, the HOA and/or RRFS had a duty to disclose  
3 the tender to the public and the HOA and/or RRFS failed to do so.  
4 b. It is the HOA's and RRFS' position that foreclosing on a lien without  
5 warranty, neither RRFS nor Spanish Trail had a special relationship with  
6 plaintiff requisite to create a duty to disclose any relevant information, and  
7 even if such a duty did exist, RRFS did not breach that duty on behalf of  
8 itself or the HOA in this instance.

9 **8. What Party should receive the excess proceeds of the foreclosure sale that are**  
10 **now being held by RRFS in its counsel's client trust account.**

- 11 a. Should the Court hold that the foreclosure sale extinguished Thornburg's  
12 Deed of Trust, the excess proceeds of the sale should be paid to Thornburg.  
13 On the other hand, if the Court holds that Thornburg's Deed of Trust  
14 survived the foreclosure sale, the excess proceeds should be paid to the  
15 previous homeowners on the Property.

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

17 Two to three days.

18 ///

19 ///

20 ///

21 ///

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

3 None.

4 DATED this 24<sup>th</sup> day of July, 2018.

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

AKERMAN LLP

7 By:/s/ Adam R. Trippiedi, Esq.  
8 Michael F. Bohn, Esq.  
9 Adam R. Trippiedi, Esq.  
10 2260 Corporate Cir, Suite 480  
11 Henderson, Nevada 89074  
12 Attorney for plaintiff

By:/s/ Melanie D. Morgan, Esq.  
Melanie D. Morgan, Esq.  
Thera A. Cooper, Esq.  
1635 Village Center Circle, Suite 200  
Las Vegas, NV 89134  
Attorney for defendant Thornburg  
Mortgage Securities Trust 2007-3

12 LEACH JOHNSON SONG & GRUCHOW

KOCH & SCOW

13 By:/s/ Ryan D. Hastings, Esq.  
14 Sean L. Anderson, Esq.  
15 Ryan D. Hastings, Esq.  
16 8945 West Russell Road, Suite 330  
17 Las Vegas, Nevada 89148  
18 Attorney for counter-defendant Spanish  
19 Trail Master Association

By:/s/ Steven B. Scow, Esq.  
David R. Koch, Esq.  
Steven B. Scow, Esq.  
11500 S. Eastern Ave, Suite 210  
Henderson, Nevada 89052  
Attorney for counter-defendant Red Rock  
Financial Services



1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of  
3 Law Offices of Michael F. Bohn., Esq., and on the 24<sup>th</sup> day of July, 2018, an electronic copy of the  
4 **JOINT PRE-TRIAL MEMORANDUM** was served on opposing counsel via the Court's  
5 electronic service system to the following counsel of record:

6  
7 Melanie D. Morgan, Esq.  
8 Thera A. Cooper, Esq.  
9 AKERMAN LLP  
10 1635 Village Center Circle Suite 200  
11 Las Vegas, Nevada 89134  
12 Attorneys for Thornburg Mortgage  
13 Securities Trust 2007-3

David R. Koch, Esq.  
Steven B. Scow, Esq.  
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11500 S. Eastern Ave., Suite 210  
Henderson, NV 89052  
Attorneys for  
counterdefendant/counterclaimant  
Red Rock Financial Services

14 Sean L. Anderson, Esq.  
15 Ryan D. Hastings, Esq.  
16 LEACH JOHNSON SONG & GRUCHOW  
17 8945 West Russell Road, Suite 330  
18 Las Vegas, Nevada 89148  
19 Attorney for counterdefendant Spanish Trail  
20 Master Association

21 /s/ Marc Sameroff /  
22 An employee of the LAW OFFICES  
23 OF MICHAEL F. BOHN, ESQ., LTD.  
24  
25  
26  
27