

IN THE SUPREME COURT OF NEVADA

U.S. BANK N.A., AS TRUSTEE FOR
THE SPECIALTY UNDERWRITING
AND RESIDENTIAL FINANCE
TRUST MORTGAGE LOAN ASSET-
BACKED CERTIFICATES SERIES
2006-BC4,

Appellant,

vs.

THUNDER PROPERTIES, INC.; AND
WESTLAND REAL ESTATE
DEVELOPMENT AND
INVESTMENTS,

Respondents.

Supreme Court No. 81129

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Elizabeth A. Brown
Clerk of Supreme Court

Certified Question from the United States Court of Appeals for the Ninth Circuit
Case No. 17-16399

APPENDIX TO OPENING BRIEF

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DATED November 25, 2020.

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/s/ Ariel E. Stern

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CERTIFICATE OF SERVICE

I certify that I electronically filed on November 25, 2020, the foregoing **APPENDIX TO OPENING BRIEF** with the Clerk of the Court for the Nevada Supreme Court by using the Court's electronic file and serve system. I further certify that all parties of record to this appeal are either registered with the Court's electronic filing system or have consented to electronic service and that electronic service shall be made upon and in accordance with the Court's Master Service List.

I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Patricia Larsen

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Attorneys for Plaintiff US Bank National Association, as Trustee for the Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates Series 2006-BC4

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

US BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR THE SPECIALTY
UNDERWRITING AND RESIDENTIAL
FINANCE TRUST MORTGAGE LOAN
ASSET-BACKED CERTIFICATES SERIES
2006-BC4,

Plaintiff,

vs.

WOODLAND VILLAGE; WESTLAND REAL
ESTATE DEVELOPMENT AND
INVESTMENTS; THUNDER PROPERTIES
INC.; AND PHIL FRINK & ASSOCIATES,
INC.,

Defendants.

Case No.: 3:16-cv-00501

COMPLAINT

Plaintiff US Bank National Association, as Trustee for the Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates Series 2006-BC4 (U.S. Bank) complains as follows:

PARTIES AND JURISDICTION

1
2 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332. U.S. Bank is
3 a citizen of Ohio and none of the defendants is a citizen of Ohio. The amount in controversy exceeds
4 \$75,000.

5 2. U.S. Bank is a national banking association. Its headquarters and primary office are
6 in Cincinnati, Ohio. U.S. Bank is a citizen of Ohio for purposes of diversity jurisdiction. *Wachovia*
7 *Bank v. Schmidt*, 546 U.S. 303, 307 (2006). The diversity of citizenship requirement is met. *See*
8 *Carolina Casualty Ins. Co. v. Team Equipment, Inc.*, 741 F.3d 1082 (9th Cir. 2014). Defendants
9 Woodland Village; Westland Real Estate Development and Investments (**Westland**); Thunder
10 Properties Inc. (**Thunder**); and Phil Frink & Associates, Inc. (**Frink**) are on information and belief
11 not citizens of Ohio. The amount in controversy requirement is met. U.S. Bank seeks a declaration
12 that its deed of trust, which secures a loan with a principal balance of \$212,672.00, was not
13 extinguished by a homeowners' association non-judicial foreclosure sale that is the basis for
14 Woodland Village's claim to title to the real property sub judice.

15 3. Defendant Woodland Village is, on information and belief, a Nevada non-profit
16 corporation with its principal place of business in Nevada. U.S. Bank is informed and believes and
17 therefore alleges Woodland Village is the purported beneficiary under an alleged homeowners'
18 association lien recorded February 17, 2010. U.S. Bank is informed and believes and therefore
19 alleges HOA foreclosed on the lien on February 10, 2011.

20 4. Westland is, on information and belief, an unincorporated partnership. U.S. Bank is
21 informed and believes and therefore alleges Westland is a citizen of Nevada for diversity purposes,
22 because its members are citizens of Nevada. U.S. Bank is informed and believes and therefore
23 alleges Westland is the purported transferee under a quitclaim deed from Woodland Village,
24 recorded on April 30, 2013.

25 5. Thunder is, on information and belief, a Nevada for-profit corporation with its
26 principal place of business in Nevada. U.S. Bank is informed and believes and therefore alleges
27 Thunder is the purported transferee under a quitclaim deed from Westland, recorded on August 26,
28 2013.

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6. Defendant Frink is, on information and belief, a now-revoked Nevada closed corporation with its principal place of business in Nevada. U.S. Bank is informed and believes and therefore alleges Frink conducted the foreclosure at issue in this case on behalf of Woodland Village.

7. This Court has subject matter jurisdiction pursuant to U.S.C. § 1332 for reasons stated above.

8. Venue is proper in this Court under 28 U.S.C. § 1391. The property that is the subject of this action is located at 17655 Little Peak Court, Cold Springs, Nevada 89508 (the **property**). Venue is proper in this Court under 28 U.S.C. § 1391(1) and (2) because this action seeks to determine an interest in property located within Washoe County, Nevada and because this lawsuit arises out of a foreclosure of real property located within Nevada.

9. The pre-litigation dispute resolution process set forth in NRS 38.300 *et seq.* is not applicable to this action and cannot restrict the jurisdiction of this court. To the extent any requirement of the statute is applicable to any portion of the claims asserted herein, that requirement has been constructively exhausted and further resort to administrative remedies would be futile because U.S. Bank submitted a demand for mediation to Nevada Real Estate Division (**NRED**) on or about September 24, 2015, but NRED has failed to schedule the mediation in the time period required by NRS 38.330(1).

GENERAL ALLEGATIONS

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

11. When these assessments go unpaid, the association may impose a lien and then foreclose on a lien if the assessments remain unpaid.

12. NRS Chapter 116 generally provides a non-judicial foreclosure scheme for a homeowners' association to conduct a non-judicial foreclosure where the unit owner fails to pay its monthly assessments.

13. NRS 116.3116 makes a homeowners' association lien for assessments junior to a first deed of trust beneficiary's secured interest in the property, with one limited exception: a

homeowners' association lien is senior to a first deed of trust beneficiary's secured interest "to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien[.]" NRS 116.3116(2)(c).

The Deed of Trust and Assignment

14. On or about May 26, 2006, Bryan Rodriguez & Michelle Rodriguez (**the Rodriguezes**) purchased the property by way of a loan in the amount of \$212,672.00 evidenced by a note and secured by a deed of trust (**the senior deed of trust**) recorded May 30, 2006. A true and correct copy of the senior deed of trust is recorded with the Washoe County Recorder as **Instrument No. 3784252**.

15. The senior deed of trust was assigned to U.S. Bank via a series of assignments of the deed of trust. A true and correct copy of the assignment from Integrity 1st Financial, LLC to National City Bank of Indiana is recorded with the Washoe County Recorder as **Instrument No. 3691858**. A true and correct copy of the assignment from National City Bank f/k/a National City Bank of Indiana to U.S. Bank is recorded with the Washoe County Recorder as **Instrument No. 3850376**.

The HOA Lien and Foreclosure

16. On February 17, 2010, Woodland Village, through its agent, Gayle A. Kern, Ltd. recorded a notice of delinquent assessment and claim of lien. Per the notice, the amount due to Woodland Village was \$1,963.00, but does not specify it includes dues, interest, fees and collection costs in addition to investments. A true and correct copy of the notice of lien is recorded with the Washoe County Recorder as **Instrument No. 3850376**.

17. On April 26, 2010, Woodland Village, through its agent Frink, recorded a notice of default and election to sell to satisfy the delinquent assessment lien. The notice states the amount due to Woodland Village was \$2,649.94, which includes "late charges, advances, attorney fees and costs of the agent of [Woodland Village]." A true and correct copy of the notice of default is

1 recorded with the Washoe County Recorder as **Instrument No. 3874667**. The notice of default also
2 does not specify the super-priority amount claimed by Woodland Village and fails to describe the
3 "deficiency in payment" required by NRS 116.31162(1)(b)(1).

4 18. On December 20, 2010, Woodland Village, through its agent Frink, recorded a notice
5 of homeowners association sale. The sale was scheduled for February 10, 2011. The notice states
6 the amount due to Woodland Village was \$3,011.99, which includes late charges interest, any
7 subsequent assessments, fees, charges and expenses, advances and costs of the [HOA]" A true
8 and correct copy of the notice of sale is recorded with the Washoe County Recorder as **Instrument**
9 **No. 3955558**. The notice of sale does not identify the super-priority amount claimed by Woodland
10 Village and fails to describe the amount necessary to satisfy the lien required by
11 NRS 116.311635(3)(a).

12 19. In none of the recorded documents nor in any notice did Woodland Village and/or its
13 agents provide notice of the purported super-priority lien amount, where to pay the amount, how to
14 pay the amount, or the consequences for failure to do so.

15 20. In none of the recorded documents did Woodland Village and/or its agent identify the
16 amount of the alleged lien that was for late fees, interest, fines/violations or collection fees/costs.

17 21. In none of the recorded documents nor in any notice did Woodland Village and/or its
18 agents specify whether it was foreclosing on the super-priority portion of its lien, if any, or on the
19 sub-priority portion of its lien.

20 22. In none of the recorded documents nor in any notice did Woodland Village and/or its
21 agents specify the senior deed of trust would be extinguished by Woodland Village's foreclosure.

22 23. In none of the recorded documents nor in any notice did Woodland Village and/or its
23 agents identify any way by which the beneficiary under the senior deed of trust could satisfy the
24 super-priority portion of Woodland Village's claimed lien.

25 24. On information and belief, had U.S. Bank or anyone else attempted to tender the
26 amounts due under Woodland Village's claimed lien, Woodland Village and/or its agents would
27 have rejected the attempted tender.
28

25. Woodland Village foreclosed on the property on or about February 10, 2011. A deed in foreclosure of assessment lien in favor of Woodland Village was recorded on February 10, 2011. A true and correct copy of the foreclosure deed is recorded with the Washoe County Recorder as **Instrument No. 3972694**.

26. Frink wrote in the foreclosure deed that the sale price at the February 10, 2011 foreclosure sale was \$5,562.25. Woodland Village's sale of the property to itself for less than three percent of the value of the unpaid principal balance on the senior deed of trust, and, on information and belief, for a similarly diminutive percentage of the property's fair market value, is commercially unreasonable and not in good faith as required by NRS 116.1113.

27. On or about April 30, 2013, Woodland Village transferred its interest in the property to Westland via quitclaim deed. A true and correct copy of the quitclaim deed is recorded with the Washoe County Recorder as **Instrument Number 4231819**.

28. On or about August 26, 2013, Westland transferred its interest in the property to Thunder via quitclaim deed. Upon information and belief, Thunder claims to own the property free and clear of U.S. Bank's senior deed of trust. A true and correct copy of the quitclaim deed is recorded with the Washoe County Recorder as **Instrument Number 4273151**.

FIRST CAUSE OF ACTION

(Quiet Title/Declaratory Judgment Against All Defendants)

29. U.S. Bank repeats and re-alleges the preceding paragraphs as though fully set forth herein and incorporates the same by reference.

30. Pursuant to 28 U.S.C. § 2201 and NRS 30.040 *et seq.*, this Court is empowered to declare the rights of parties and other legal relations of parties regarding the property.

31. An actual controversy has arisen between U.S. Bank and defendants regarding the property. The senior deed of trust is a first secured interest on the property. As a result of the February 10, 2011, HOA foreclosure sale, Thunder claims an interest in the property, and on information and belief, asserts Thunder owns the property free and clear of the senior deed of trust.

32. U.S. Bank's interest in the senior deed of trust encumbering the property constitutes an interest in real property.

33. U.S. Bank is entitled to a declaration that Woodland Village's foreclosure did not extinguish the senior deed of trust, or, alternatively, Woodland Village's foreclosure is void.

NRS Chapter 116 Violates U.S. Bank's Right to Procedural Due Process

34. U.S. Bank asserts that Chapter 116 of the Nevada Revised Statutes' scheme of HOA super priority non-judicial foreclosure violates U.S. Bank's procedural due process rights under the state and federal constitutions.

35. The Fourteenth Amendment of the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution protect U.S. Bank from being deprived of its deed of trust in violation of procedural due process guarantees of notice and an opportunity to be heard.

36. U.S. Bank asserts that there is no way to apply Nevada's scheme of non-judicial HOA super priority foreclosure that complies with Nevada and the United States' respective guarantees of procedural due process.

37. The Nevada Constitution does not expressly set forth a state action requirement. Even if it did, and consistent with the state action requirements of the Federal Constitution, the state of Nevada has become sufficiently intertwined with HOA foreclosure such that state and federal procedural due process protections for U.S. Bank's deed of trust apply, to wit:

a) The super-priority lien did not exist at common law, but rather is imposed by statute.

b) In order to conserve governmental resources and fund the quasi-governmental HOA, Nevada's legislature made super priority mandatory, expanded the super-priority duration from six to nine months, and declared it could not contractually subordinate its lien by provisions within a HOA's covenants, conditions, and restrictions..

c) The super-priority lien has no nexus whatsoever to a private agreement between the Woodland Village and U.S. Bank, but, again, is imposed by legislative enactment.

d) Nevada and Washoe County mandated the creation of Woodland Village as a quasi-governmental entity to perform governmental functions including maintaining the common open spaces and private streets within the Woodland Village community.

1 38. Since the state of Nevada is responsible for the creation of the super-priority lien and
2 has made it mandatory, then the state of Nevada's HOA superpriority foreclosure scheme is the
3 result of state action subject to procedural due process safeguards.

4 39. On its face, Nevada's scheme of non-judicial HOA super priority foreclosure lacks
5 any pre-deprivation notice requirements or post deprivation redemption options that are necessary
6 components of due process:

7 a) NRS 116.31162 and NRS 116.311635 do not require that an HOA provide
8 U.S. Bank with written notice of the sum that constitutes the super-priority portion of the
9 assessment lien.

10 b) Chapter 116 of NRS seeks to insulate its scheme of super-priority non-judicial
11 foreclosure by failing to provide any post-sale right of equity or redemption..

12 c) Chapter 116 of NRS fails to provide U.S. Bank with a statutorily enforceable
13 mechanism to compel an HOA to inform U.S. Bank of the sum of the HOA super priority
14 amount.

15 40. U.S. Bank requests that this Court void the HOA foreclosure sale or declare that
16 Woodland Village's title and subsequently Thunder's title was acquired subject to the senior deed of
17 trust because NRS 116's scheme of HOA super-priority foreclosure violates the procedural process
18 clauses of the Fourteenth Amendment of the United States Constitution and Article 1, Sec. 8, of the
19 Nevada Constitution.

20 *Additional Reasons the HOA Foreclosure Sale Did Not Extinguish the Senior Deed of Trust*

21 41. The HOA sale is void or did not extinguish the senior deed of trust for additional
22 reasons stated below.

23 42. The foreclosure sale did not extinguish the senior deed of trust because the recorded
24 notices, even if they were in fact provided, failed to describe the lien in sufficient detail as required
25 by Nevada law, including, without limitation: whether the deficiency included a "super-priority"
26 component, the amount of the super-priority component, how the super-priority component was
27 calculated, when payment on the super-priority component was required, where payment was to be
28 made or the consequences for failure to pay the super-priority component. Alternatively, the

1 foreclosure sale is void.

2 43. The foreclosure sale did not extinguish the senior deed of trust because, on
3 information and belief, Woodland Village and/or its agents would have rejected any tender of the
4 amounts entitled to super-priority and U.S. Bank or its predecessors in interest were not required to
5 make a futile attempt to tender. Alternatively, the foreclosure sale is void.

6 44. The foreclosure sale did not extinguish the senior deed of trust because the sale was
7 commercially unreasonable or otherwise failed to comply with the good faith requirement of
8 NRS 116.1113 in several respects, including, without limitation, the lack of sufficient notice, the sale
9 of the property for a fraction of the loan balance or actual market value of the property, a foreclosure
10 that was not calculated to promote an equitable sales prices for the property or to attract proper
11 perspective purchasers, and a foreclosure sale that was designed and/or intended to result in
12 maximum profit for Woodland Village and its agents at the sale without regard to the rights and
13 interest of those who have an interest in the loan and made the purchase of the property possible in
14 the first place. Alternatively, the foreclosure sale is void.

15 45. The foreclosure sale did not extinguish the senior deed of trust because otherwise the
16 sale would violate U.S. Bank's rights to due process, as a result of Woodland Village's failure to
17 provide sufficient notice of the super-priority component of Woodland Village's lien, the manner and
18 method to satisfy it, and the consequences for failing to do so. Alternatively, the foreclosure sale is
19 void.

20 46. The foreclosure sale did not extinguish the senior deed of trust because otherwise the
21 sale would violate U.S. Bank's rights to due process, as a result of Woodland Village's improper
22 calculation of the super-priority component and its inclusion of charges that are not part of the super-
23 priority lien under Nevada law. Alternatively, the foreclosure sale is void.

24 47. The foreclosure sale did not extinguish the senior deed of trust because Woodland
25 Village's unequivocal representation in its CC&Rs that the rights of the beneficiary under the senior
26 deed of trust would not be jeopardized by any violation of the obligations imposed by the CC&Rs
27 caused the sales price to be commercially unreasonable.

28 48. The foreclosure sale did not extinguish the senior deed of trust because Woodland

Village, Westland, and Thunder do not qualify as bona fide purchasers for value, because they were aware of, or should have been aware of, the existence of the senior deed of trust and the commercial unreasonableness of the HOA sale. Alternatively, the foreclosure sale is void.

49. U.S. Bank is entitled to a declaration, pursuant to 28 U.S.C. § 2201, NRS 30,040, and NRS 40.010, that the HOA sale did not extinguish the senior deed of trust.

50. U.S. Bank was required to retain an attorney to prosecute this action, and is therefore entitled to collect its reasonable attorneys' fees and costs.

SECOND CAUSE OF ACTION

(Breach of NRS 116.1113 Against Woodland Village and Frink)

51. U.S. Bank repeats and re-alleges the preceding paragraphs as though fully set forth herein and incorporates the same by reference.

52. NRS 116.1113 and common law provide that every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

53. Woodland Village's recorded CC&Rs contain a security interest provision which provides "a breach by an Owner of any of the provisions of this Declaration, shall not defeat or render invalid the lien of any Deed of Trust made in good faith and for value," thereby making U.S. Bank a direct beneficiary of the protections afforded under the CC&Rs, along with all accompanying duties under NRS 116 et seq. and common law.

54. NRS Chapter 116 requires Woodland Village to comply with the obligations of the CC&Rs, including the security interest clause.

55. After making the representation in the CC&Rs that no breach of any obligation imposed by the CC&Rs would jeopardize the rights of the beneficiary of the senior deed of trust, Woodland Village and Frink are charged with a duty to inform lenders like U.S. Bank and its loan servicer that Woodland Village's representation regarding the unequivocal protection of security interests in the CC&Rs was false, to notify U.S. Bank and its loan servicer that the senior deed of trust was at risk, and to give U.S. Bank reasonable opportunity to protect its interests in the property.

56. After making the representation in the CC&Rs that no breach of any obligation imposed by the CC&Rs would jeopardize the rights of the beneficiary of the senior deed of trust, Woodland Village and Frink are charged with the duty to either not foreclose or to specifically foreclose on only the sub-priority portion of the Woodland Village's lien.

1 57. As a senior lienholder, Woodland Village also owes all junior lienholders a duty of
2 good faith to treat it fairly with regard to decisions regarding the disposal of the collateral securing
3 the respective liens.

4 58. Woodland Village and Frink breached their duty of good faith by not identifying the
5 super-priority amount of the lien for U.S. Bank, by not notifying U.S. Bank that its representation
6 regarding the protection of security interests was false, by not notifying U.S. Bank its security
7 interest was at risk, by not providing any reasonable opportunity for U.S. Bank to protect its interest,
8 by purporting to foreclose on the super-priority portion of its lien, and by unfairly disposing of the
collateral in a commercially unreasonable fashion.

9 59. If it is determined Woodland Village's sale extinguished the senior deed of trust
10 notwithstanding the deficiencies, violations, and improper actions described herein, Woodland
11 Village's and its agent Frink's breach of its obligation of good faith will cause U.S. Bank to suffer
12 general and special damages in the amount equal to the fair market value of the property or the
13 unpaid principal balance of the loan at issue, plus interest, at the time of the HOA sale, whichever is
14 greater.

15 60. U.S. Bank was required to retain an attorney to prosecute this action, and is therefore
16 entitled to collect its reasonable attorneys' fees and costs.

17 **THIRD CAUSE OF ACTION**

18 **(Wrongful Foreclosure Against Woodland Village and Frink)**

19 61. U.S. Bank repeats and re-alleges the preceding paragraphs as though fully set forth
20 herein and incorporates the same by reference.

21 62. To the extent defendants contend or the Court concludes Woodland Village's
22 foreclosure sale extinguished the senior deed of trust, the foreclosure was wrongful.

23 63. Because Woodland Village and its agent Frink failed to give adequate notice and an
24 opportunity to cure the deficiency, the foreclosure was wrongful to the extent any defendant
25 contends it extinguished the senior deed of trust.

26 64. Because Woodland Village and its agent Frink sold the property for a grossly
27 inadequate amount, compared to the value of the property and amount of outstanding liens
28

1 defendants contend were extinguished by the foreclosure sale, the foreclosure was wrongful to the
2 extent any defendant contends it extinguished the senior deed of trust.

3 65. Because Woodland Village and its agent Frink violated the good faith requirements of
4 NRS 116.1113, the foreclosure was wrongful to the extent any defendant contends it extinguished
5 the senior deed of trust.

6 66. Because Woodland Village and its agent Frink violated the promise in the CC&Rs
7 that they would not jeopardize the interests of the beneficiary under the senior deed of trust, the
8 foreclosure was wrongful to the extent any defendant contends it extinguished the senior deed of
9 trust.

10 67. If it is determined Woodland Village's foreclosure sale extinguished the senior deed
11 of trust notwithstanding the deficiencies, violations, and improper actions described herein,
12 Woodland Village's and its agent Frink's actions will cause U.S. Bank to suffer general and special
13 damages in the amount equal to the fair market value of the property or the unpaid principal balance
14 of the loan at issue, plus interest, at the time of the sale, whichever is greater.

15 68. U.S. Bank was required to retain an attorney to prosecute this action, and is therefore
16 entitled to collect its reasonable attorneys' fees and costs.

17 **FOURTH CAUSE OF ACTION**

18 **(Injunctive Relief Against Thunder)**

19 69. U.S. Bank repeats and re-alleges the preceding paragraphs as though fully set forth
20 herein and incorporates the same by reference.

21 70. U.S. Bank disputes Thunder's claim it owns the property free and clear of the senior
22 deed of trust.

23 71. Any sale or transfer of the property by Thunder, prior to a judicial determination
24 concerning the respective rights and interests of the parties to this case, may be rendered invalid if
25 the senior deed of trust still encumbers the property in first position and was not extinguished by the
26 HOA sale.

72. U.S. Bank has a substantial likelihood of success on the merits of the complaint, and damages would not adequately compensate for the irreparable harm of the loss of title to a bona fide purchaser or loss of the first position priority status secured by the property.

73. U.S. Bank has no adequate remedy at law due to the uniqueness of the property involved in this case and the risk of the loss of the senior security interest.

74. U.S. Bank is entitled to a preliminary injunction prohibiting Thunder, or its successors, assigns, or agents, from conducting any sale, transfer, or encumbrance of the property that is claimed to be superior to the senior deed of trust or not subject to the senior deed of trust.

75. U.S. Bank is entitled to a preliminary injunction requiring Thunder to pay all taxes, insurance and homeowners' association dues during the pendency of this action.

PRAYER FOR RELIEF

U.S. Bank requests the Court grant the following relief:

1. An order declaring that Woodland Village purchased the property and Westland and Thunder acquired the property subject to U.S. Bank's senior deed of trust;

2. In the alternative, an order that the HOA foreclosure sale, and any resulting foreclosure deed, was void ab initio;

3. In the alternative, an order requiring Woodland Village and Frink to pay U.S. Bank all amounts by which it was damaged as a result of Woodland Village's and Frink's wrongful foreclosure and/or violation of the good faith provisions of NRS 116.1113;

4. A preliminary injunction prohibiting Thunder, its successors, assigns, or agents from conducting any sale, transfer, or encumbrance of the property that is claimed to be superior to the senior deed of trust or not subject to the senior deed of trust;

5. A preliminary injunction requiring Thunder to pay all taxes, insurance, and homeowners' association dues during the pendency of this action;

6. Reasonable attorneys' fees as special damages and the costs of suit; and

//

//

//

1 7. For such other and further relief the Court deems proper.

2 DATED August 25, 2016.

3 **AKERMAN LLP**

4 /s/ Vatana Lay

5 MELANIE D. MORGAN, ESQ.

6 Nevada Bar No. 8215

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11 Attorneys for Plaintiff US Bank National Association,
12 as Trustee for the Specialty Underwriting and
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14 Backed Certificates Series 2006-BC4

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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Nevada

US Bank National Association, as Trustee for the
Specialty Underwriting and Residential Finance
Trust Mortgage Loan Asset-Backed
Certificates Series 2006-BC4,

Plaintiff(s)

v.

Woodland Village; Westland Real Estate
Development and Investments; Thunder Properties
Inc.; and Phil Frink & Associates, Inc.,

Defendant(s)

Civil Action No. 3:16-cv-00501

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Woodland Village
c/o Eugene Burger Management Corporation Of Nevada – Reno, Registered Agent
5011 Meadowood Mall Way, Suite 200
Reno, Nevada 89502

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Melanie D. Morgan, Esq.
Vatana Lay, Esq.
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 3:16-cv-00501

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Nevada

US Bank National Association, as Trustee for the
Specialty Underwriting and Residential Finance
Trust Mortgage Loan Asset-Backed
Certificates Series 2006-BC4,

Plaintiff(s)

v.

Woodland Village; Westland Real Estate
Development and Investments; Thunder Properties
Inc.; and Phil Frink & Associates, Inc.,

Defendant(s)

Civil Action No. 3:16-cv-00501

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Westland Real Estate Development and Investments
c/o Kelven Dale Tittlemier, Owner
2360 Corporate Center Dr., #400
Henderson, Nevada 89074

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Melanie D. Morgan, Esq.
Vatana Lay, Esq.
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 3:16-cv-00501

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☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
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☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

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Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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UNITED STATES DISTRICT COURT

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Trust Mortgage Loan Asset-Backed
Certificates Series 2006-BC4,

Plaintiff(s)

v.

Woodland Village; Westland Real Estate
Development and Investments; Thunder Properties
Inc.; and Phil Frink & Associates, Inc.,

Defendant(s)

Civil Action No. 3:16-cv-00501

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Thunder Properties Inc.
c/o Jon Jentz, Registered Agent
6360 East Sahara
Las Vegas, Nevada 89142

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Melanie D. Morgan, Esq.
Vatana Lay, Esq.
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 3:16-cv-00501

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

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 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

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Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Nevada

US Bank National Association, as Trustee for the
Specialty Underwriting and Residential Finance
Trust Mortgage Loan Asset-Backed
Certificates Series 2006-BC4,

Plaintiff(s)

v.

Woodland Village; Westland Real Estate
Development and Investments; Thunder Properties
Inc.; and Phil Frink & Associates, Inc.,

Defendant(s)

Civil Action No. 3:16-cv-00501

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Phil Frink & Associates, Inc.
c/o Linda Frink-Fisher, Registered Agent
975 De Roca Court
Sparks, Nevada 89434

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Melanie D. Morgan, Esq.
Vatana Lay, Esq.
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 3:16-cv-00501

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

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 _____ on *(date)* _____; or

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 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

US Bank National Association, as Trustee for the Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates Series 2006-BC4,

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Melanie D. Morgan, Esq., Vatana Lay, Esq., Akerman LLP
1160 Town Center Drive, Suite 330, Las Vegas, NV 89144
(702) 634-5000

DEFENDANTS

Woodland Village; Westland Real Estate Development and Investments; Thunder Properties Inc.; and Phil Frink & Associates, Inc.,

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input checked="" type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
U.S.C. § 1332

Brief description of cause:
Quiet Title / Declaratory Relief

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

08/25/2016

SIGNATURE OF ATTORNEY OF RECORD

/s/ Vatana Lay

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AA23

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

U.S. BANK NATIONAL ASSOCIATION,

Plaintiff,

vs.

WOODLAND VILLAGE et al.,

Defendants.

3:16-cv-00501-RCJ-WGC

ORDER

This case arises from a residential foreclosure by the Woodland Village Homeowners Association (“Woodland Village” or “HOA”) for failure to pay HOA fees. Pending before the Court is Defendant Woodland Village’s Motion to Dismiss. (ECF No. 19.) For the reasons given herein, the Court grants the Motion.

I. FACTS AND PROCEDURAL BACKGROUND

In 2006, non-party homeowners obtained a \$212,672 mortgage loan to purchase property located at 17655 Little Peak Court, Cold Springs, Nevada 89508 (the “Property”). Plaintiff U.S. Bank (“Plaintiff”) acquired the note and Deed of Trust (“DOT”) by Corporate Assignment of Deed of Trust recorded July 24, 2009. (Mot. Dismiss 2, ECF No. 19.)

On February 17, 2010, as a result of the homeowners’ failure to pay HOA fees, the HOA recorded a lien for delinquent assessment. (Compl. ¶ 16, ECF No. 1.) The HOA later foreclosed, and on February 10, 2011, the HOA acquired the Property with a credit bid of \$5,562.25, which

the HOA claims to be the total sum of “unpaid assessments and permitted costs, fees and expenses incident to the enforcement of its lien” (Mot. Dismiss 2, ECF No. 19.) The deed of sale was recorded on February 10, 2011. Subsequently, the HOA transferred its interest in the Property to Defendant Westland Real Estate Development and Investments (“Westland”) by way of quitclaim deed recorded April 30, 2013. (Compl. ¶ 27.) Westland then transferred its interest in the Property to Defendant Thunder Properties Corp. (“Thunder”) by way of quitclaim deed recorded August 26, 2013. (*Id.* at ¶ 28.) The chain of title indicates that Thunder is the current owner of the Property.

On August 25, 2016, Plaintiff brought this action for quiet title and declaratory relief, violation of NRS 116.1113, wrongful foreclosure, and injunctive relief. Woodland Village now moves the Court to dismiss the claims asserted against it.

II. MOTION TO DISMISS STANDARD

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief” in order to “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Conley v. Gibson*, 355 U.S. 41, 47 (1957). Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action that fails to state a claim upon which relief can be granted. A motion to dismiss under Rule 12(b)(6) tests the complaint’s sufficiency. *See N. Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir. 1983). When considering a motion to dismiss under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the complaint does not give the defendant fair notice of a legally cognizable claim and the grounds on which it rests. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering whether the complaint is sufficient to state a claim, the court will take all material allegations as true and construe them in the light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th

1 Cir. 1986). The court, however, is not required to accept as true allegations that are merely
2 conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden*
3 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

4 A formulaic recitation of a cause of action with conclusory allegations is not sufficient; a
5 plaintiff must plead facts pertaining to his own case making a violation “plausible,” not just
6 “possible.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677–79 (2009) (citing *Twombly*, 550 U.S. at 556)
7 (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
8 draw the reasonable inference that the defendant is liable for the misconduct alleged.”). That is,
9 under the modern interpretation of Rule 8(a), a plaintiff must not only specify or imply a
10 cognizable cause of action (*Conley* review), but also must allege the facts of his case so that the
11 court can determine whether the plaintiff has any basis for relief under the cause of action he has
12 specified or implied, assuming the facts are as he alleges (*Twombly-Iqbal* review).

13 “Generally, a district court may not consider any material beyond the pleadings in ruling
14 on a Rule 12(b)(6) motion. However, material which is properly submitted as part of the
15 complaint may be considered on a motion to dismiss.” *Hal Roach Studios, Inc. v. Richard Feiner*
16 *& Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citation omitted). Similarly, “documents
17 whose contents are alleged in a complaint and whose authenticity no party questions, but which
18 are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6)
19 motion to dismiss” without converting the motion to dismiss into a motion for summary
20 judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994). Moreover, under Federal Rule
21 of Evidence 201, a court may take judicial notice of “matters of public record.” *Mack v. S. Bay*
22 *Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Otherwise, if the district court
23 considers materials outside of the pleadings, the motion to dismiss is converted into a motion for
24

summary judgment. *See Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001).

III. ANALYSIS

a. Statute of Limitations

The Court generally agrees with the HOA that Plaintiff's claims are time-barred. The HOA argues that a five-year statute of limitations applies to Plaintiff's quiet title claim, and that a three-year statute of limitations applies to claims for violation of NRS 116.1113 and wrongful foreclosure. The HOA additionally argues that the limitations period began running from the date of foreclosure. Plaintiff counters that its claims are subject to the six-year statute of limitations of NRS 11.190(1)(b) for actions based "upon a contract, obligation, or liability founded upon an instrument in writing," because its claims are aimed at "enforc[ing] the promises made in the HOA's CC&Rs." (Resp. 6, ECF No. 27.) Plaintiff also contends that, even if the three and five-year statutes are applicable, the limitations period has not yet begun to run, because it has not yet been "legally established that Plaintiff's mortgage did not survive foreclosure," and therefore Plaintiff has not yet suffered any injury.

i. The applicable limitations periods for claims arising from the foreclosure sale began running at the time of foreclosure.

"In determining whether a statute of limitations has run against an action, the time must be computed from the day the cause of action accrued. A cause of action 'accrues' when a suit may be maintained thereon." *Clark v. Robison*, 944 P.2d 788, 789 (Nev. 1997) (internal citation omitted). "If the facts giving rise to the cause of action are matters of public record then '[t]he public record gave notice sufficient to start the statute of limitations running.'" *Job's Peak Ranch Cmty. Ass'n, Inc. v. Douglas Cty.*, No. 55572, 2015 WL 5056232, at *3 (Nev. Aug. 25, 2015) (quoting *Cumming v. San Bernardino Redev. Agency*, 101 Cal. App. 4th 1229, 125 Cal. Rptr. 2d

1 42, 46 (Ct. App. 2002)); *see also Allen v. Webb*, 485 P.2d 677, 684 (Nev. 1971) (Gunderson, J.,
2 concurring) (concluding that, where a written document regarding real property was not properly
3 recorded, there was not proper notice of the conveyance of that property so as to trigger the
4 statute of limitations period on a quiet title action).

5 Plaintiff's position that the statute of limitations period has not yet begun to run is
6 contrary to Nevada law, and contrary to its own filing of this action. In Nevada, a cause of action
7 accrues when a suit may be maintained thereon. Indeed, by filing this action, Plaintiff has
8 asserted that its claim may now be maintained, essentially an admission that the limitations
9 period began to run at some point prior to the filing of the Complaint. If Plaintiff believed that its
10 action could not be maintained until after it had been "legally established that [its] mortgage did
11 not survive foreclosure," it would not have brought this action when it did.

12 In reality, Plaintiff's interest in the Property was called into question at the time of the
13 foreclosure sale due to NRS 116.3116(2), which gives priority to that portion of an HOA lien
14 consisting solely of unpaid HOA assessments accrued during the "nine months immediately
15 preceding institution of an action to enforce the lien." It is clear that Plaintiff could have brought
16 its action to quiet title against the HOA at any time following the HOA's foreclosure sale, in
17 order to obtain a declaration that the sale had not extinguished its interest in the Property.
18 Similarly, Plaintiff could have asserted its claims for violation of NRS 116. 1113 and wrongful
19 foreclosure as soon as it obtained facts to support a contention that the HOA's sale of the
20 Property was improper. There is no indication in the Complaint that such facts were obtained any
21 later than at the time of foreclosure. Therefore, the Court finds that the statutes of limitations
22 applicable to Plaintiff's claims against the HOA began to run, at the latest, on the date of
23 recordation of the foreclosure deed—February 10, 2011.

24 ///

ii. The quiet title claim is subject to a five-year statute of limitations.

In Nevada, the statute of limitations for quiet title claims is five years. *See Nev. Rev. Stat.* §§ 11.070, 11.080. Plaintiff brought this action more than five years after the foreclosure deed was recorded. Therefore, Plaintiff's quiet title claim against the HOA is time-barred, and is dismissed.

Following *Silverton v. Dep't of Treasury* and its progeny, the Court will also dismiss the quiet title claim against Phil Frink & Associates, Inc. ("Frink"), but declines to dismiss the quiet title claim against Westland and Thunder. 644 F.2d 1341, 1345 (9th Cir. 1981) ("A [d]istrict [c]ourt may properly on its own motion dismiss an action as to defendants who have not moved to dismiss where such defendants are in a position similar to that of moving defendants."). Westland and Thunder acquired their interest in the Property within the five-year statute of limitations period.

iii. The claim for violation of NRS 116.1113 is subject to a three-year statute of limitations.

Plaintiff also alleges violations of NRS 116.1113, which states that "[e]very contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement." This claim is based "upon a liability created by statute," *Nev. Rev. Stat.* § 11.190(3)(a); thus, the three-year statute of limitations applies. *See, e.g., Bank of N.Y. Mellon Trust Co., N.A. v. Jentz*, No. 2:15-cv-01167-RCJ-CWH, 2016 WL 4487841, at *3 (D. Nev. Aug. 24, 2016); *Nationstar Mortg. LLC v. Amber Hills II Homeowners Ass'n*, No. 2:15-cv-01433-APG-CWH, 2016 WL 1298108, at *5 (D. Nev. Mar. 31, 2016); *HSBC Bank USA v. Park Ave. Homeowners' Ass'n*, No. 2:16-cv-460-JCM-NJK, 2016 WL 5842845, at *3 (D. Nev. Oct. 3, 2016). Plaintiff filed this action more than three years after the recordation of the foreclosure

1 deed. Therefore, Plaintiff's claim for violation of NRS 116.1113 is also time-barred, and is
 2 dismissed against both the HOA and Frink. *See Silverton*, 644 F.2d at 1345.

3 **iv. The wrongful foreclosure claim may be subject to either a three-year**
 4 **or six-year statute of limitations.**

5 "A wrongful foreclosure claim challenges the authority behind the foreclosure, not the
 6 foreclosure act itself." *McKnight Family, L.L.P. v. Adept Mgmt.*, 310 P.3d 555, 559 (Nev. 2013).
 7 The Nevada Supreme Court has opined that "deciding a wrongful foreclosure claim against a
 8 homeowners' association involves interpreting covenants, conditions, or restrictions applicable
 9 to residential property." *Id.* This is so because a wrongful foreclosure claim may lie where the
 10 HOA's foreclosure violated *either* (1) the statute giving the HOA authority to foreclose (i.e.,
 11 NRS Chapter 116), *or* (2) the CC&Rs applicable to the foreclosed property. *See Long v. Towne*,
 12 639 P.2d 528, 530 (Nev. 1982) (finding no impropriety where "the lien foreclosure sale was
 13 conducted under authority of the CC&Rs and in compliance with NRS 107.080"). The
 14 procedural requirements of NRS Chapter 116 may not be waived in the CC&Rs "except as
 15 expressly provided in Chapter 116." *SFR Investments Pool I v. U.S. Bank*, 334 P.3d 408, 419
 16 (Nev. 2014), *reh'g denied* (Oct. 16, 2014) (internal brackets and quotation marks omitted) (citing
 17 NRS 116.1104). Therefore, the CC&Rs may not ease the procedural requirements of Chapter
 18 116, nor alter the statute's substantive effect. However, an HOA could theoretically comply with
 19 Chapter 116 and nonetheless fail to comply with supplementary or heightened procedural
 20 requirements contained in the CC&Rs. In such a case, no wrongful foreclosure claim would arise
 21 from statute, but may arise from the CC&Rs.

22 A wrongful foreclosure action based on an alleged failure to comply with Chapter 116 is
 23 subject to the three-year statute of limitations for claims based "upon a liability created by
 24 statute." Nev. Rev. Stat. § 11.190(3)(a); *see also Amber Hills II Homeowners Ass'n*, 2016 WL

1 1298108, at *5; *Park Ave. Homeowners' Ass'n*, 2016 WL 5842845, at *3. Therefore, to the
2 extent Plaintiff alleged wrongful foreclosure based on the requirements of Chapter 116, this
3 claim is dismissed because it was not brought within three years of the recordation of the
4 foreclosure deed. This dismissal is applicable both to the HOA and Frink. *See Silverton*, 644
5 F.2d at 1345.

6 However, Plaintiff also asserts wrongful foreclosure on the basis that the HOA violated
7 the terms of the CC&Rs. This claim is not based on an obligation created by a statute; rather, it
8 arises from a “contract, obligation, or liability founded upon an instrument in writing.” NRS §
9 11.190(1)(b). Therefore, to the extent Plaintiff’s wrongful foreclosure claim is based on a
10 violation of the CC&Rs, a six-year statute of limitations applies, and the claim is not time-barred.

11 **b. Wrongful Foreclosure Arising from Violation of CC&Rs**

12 Notwithstanding the timeliness of the claim, however, the Court finds that Plaintiff has
13 failed to plead wrongful foreclosure with plausibility. The Complaint fails to identify any
14 provision of the CC&Rs with which the HOA failed to comply in foreclosing on the Property.
15 Plaintiff points only to a “security interest provision,” which purports to subordinate the HOA’s
16 lien to any first recorded security interest. (Compl. ¶ 53, ECF No. 1.) Such “mortgage
17 protection” provisions are legally ineffectual—the priority position of an HOA’s super-priority
18 lien cannot be waived by agreement. *See SFR Investments Pool 1*, 334 P.3d at 419 (2014).
19 Moreover, the plain language of the provision does not impose any obligations on the HOA—
20 such as pre-foreclosure notice requirements or mandatory waiting periods—or limit the HOA’s
21 right to foreclose on the full value of its lien.

22 A wrongful foreclosure action is a challenge to the authority to foreclose. Plaintiff has not
23 identified any obligation under the CC&Rs that the HOA failed to satisfy in foreclosing on the
24

1 Property. Accordingly, Plaintiff has failed to state of plausible claim of wrongful foreclosure on
2 the basis of the CC&Rs.

3 In addition, Plaintiff has failed to exhaust administrative remedies under NRS 38.310.
4 *See McKnight*, 310 P.3d at 559 (“Wrongful foreclosure is a civil action subject to NRS 38.310’s
5 requirements”). Plaintiff alleges it submitted a demand for mediation to the Nevada Real
6 Estate Division (“NRED”), but NRED failed to schedule a mediation in the time period required
7 under NRS 38.330(1). Thus, Plaintiff argues it exhausted its administrative remedies prior to
8 filing this action “or was excused from doing so.” (Resp. 13, ECF No. 27.) Plaintiff fails to cite
9 any authority in support of its argument. Subsection (1) of NRS 38.330 states that “[u]nless
10 otherwise provided by an agreement of the parties, mediation must be completed within 60 days
11 after the filing of the written claim.” Nev. Rev. Stat. § 38.330(1). However, nothing in NRS
12 38.330 provides that NRED’s failure to appoint a mediator within sixty days constitutes
13 exhaustion. While Plaintiff has submitted a request for mediation, the parties have not
14 participated in mediation. Thus, Plaintiff has not exhausted its administrative remedies and must
15 mediate its wrongful foreclosure claim prior to initiating an action in court. *See HSBC Bank*
16 *Nat’l Ass’n v. Stratford Homeowners Ass’n*, No. 2:15-cv-01259-JAD-PAL, 2016 WL 3200106,
17 at *2–3 (D. Nev. June 7, 2016) (finding submission of mediation request alone insufficient to
18 exhaust under NRS 38.310); *Bank of America, N.A., v. Ann Losee Homeowners Ass’n*, 2:1-cv-
19 407-JCM-CWH, 2016 WL 6122933, at *2–3 (D. Nev. Oct. 18, 2016) (same).

20 ///

21 ///

22 ///

23 ///

24 ///

CONCLUSION

IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 19) is GRANTED without prejudice. Plaintiff's quiet title claims against Westland and Thunder survive; all other claims are dismissed.

IT IS SO ORDERED December 6, 2016.



ROBERT C. JONES
United States District Judge

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THUNDER PROPERTIES, INC.

8
9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 ***

12 US BANK NATIONAL ASSOCIATION, AS)
TRUSTEE FOR THE SPECIALTY)
13 UNDERWRITING AND RESIDENTIAL)
FINANCE TRUST AND MORTGAGE LOAN)
14 ASSET-BACKED CERTIFICATES SERIES)
2006-BC4,)

Case No. 3:16-cv-00501-RCJ-WGC

15 Plaintiff,)

16 vs.)

17 WOODLAND VILLAGE; WESTLAND REAL)
18 ESTATE DEVELOPMENT AND)
INVESTMENTS; THUNDER PROPERTIES,)
19 INC.; AND PHIL FRINK & ASSOCIATES,)
INC.,)

20 Defendants.)
21)

22 **MOTION TO DISMISS OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT**

23 COMES NOW, Defendant, THUNDER PROPERTIES, INC. (*“Thunder”*), by and
24 through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby presents its
25 Motion to Dismiss or, Alternatively, for Summary Judgment, requesting that the Plaintiff’s
26 Complaint be dismissed or that Summary Judgment be entered in Thunder’s favor because the
27 claims contained therein are time-barred. This Motion is made and based upon the attached
28

memorandum of points and authorities, all pleadings, papers and documents on file herein, and any oral argument that the Court may entertain at the hearing of this matter.

DATED this 31st day of March, 2017.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

For the past several years, the purchasers of real properties at homeowners association lien foreclosure sales have been embroiled in litigation with purportedly secured deed of trust holders such as the Plaintiff herein, US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE SPECIALTY UNDERWRITING AND RESIDENTIAL FINANCE TRUST AND MORTGAGE LOAN ASSET-BACKED CERTIFICATES SERIES 2006-BC4 (“USB” or the “Bank”), regarding the force and effect of NRS §116.3116, which provides an HOA with a super-priority lien on an individual homeowner's property for up to nine months of unpaid HOA dues. In a nutshell, the purchasers of these properties have always asserted that HOA lien foreclosure sales served to extinguish all junior liens, including a first position deed of trust, pursuant to black letter lien law. Deed of trust holders such as USB incorrectly asserted that their security interests survived the HOA lien foreclosure sales.

The conflicting positions of the purchasers and the purported secured mortgage holders were the subject of significant dispute for a lengthy period of time. However, on September 18,

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1 2014, the Nevada Supreme Court, in the matter of *SFR Investments Pool I, LLC v. U.S. Bank*,
2 *N.A.*, 130 Nev. ___, 334 P.3d 408, 2014 WL 4656471 (Adv. Op. No. 75, Sept. 18, 2014),
3 definitively determined that the foreclosure of a HOA's superpriority lien does indeed extinguish
4 a first deed of trust, stating as follows:

5 We must decide whether this is a true priority lien such that its foreclosure
6 extinguishes a first deed of trust on the property and, if so, whether it can be
7 foreclosed nonjudicially. We answer both questions in the affirmative and
8 therefore reverse.

9 “The SFR decision made winners out of the investors who purchased foreclosure properties in
10 HOA sales and losers of the lenders who gambled on the opposite result, elected not to satisfy the
11 HOA liens to prevent foreclosure, and thus saw their interests wiped out by sales that often
12 yielded a small fraction of the loan balance.” *Freedom Mortg. Corp. v. Las Vegas Dev. Grp., LLC*, 2015 U.S. Dist. LEXIS 66249, 1-2 (D. Nev. May 19, 2015) (Dorsey, J.).

13 Pursuant to its decision in *SFR Investments*, the Nevada Supreme Court resolved the
14 divergent opinions that previously existed in the state and federal courts of the State of Nevada
15 regarding the force, effect and interpretation of NRS §116.3116 *et seq.* In doing so, the Nevada
16 Supreme Court clarified that the statute provides a homeowners association with a true
17 superpriority lien over real property that can and does extinguish a first deed of trust when non-
18 judicially foreclosed. *Id.* The Nevada Supreme Court also recognized that a foreclosure deed
19 “reciting compliance with notice provisions of NRS 116.31162 through NRS 116.31168 ‘is
20 conclusive’ as to the recitals ‘against the unit’s former owner, his or her heirs and assigns and all
21 other persons.’” *See id.* at *3 (citing NRS 116.3116.31166(2)). Moreover, the Nevada Supreme
22 Court specifically found that N.R.S. Chapter 116 did not violate U.S. Bank’s due process rights,
23 stating that “the Nevada Legislature has written NRS Chapter 116 to allow nonjudicial
24 foreclosure of HOA liens, subject to the special notice requirements and protections handcrafted
25 by the Legislature in NRS 116.31162 through NRS 116.31168.” *SFR Invs. Pool I, LLC*, 334
26 P.3d 408 at 417. (Emphasis added).

27 The instant action relates to real property commonly known as 17655 Little Peak Court,
28 Cold Springs, Nevada 89508 (*the “Property”*). The Property is located within and governed by a

common interest community association known as Woodland Village (“HOA”) and was the subject of a homeowners association lien foreclosure sale conducted on behalf of HOA dated February 10, 2011 (“HOA Foreclosure Sale”). USB filed the instant action on August 25, 2016, seeking quiet title and declaratory relief. However, the action was filed more than 5 years after the date of the HOA Foreclosure Sale and the recording of the associated Deed in Foreclosure of Assessment Lien (“HOA Foreclosure Deed”). As a result, the Plaintiff’s claims are time-barred and the instant action must be dismissed. In the alternative, Summary Judgment must be entered in favor of Thunder. This Court has already so held pursuant to its Order dated December 6, 2016 [ECF #32].

II.

STATEMENT OF UNDISPUTED FACTS

The Plaintiff’s Complaint alleges the following facts, which are for purposes of this Motion undisputed:

1. On or about May 26, 2006, Bryan Rodriguez and Michelle Rodriguez (“Former Owners”) purchased the property by way of a loan in the amount of \$212,672.00 evidenced by a note and secured by a deed of trust recorded May 30, 2006 (“First Deed of Trust”). Complaint, ¶14.
2. Plaintiff is the current beneficiary of the First Deed of Trust. Complaint, ¶15.
3. On February 17, 2010, HOA, through its agent, Gayle A. Kern, Ltd., recorded a notice of delinquent assessment and claim of lien. Complaint, ¶16.
4. On April 26, 2010, HOA, through its agent Phil Frink & Associates (“Frink”), recorded a notice of default and election to sell to satisfy the delinquent assessment lien. Complaint, ¶17.
5. On December 20, 2010, HOA, through its agent Frink, recorded a notice of homeowners association sale, scheduling a sale to take place on February 10, 2011. Complaint, ¶18.
6. The HOA Foreclosure Sale was held on February 10, 2011, at which time HOA was the prevailing bidder. Complaint, ¶25.
7. The HOA Foreclosure Deed in favor of HOA was recorded on February 10, 2011, in the

- Office of the Washoe County Recorder as Instrument No. 3972694. Complaint, ¶25.
8. On or about April 30, 2013, HOA transferred its interest in the Property to Defendant, Westland Real Estate and Developments (“*Westland*”). Complaint, ¶27.
9. On or about August 26, 2013, Westland transferred its interest in the Property to Thunder. Complaint, ¶28.
10. Westland has disclaimed any interest in the Property. ECF #37.
11. The instant action was filed on August 25, 2016. See Complaint, generally.
12. More than five years passed between the date of the HOA Foreclosure Sale and the recording of the HOA Foreclosure Deed and the filing of the instant action.

III.

LEGAL ARGUMENT

1. STATEMENT OF THE LAW

Pursuant to Fed. R. Civ. P. 12(b)(6):

Dismissal for failure to state a claim is proper *only if it is clear that the plaintiff cannot prove any set of facts in support of the claim that would entitle him or her to relief*. See *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making this determination, the court takes as true all allegations of material fact stated in the complaint, and the court construes them in the light most favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996).

Williams v. Foster, 2013 U.S. Dist. LEXIS 142878, 4 (D. Nev. Oct. 2, 2013) (emphasis added). Well pleaded factual assertions as entitled to the assumption of their veracity. *Id.* at 5, citing *Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). The burden to show that no claim exists lies with the moving party. *Total Benefits Planning Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 434 (6th Cir. 2008).

“Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion. However, material which is properly submitted as part of the complaint may be considered on a motion to dismiss.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citation omitted). Similarly, “documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6)

1 motion to dismiss” without converting the motion to dismiss into a motion for summary
2 judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994).

3 Alternatively, the Federal Rules of Civil Procedure provide for summary adjudication
4 when the pleadings, depositions, answers to interrogatories, and admissions on file, together with
5 the affidavits, if any, show that "there is no genuine dispute as to any material fact and the
6 movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Material facts are those
7 that may affect the outcome of the case. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248,
8 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A dispute as to a material fact is genuine if there is
9 sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. See *id.*
10 "Summary judgment is inappropriate if reasonable jurors, drawing all inferences in favor of the
11 nonmoving party, could return a verdict in the nonmoving party's favor." *Diaz v. Eagle Produce*
12 *Ltd. P'ship*, 521 F.3d 1201, 1207 (9th Cir. 2008) (citing *United States v. Shumway*, 199 F.3d
13 1093, 1103-04 (9th Cir. 1999)). A principal purpose of summary judgment is "to isolate and
14 dispose of factually unsupported claims." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24, 106 S.
15 Ct. 2548, 91 L. Ed. 2d 265 (1986).

16 **2. THE PLAINTIFF'S CLAIMS AGAINST THUNDER ARE BARRED BY THE**
17 **STATUTE OF LIMITATIONS**

18 The Plaintiff's Complaint is comprised of two claims against Thunder: a claim for Quiet
19 Title/Declaratory Judgment and a purported claim for Injunctive Relief. Pursuant to NRS
20 40.010, a quiet title action "may be brought by any person against another who claims an estate
21 or interest in real property, adverse to the person bringing the action, for the purpose of
22 determining such adverse claim." In a quiet title case, a presumption exists in favor of the record
23 title holder. *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669 (1996). "A claim for
24 declaratory relief is subject to a statute of limitations generally applicable to civil claims." *Zuill v.*
25 *Shanahan*, 80 F.3d 1366, 1369-70 (9th Cir. 1996); *Levald v. City of Palm Desert*, 998 F.2d 680,
26 688 (9th Cir. 1993) (noting that statute of limitations applicable to damages action applies
27 equally to claims for declaratory judgment). When a complaint shows on its face that the cause of
28 action is barred by the statute of limitations, the burden falls upon the plaintiff to demonstrate

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that the bar does not exist. *Bank of Nevada v. Friedman*, 82 Nev. 417, 422, 420 P.2d 1, 4 (1966).

A quiet title claim is subject to the five-year limitations period of NRS § 11.070. *Nationstar Mortg. LLC v. Amber Hills II Homeowners Ass'n*, 2016 U.S. Dist. LEXIS 43592, 9-10 (D. Nev. Mar. 31, 2016). Like the instant case, *Amber Hills II* involved a deed of trust holder's claim that its deed of trust was unaffected by a homeowners association lien foreclosure sale. In *Amber Hills II*, the defendant asserted that the plaintiff's claims were governed by a 3-year statute of limitations because the claims were based upon liability created by statute. *Id.* Judge Gordon rejected this assertion, holding that the applicable statute of limitations was five years.

In *Amber Hills II*, the District Court held that a deed of trust holder was neither "seized" nor "possessed" of real property by virtue of a deed of trust. *Id.* However, the Court read NRS 40.010 and NRS 11.070 together, finding that "§ 40.010 allows anyone with an interest in the property to sue to determine adverse claims, and § 11.070 provides the corresponding limitations period for such claims." *Id.* at *10. This Court has already held identically in this matter. See Order, ECF #32 ("In Nevada, the statute of limitations for quiet title claims is five years. See Nev. Rev. Stat. §§ 11.070, 11.080.")

It is well settled in Nevada that a cause of action accrues when "the aggrieved party knew, or reasonably should have known, of the facts giving rise to the damage or injury." *Nevada State Bank v. Jamison Partnership*, 106 Nev. 792, 800, 801 P.2d 1377, 1382 (1990). As this Court has already noted in its Order dated December 6, 2016:

"In determining whether a statute of limitations has run against an action, the time must be computed from the day the cause of action accrued. A cause of action 'accrues' when a suit may be maintained thereon." *Clark v. Robison*, 944 P.2d 788, 789 (Nev. 1997) (internal citation omitted). "If the facts giving rise to the cause of action are matters of public record then '[t]he public record gave notice sufficient to start the statute of limitations running.'" *Job's Peak Ranch Cmty. Ass'n, Inc. v. Douglas Cty.*, No. 55572, 2015 WL 5056232, at *3 (Nev. Aug. 25, 2015) (quoting *Cumming v. San Bernardino Redev. Agency*, 101 Cal. App. 4th 1229, 125 Cal. Rptr. 2d 42, 46 (Ct. App. 2002)); see also *Allen v. Webb*, 485 P.2d 677, 684 (Nev. 1971) (Gunderson, J., concurring) (concluding that, where a written document regarding real property was not properly recorded, there was not proper notice of the conveyance of that property so as to trigger the statute of limitations period on a quiet title action).

See Order, ECF #32.

Here, the face of Plaintiff's Complaint proves that the HOA Foreclosure Sale took place

1 on February 10, 2011. Moreover, the Complaint proves that the HOA Foreclosure Deed was
2 recorded on the same date. Thus, as this Court has also noted, “the statutes of limitations
3 applicable to Plaintiff’s claims against the HOA began to run, at the latest, on the date of
4 recordation of the foreclosure deed—February 10, 2011.” Order, ECF #32. This is equally true
5 of the claims against Thunder.

6 It is undisputed that neither the Plaintiff nor any other party brought any claims contesting
7 the force and effect of the HOA Foreclosure Sale until well over five years after the HOA
8 Foreclosure Sale took place and the HOA Foreclosure Deed was recorded. Under such
9 circumstances, the Plaintiff’s claim for Quiet Title/Declaratory Judgment is barred by the statute
10 of limitations and the instant action must be dismissed.

11 **3. THE LATER TRANSFERS OF THE PROPERTY TO WESTLAND AND THEN**
12 **TO THUNDER DO NOT CHANGE THE FACT THAT THE PLAINTIFF’S**
13 **CLAIMS ARE BARRED**

14 By way of its Complaint, the Plaintiff seeks Quiet Title/Declaratory Judgment in its favor
15 despite the HOA Foreclosure Sale that extinguished the First Deed of Trust as a matter of law.
16 This Court has already found that the Plaintiff’s claim for Quiet Title/Declaratory Judgment is
17 time-barred as to the HOA and Frink. However, pursuant to its Order, this Court declined to
18 dismiss the claim as it relates to Thunder and Westland, stating as follows:

19 Following *Silverton v. Dep’t of Treasury* and its progeny, the Court will also
20 dismiss the quiet title claim against Phil Frink & Associates, Inc. (“Frink”), but
21 declines to dismiss the quiet title claim against Westland and Thunder. 644 F.2d
22 1341, 1345 (9th Cir. 1981) (“A [d]istrict [c]ourt may properly on its own motion
dismiss an action as to defendants who have not moved to dismiss where such
defendants are in a position similar to that of moving defendants.”). Westland and
Thunder acquired their interest in the Property within the five-year statute of
limitations period.

23 Order, ECF #32.

24 It is undisputed based upon the face of the Plaintiff’s Complaint that the Plaintiff took no
25 action for a period of over five years after the date of the HOA Foreclosure Sale and the
26 recording of the HOA Foreclosure Deed. Because it failed to do so, its claim is time-barred.
27 This is the case with respect to all of the Defendants, not just HOA and Frink.
28

Pursuant to its Order dated December 6, 2016, this Court noted that the Property was transferred from HOA to Westland and from Westland to Thunder within the five year period preceding the filing of the Plaintiff's Complaint. However, these subsequent transfers did nothing to change the date on which the Plaintiff's claim accrued. Nor did they serve to affect the Plaintiff's claimed interest in the Property in any manner whatsoever. This would be the case whether the Property was transferred once, twice or a hundred times.

The Plaintiff's claim for Quiet Title/Declaratory Judgment is tied to the Property. As this Court has held, "Plaintiff's interest in the Property was called into question at the time of the foreclosure sale due to NRS 116.3116(2), which gives priority to that portion of an HOA lien consisting solely of unpaid HOA assessments accrued during the 'nine months immediately preceding institution of an action to enforce the lien.'" Order, ECF #32. The Plaintiff had five years from said date in which to bring its claims. It failed to do so and the claims became time-barred by operation of law. This is the case with respect to the Plaintiff's claims against all parties to this case as well as the rest of the world. Finding otherwise would suggest that the statute of limitations is restarted every time real property is transferred. This would turn real property law on its head.

4. PLAINTIFF'S CLAIM FOR INJUNCTIVE RELIEF IS A REMEDY AND NOT A CAUSE OF ACTION

Plaintiff's second cause of action against Thunder is for Injunctive Relief. This so-called claim is a remedy and not a cause of action. Moreover, because the Plaintiff's cause of action for Quiet Title/Declaratory Relief is time-barred, no good cause exists for any form of injunctive relief in favor of the Plaintiff. Plaintiff's Fourth Cause of Action for Injunctive Relief must also be dismissed.

III.

CONCLUSION

For the reasons set forth herein, the instant action must be dismissed in its entirety. The Plaintiff possessed a five year period of time in which to bring claims that resulted from the HOA Foreclosure Sale. It failed to do so and its claims are thus time-barred. This is the case not only

1 with respect to the HOA and Frink, as this Court has already held pursuant to its Order dated
2 December 6, 2016, but with also with respect to Thunder, Westland and the rest of the world.

3 DATED this 31st day of March, 2017.

4 ROGER P. CROTEAU & ASSOCIATES, LTD.

5
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15 **THUNDER PROPERTIES, INC.**
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of March, 2017, I served via the United States District Court CM/ECF electronic filing system, the foregoing **MOTION TO DISMISS OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT** to the following parties:

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Attorneys for Plaintiff US Bank National Association, as Trustee for the Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates Series 2006-BC4

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE SPECIALTY UNDERWRITING AND RESIDENTIAL FINANCE TRUST MORTGAGE LOAN ASSET-BACKED CERTIFICATES SERIES 2006-BC4,

Plaintiff,

vs.

WOODLAND VILLAGE HOMEOWNERS ASSOCIATION; WESTLAND REAL ESTATE DEVELOPMENT AND INVESTMENTS; THUNDER PROPERTIES, INC.; AND PHIL FRINK & ASSOCIATES, INC.,

Defendants.

Case No.: 3:16-cv-00501-RCJ-WGC

PLAINTIFF'S OPPOSITION TO DEFENDANT THUNDER PROPERTIES, INC.'S MOTION TO DISMISS OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT [ECF NO. 39]

Plaintiff US Bank National Association, as Trustee for the Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates Series 2006-BC4 (**U.S. Bank**) opposes defendant Thunder Properties, Inc. (**Thunder**)'s motion to dismiss or, alternatively, for summary judgment.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Thunder asks the Court to dismiss U.S. Bank's complaint because, Thunder argues, it is barred by the five-year statute of limitations on quiet title claims. (ECF No. 39 at 6–9.)

Thunder's motion should be denied for three reasons. First, the Nevada statutes on which Thunder relies do not apply to U.S. Bank's claim: NRS 11.070 and 11.080 govern claims to title, not lienholders' claims for declaratory relief concerning the enforceability of their liens. Second, even if NRS 11.070 and 11.080 do apply to U.S. Bank's claim, they did not begin running on foreclosure, but rather on the date when U.S. Bank's grantors lost or abandoned possession of the property. Third and finally, Thunder cannot rely on NRS 11.070 and 11.080 because it cannot satisfy the requirements of adverse possession under Nevada law.

II. STATEMENT OF UNDISPUTED FACTS

For purposes of the present motion, U.S. Bank accepts Thunder's account of the undisputed facts. (See ECF No. 39 at 4–5.)

III. LEGAL STANDARD

Under Rule 12(b)(6), dismissal is warranted only if "it appears beyond a doubt that the [claimant] can prove no set of facts in support of his claim which would entitle him to relief." *Gibson v. United States*, 781 F.2d 1334, 1337 (9th Cir. 1986). Under Rule 56, summary judgment is warranted only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

IV. NRS 11.070 AND 11.080 DO NOT APPLY

Thunder's argument that the quiet title claim is time-barred rests on two Nevada statutes: NRS 11.070 and NRS 11.080. (ECF No. 39 at 7.) But neither of these statutes sets a single statute of limitations period for all quiet title actions—neither statute actually mentions "quiet title actions" as such. Instead, NRS 11.080 governs suits "for the recovery of real property," and NRS 11.070 governs any "cause of action or defense to an action, founded upon the title to real property." Neither section applies here. This cannot be a suit "for the recovery of real property," because

1 U.S. Bank has never possessed the property or claimed title to it. It cannot be a "cause of action . . .
2 founded upon the title to real property," because U.S. Bank does not claim "title."

3 Thunder argues this Court should "read NRS 40.010 and NRS 11.070 together" and conclude
4 that the statute of limitations in NRS 11.070 applies to all quiet title actions brought under
5 NRS 40.010. But the text of the two sections rules out any such "reading together." NRS 40.010
6 allows suits by anyone who claims "an estate *or interest*" in the property. NRS 11.070, on the other
7 hand, establishes a statute of limitations only for actions "founded upon *title*." The broader word
8 "interest" does not appear in the statute. Unsurprisingly, given this difference, NRS 10.070 has never
9 been interpreted by the Nevada Supreme Court to apply to suits by mortgagees related to the
10 enforceability of their mortgage.

11 U.S. Bank has never claimed "title" to this property, but merely a beneficial interest in the
12 deed of trust encumbering it—exactly the sort of "interest" to which NRS 11.070 and NRS 11.080
13 **do not apply**. U.S. Bank's complaint prays not for title per se, but for a declaratory judgment that
14 U.S. Bank may legally enforce its deed of trust.

15 It is the substance of an asserted claim for declaratory relief that dictates the relevant statute
16 of limitations. *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 688 (9th Cir. 1993). The
17 declaratory judgment claim cannot be time-barred until enforcement of the contract itself (the deed
18 of trust) would be time-barred, and Thunder has not even attempted to argue any time bar would
19 preclude its enforcement of the deed of trust. *See Algrant v. Evergreen Nurseries, Ltd.*, 126 F.3d
20 173, 181 (3rd Cir. 1997) (action for declaratory relief barred only if the limitation applicable to the
21 substantive claim would be barred); *Clary v. Stack and Supply Co.*, 611 P.2d 80, 83 (Alaska 1980)
22 (declaratory judgment claim regarding rights under contract barred when action to enforce the
23 contract is barred); *118 East 60th Owners, Inc. v. Bonner Properties, Inc.*, 677 F.2d 200, 202 (2nd
24 Cir. 1982) ("[W]hen the declaratory judgment sought by a plaintiff would declare his entitlement to
25 some affirmative relief, his suit is time-barred if the applicable limitations period has run on a direct
26 claim to obtain such relief."). As long as the affirmative relief sought by plaintiff, the ability to
27 enforce the underlying contract, is not time-barred, an action seeking a declaration regarding the
28 enforceability of that contract is likewise not time-barred.

1 **V. NRS 11.070 AND 11.080 DO NOT BEGIN RUNNING ON FORECLOSURE**

2 Thunder claims the statute of limitations on U.S. Bank's claim ran in February 2016, five
3 months before this suit was filed. But this assumes the five-year statute began running in February
4 2011, at the time of the HOA foreclosure sale. This assumption is plainly contradicted by the text of
5 the statutes Thunder relies on.

6 Even if they apply here, which they clearly do not, the time limits in both NRS 11.070 and
7 NRS 11.080 begin running on loss of possession. NRS 11.070 bars certain actions unless "the person
8 prosecuting the action . . . or the ancestor, predecessor, or grantor of such person, was seized *or*
9 *possessed* of the premises in question within 5 years before the committing of the act in respect to
10 which said action is prosecuted." Nev. Rev. Stat. § 11.070 (emphasis added). NRS 11.080 bars
11 certain actions unless "the plaintiff or the plaintiff's ancestor, predecessor or grantor was seized *or*
12 *possessed* of the premises in question, within 5 years before the commencement thereof." Nev. Rev.
13 Stat. § 11.080 (emphasis added). The operative date in each statute is not some event like an HOA
14 foreclosure, but rather the date on which the party or its predecessor bringing the action lost or
15 relinquished possession of the property at issue.

16 U.S. Bank has never been "seized or possessed of the premises in question" here, illustrating
17 the non-applicability of these statutes. But if the Court were to apply the statute, then it would
18 presumably look to the fact that U.S. Bank acquired its interest from the "grantors" of the deed of
19 trust, borrowers Bryan and Michelle Rodriguez. The five-year period established by 11.070 and
20 11.080 could not begin running until the date Bryan and Michelle Rodriguez lost or relinquished
21 possession of the property. That date does not appear in U.S. Bank's complaint, in Thunder's
22 statement of undisputed facts or—to U.S. Bank's knowledge—in any evidence produced in this case
23 through discovery.

24 Thunder may argue that, because the HOA foreclosed on February 10, 2011, the Rodriguezes
25 must have lost possession of the property in February 2011. But foreclosure, if effective, deprives an
26 owner of title, not of possession. If the Rodriguezes contested the foreclosure sale, sought to
27 negotiate a new arrangement with the foreclosing HOA, or simply refused to leave the property, they
28

1 may have retained possession for many months after foreclosure. They might easily have been in
2 possession on August 25, 2011, five years before this suit was brought.

3 For purposes of Thunder's motion for dismissal or summary judgment, these questions must
4 be resolved in favor of the non-moving party, U.S. Bank. *Cahill v. Liberty Mut'l Ins. Co.*, 80 F.3d
5 336, 337–38 (9th Cir. 1996) ("All allegations of material fact are . . . construed in the light most
6 favorable to the non-moving party [for purposes of a 12(b)(6) motion]."); *Zetwick v. County of Yolo*,
7 850 F.3d 436, 440 (9th Cir. 2017) ("Summary judgment is appropriate when, viewing the evidence
8 in the light most favorable to the nonmoving party, there is no genuine dispute as to any material
9 fact."). For purposes of this motion, the Court must assume the Rodriguezes were in possession on
10 August 25, 2011, and that U.S. Bank's suit is timely, even if these inapplicable statutes were
11 erroneously applied to this case. If Thunder wishes to argue that the Rodriguezes were not in
12 possession on August 25, 2011, it should be required to produce evidence of that fact.

13 **VI. THUNDER HAS NOT SATISFIED THE REQUIREMENTS FOR ADVERSE POSSESSION**

14 NRS 11.070 and NRS 11.080 are not ordinary statutes of limitations. Instead, they are part of
15 Nevada's law of adverse possession. *See Lombardo Turquoise Mill & Mining Co. v. Hemanes*,
16 430 F. Supp. 429, 438 (D. Nev. 1977) ("The regular statute pertaining to adverse possession of real
17 property requires adverse possession for five years. (*N.R.S. 11.070*).\" (emphasis added)); *Lanigir v.*
18 *Arden*, 409 P.2d 891, 896 (Nev. 1966) (discussing the possibility of an adverse possession claim
19 "under . . . NRS 11.070"); *see also* Nev. Rev. Stat. Ann. §§ 11.070, 11.080 (West) (West's
20 annotations for each section include "Adverse Possession").

21 Adverse possession is the legal process through which a party in possession of property, like
22 Thunder in this case, defeats rival claimants not through superiority of title but by the application of
23 a statute of limitations. *See* Wex Legal Dictionary and Encyclopedia, *Adverse Possession* (last
24 updated August 2016) ("Adverse possession is a doctrine under which a person in possession of land
25 owned by someone else may acquire valid title to it, so long as . . . the adverse possessor is in
26 possession for a sufficient period of time, *as defined by a statute of limitations*." (emphasis added)),
27 https://www.law.cornell.edu/wex/adverse_possession (copy attached hereto as **Exhibit A**). But
28

1 Nevada law puts more requirements on an adverse possessor like Thunder than simply the passage
2 of the statutory period.

3 To begin with, Thunder must satisfy the standard common-law requirements: possession
4 must be actual, open and notorious, hostile under an exclusive claim of right, and continuous and
5 uninterrupted for five years. *Howard v. Wright*, 143 P. 1184, 1186 (Nev. 1914). Thunder has not
6 attempted to satisfy these requirements, and it probably cannot satisfy them. In particular, because
7 U.S. Bank and its predecessors have never claimed a right to possess the property, Thunder's
8 possession has not been hostile to U.S. Bank's claimed interest. Thunder's possession became hostile,
9 at the earliest, on the date when Thunder informed U.S. Bank that it did not recognize the validity of
10 the deed of trust. That date is not in the complaint or in the summary judgment record. For purposes
11 of Thunder's dispositive motion, the Court must resolve the question in U.S. Bank's favor and
12 conclude Thunder's possession has not been hostile for the full statutory period.

13 Further, an adverse possessor like Thunder must satisfy multiple statutory requirements.
14 Under NRS 11.150, an adverse possessor cannot prevail unless it can show "that the land has been
15 occupied and claimed for the period of 5 years, continuously" and that it has "paid all taxes, state,
16 county and municipal, which may have been levied and assessed against the land for the period
17 mentioned." Nothing in the complaint or the summary judgment record indicates that Thunder and
18 its predecessors have possessed the property continuously for five years, and nothing indicates that
19 they have paid all property taxes accruing in that period. To the contrary, when U.S. Bank's requests
20 for admissions asked Thunder to admit it had not paid all taxes due on the property, Thunder
21 responded, "After reasonable inquiry Responding Party is without sufficient knowledge to either
22 admit or deny this Request." (**Exhibit B**, Response to Request for Admission No. 27.)

23 For purposes of this motion, the Court must resolve these questions in U.S. Bank's favor, so
24 Thunder has not satisfied the requirements of Nevada's adverse possession law. Thunder's
25 dispositive motion based on the statute of limitations should be denied.

26 **VII. CONCLUSION**

27 NRS 11.070 and 11.080 do not apply. Instead the Court should apply the statute of
28 limitations governing declaratory relief, which is the statute of limitations governing enforcement of

1 the deed of trust. Even if NRS 11.070 and 11.080 apply, they first began to run when the
 2 Rodriguezes lost or abandoned possession of the property, and for present purposes the Court must
 3 assume the Rodriguezes lost or abandoned the property within the five-year limitations period.
 4 Finally, even if NRS 11.070 and 11.080 do apply, they do not bar U.S. Bank's claim because
 5 Thunder cannot satisfy Nevada law's requirements for adverse possession.

6 Thunder's motion should be denied.

7 DATED this 11th day of April, 2017.

8 **AKERMAN LLP**

9 */s/ Vatana Lay*

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16 *Attorneys for Plaintiff US Bank National Association,*
 17 *as Trustee for the Specialty Underwriting and*
 18 *Residential Finance Trust Mortgage Loan Asset-*
 19 *Backed Certificates Series 2006-BC4*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 11th day of April, 2017, and pursuant to Federal Rule of Civil Procedure 5, I filed and served a true and correct copy of the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT THUNDER PROPERTIES, INC.'S MOTION TO DISMISS OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT [ECF NO. 39]** via the Court's CM/ECF system on the following:

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**EXHIBITS TO PLAINTIFF'S OPPOSITION TO DEFENDANT THUNDER PROPERTIES,
INC.'S MOTION TO DISMISS OR, ALTERNATIVELY, FOR SUMMARY JUDGMENT
[ECF NO. 39]**

Case No.: 3:16-cv-00501-RCJ-WGC

Exhibit A https://www.law.cornell.edu/wex/adverse_possession

Exhibit B Thunder Properties Inc.'s Response to Request for Admission No. 27

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EXHIBIT A

https://www.law.cornell.edu/wex/adverse_possession



(<https://www.cornell.edu>) Cornell University Law School (<http://www.lawschool.cornell.edu/>) Search Cornell (<https://www.cornell.edu/search/>)

Adverse Possession

Adverse possession is a doctrine under which a person in possession of land owned by someone else may acquire valid title ([/wex/title](#)) to it, so long as certain common law requirements are met, and the adverse possessor is in possession for a sufficient period of time, as defined by a statute of limitations ([/wex/statute_of_limitations](#)).

The common law requirements

The common law requirements have evolved over time, and the articulation of those requirements varies somewhat from jurisdiction ([/wex/jurisdiction](#)) to jurisdiction. Typically, adverse possession, in order to ripen into title ([/wex/title](#)), must be:

- (1) *Continuous*; this means continual possession by a single adverse possessor, or by successive adverse possessors so long as privity (<https://www.law.cornell.edu/wex/privity>) exists between them.
- (2) *Hostile* to the interests of the true owner; this is the *adverse* part of adverse possession.
- (3) *Open and notorious*, so as to put the true owner on notice that a trespasser is in possession.
- (4) *Actual*, so that the true owner has a cause of action ([/wex/cause_of_action](#)) for trespass ([/wex/trespass](#)), on which the true owner must act within the statute of limitations ([/wex/statute_of_limitations](#)).
- (5) *Exclusive*, in order that there be no confusion as to who acquires title ([/wex/title](#)) once the time has run.

The statute of limitations

A typical statute will require possession for 7 years, if under color of title ([/wex/color_of_title](#)), or 20 years, if not.

A mnemonic may help with remembering the decisional and statutory elements of adverse possession; think of it as inchoate ownership which becomes **choaTe** [(i.e., continuous, hostile, open, actual, for the requisite period of Time, and exclusive). Decisional pieces are indicated in lowercase, statutory ones in uppercase.].

Last updated in August 2016 by Joseph Szydl.

EXHIBIT B

Thunder Properties Inc.'s Response to Request for Admission No. 27

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7
 8
 9 UNITED STATES DISTRICT COURT
 10 DISTRICT OF NEVADA

11 ***

12 US BANK NATIONAL ASSOCIATION, AS)
 TRUSTEE FOR THE SPECIALTY)
 13 UNDERWRITING AND RESIDENTIAL)
 FINANCE TRUST AND MORTGAGE LOAN)
 14 ASSET-BACKED CERTIFICATES SERIES)
 2006-BC4,)

Case No. 3:16-cv-00501-RCJ-WGC

15 Plaintiff,)
 16)

17 vs.)

18 WOODLAND VILLAGE; WESTLAND REAL)
 ESTATE DEVELOPMENT AND)
 19 INVESTMENTS; THUNDER PROPERTIES,)
 INC.; AND PHIL FRINK & ASSOCIATES,)
 INC.,)

20 Defendants.)
 21)

22 **THUNDER PROPERTIES INC.'S RESPONSES TO PLAINTIFF'S**

23 **FIRST SET OF REQUESTS FOR ADMISSIONS**

24 COMES NOW, Defendant, THUNDER PROPERTIES, INC., by and through its
 25 attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby responds to Plaintiff's
 26 First Set of Requests for Admissions to said Defendant, stating as follows:
 27
 28

not reasonably calculated to lead to the discovery of relevant, admissible evidence. Without waiving said objections, Responding Party states as follows: Admit.

REQUEST FOR ADMISSION NO. 27:

Admit you have not paid all taxes, HOA assessments, and utility bills due on the PROPERTY.

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Objection. This Request is overly broad, vague, ambiguous and confusing to the extent that Responding Party is unable to provide an intelligent response. Furthermore, this Request is not reasonably calculated to lead to the discovery of relevant, admissible evidence. Without waiving said objections, Responding Party states as follows: After reasonable inquiry Responding Party is without sufficient knowledge to either admit or deny this Request.

REQUEST FOR ADMISSION NO. 28:

Admit you have not maintained an active homeowners' insurance or property insurance policy covering the PROPERTY.

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Objection. This Request is overly broad, vague, ambiguous and confusing to the extent that Responding Party is unable to provide an intelligent response. Furthermore, this Request is not reasonably calculated to lead to the discovery of relevant, admissible evidence. Without waiving said objections, Responding Party states as follows: Admit.

DATED this 10th day of January, 2017.

ROGER P. CROTEAU & ASSOCIATES, LTD.

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*Attorneys for Plaintiff US Bank National
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Underwriting and Residential Finance Trust
Mortgage Loan Asset-Backed Certificates
Series 2006-BC4*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

US BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR THE SPECIALTY
UNDERWRITING AND RESIDENTIAL
FINANCE TRUST MORTGAGE LOAN
ASSET-BACKED CERTIFICATES SERIES
2006-BC4,

Plaintiff,

vs.

WOODLAND VILLAGE HOMEOWNERS
ASSOCIATION; WESTLAND REAL ESTATE
DEVELOPMENT AND INVESTMENTS;
THUNDER PROPERTIES, INC.; AND PHIL
FRINK & ASSOCIATES, INC.,

Defendants.

Case No.: 3:16-cv-00501-RCJ-WGC

**U.S. BANK NATIONAL ASSOCIATION'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Plaintiff US Bank National Association, as Trustee for the Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates Series 2006-BC4 (**U.S. Bank**) moves for summary judgment on its first cause of action against defendant Thunder Properties Inc. (**Thunder**).

{41154601;1}

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

This case is a dispute over the effect of an HOA foreclosure sale. Plaintiff U.S. Bank claims its deed of trust survived the sale. Defendant Thunder claims its predecessor, the HOA, purchased the property free and clear of U.S. Bank's interest.

The Court should grant summary judgment in favor of U.S. Bank because the HOA's foreclosure could not extinguish U.S. Bank's deed of trust. The foreclosure was void because, as the Ninth Circuit has recognized, it was conducted under the authority of an unconstitutional statute. Further, the foreclosure was commercially unreasonable. The HOA publicly promised that the deed of trust would survive the sale, thereby discouraging potential bidders and allowing the HOA to purchase the property for less than 5% of its fair market value.

Thunder has argued that U.S. Bank may no longer object to the foreclosure sale because U.S. Bank filed this suit more than five years after the sale was held. (ECF No. 39 at 6–8.) But Thunder's argument misapplies the relevant statutes of limitation. NRS 11.070 and 11.080, the statutes on which Thunder relies, do not apply to suits by lienholders or to the claims asserted in this case. Even if they did apply, they did not begin to run on foreclosure, and they place requirements on Thunder that Thunder cannot satisfy.

U.S. Bank's deed of trust survived the foreclosure sale, and its suit is timely. It is entitled to summary judgment.

II. STATEMENT OF UNDISPUTED FACTS**A. Property History**

On May 26, 2006, Bryan Rodriguez and Michelle Rodriguez (the **borrowers**) purchased a home located at 17655 Little Peak Court, Cold Springs, Nevada 89508 (the **property**). The borrowers financed their purchase by way of a loan in the amount of \$212,672.00, secured by a deed of trust (the **senior deed of trust**) recorded May 30, 2006. A true and correct copy of the senior deed of trust is attached to this motion as **Exhibit A**.

The senior deed of trust was assigned first to National City Bank of Indiana and then to U.S.

1 Bank. These assignments were publicly recorded, and copies of the recorded assignments are
2 attached as **Exhibit B** and **Exhibit C**.

3 The property is subject to the Covenants, Conditions, and Restrictions (the **CC&Rs**) of
4 Woodland Village Homeowners Association (**Woodland**). The CC&Rs include the following
5 provision:

6 9.4 Breach of Covenants. A breach by an Owner of any of the
7 provisions of this Declaration, shall not defeat or render invalid the
8 lien of any Deed of Trust made in good faith and for value as to the
Village or any portion thereof

9 A copy of the CC&Rs is attached as **Exhibit D**.

10 **B. HOA Foreclosure History**

11 On February 17, 2010, Woodland, through its agent Gayle A. Kern Ltd. (**Kern**), recorded a
12 notice of delinquent assessment and claim of lien. A true and correct copy of the notice of lien is
13 attached as **Exhibit E**. On April 26, 2010, Woodland's new agent Phil Frink & Associates (**Frink**)
14 recorded a notice of default and election to sell under homeowners association lien in order to satisfy
15 the delinquent assessment lien. A true and correct copy of the notice of default is attached as **Exhibit**
16 **F**. On December 20, 2010, Woodland's agent Frink recorded a notice of homeowners association
17 sale. The foreclosure sale was scheduled for February 10, 2011. A copy of the notice of sale is
18 attached as **Exhibit G**.

19 Woodland, through Frink, foreclosed on the property and recorded a foreclosure deed on or
20 about February 10, 2011. A true and correct copy of the foreclosure deed is attached as **Exhibit H**.
21 Frink wrote in the foreclosure deed that Woodland bought the property for \$5,562.25. At the time of
22 the foreclosure sale, the property had a fair market value of \$119,000.00. (**Exhibit I**, Declaration of
23 Matthew Lubawy, at LUBAWY000003).

24 On April 30, 2013, Woodland transferred its interest in the property to Westland Real Estate
25 Development and Investments (**Westland**) via quitclaim deed. A true and correct copy of the
26 quitclaim deed is attached as **Exhibit J**. On August 26, 2013, Westland transferred its interest in the
27
28

property to Thunder via quitclaim deed. A true and correct copy of the quitclaim deed is attached as
Exhibit K.

III. Request for Judicial Notice

U.S. Bank requests the court take judicial notice of the following pursuant to Federal Rule of Evidence 201:

1. **Exhibits A through H, J, and K.** These are publicly recorded documents concerning the property's title history or governing the common interest community where the property is located. *Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986).

IV. LEGAL STANDARD

Summary judgment should be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "Summary judgment is inappropriate if reasonable jurors, drawing all inferences in favor of the nonmoving party, could return a verdict in the nonmoving party's favor." *Diaz v. Eagle Produce Ltd. P'ship*, 521 F.3d 1201, 1207 (9th Cir. 2008) (citing *United States v. Shumway*, 199 F.3d 1093, 1103–04 (9th Cir. 1999)).

V. ARGUMENT

A. The Statute of Limitations Has Not Run

Thunder's motion to dismiss argues that U.S. Bank may no longer object to the foreclosure sale because U.S. Bank filed this suit more than five years after the sale was held. (ECF No. 39 at 6–8.) In order to win summary judgment on this issue, U.S. Bank must show that Thunder has failed to produce evidence from which a reasonable jury could find that the statute of limitations had run when U.S. Bank filed its lawsuit. U.S. Bank can meet this burden, for three reasons.

First, the statutes Thunder relies are irrelevant. As explained in U.S. Bank's opposition to Thunder's motion, NRS 11.070 and 11.080 do not apply to suits by lienholders. U.S. Bank incorporates the relevant portions of its opposition brief into this motion. (See ECF No. 40 at 2–3.)

Second, for the reasons explained in U.S. Bank's opposition brief, NRS 11.070 and 11.080 do not begin running at foreclosure, but when a party or its predecessor loses possession of the property.

(See ECF No. 40 at 4–5, which U.S. Bank incorporates herein by reference.) Thunder has presented no evidence whatsoever of the date on which U.S. Bank's predecessors in interest—the borrowers Bryan and Michelle Rodriguez—lost possession of the property. Because the record contains no evidence on this issue, Thunder has failed to meet the burden of production for its affirmative defense. *Cf. Hubbard v. State*, 877 P.2d 519, 677 (Nev. 1994) ("We conclude that the statute of limitations is a non-jurisdictional *affirmative defense* that must be asserted by the defendant or else it is waived." (emphasis added)). Because of the lack of evidence, no reasonable jury could find for Thunder on this point.

Third, as explained in U.S. Bank's opposition brief, Thunder may not avail itself of NRS 11.070 and 11.080 unless it satisfies the requirements of Nevada's law of adverse possession. (See ECF No. 40 at 5–6, which U.S. Bank incorporates herein by reference.) Those requirements include five years of possession that is actual, open and notorious, hostile under an exclusive claim of right, continuous, and uninterrupted, as well as payment of all taxes assessed against the property. *See Nev. Rev. Stat. 11.150* (continuous possession; payment of taxes); *Howard v. Wright*, 143 P. 1184, 1186 (Nev. 1914) (other requirements of adverse possession).

No jury could find those requirements satisfied because Thunder has not produced evidence to support them. Thunder has produced no evidence that the property was inhabited continuously for five years before U.S. Bank filed suit. Thunder's own records indicate it paid no tax on the property before 2015. (**Exhibit L**, Thunder's Financial Records, at 3.) Finally, Thunder cannot produce evidence that its possession was hostile to U.S. Bank's interest, because U.S. Bank and the previous beneficiaries of the deed of trust have never claimed a competing right to possess the property—merely a right, at U.S. Bank's discretion, to foreclose and divest the record owner of title. Thunder's possession has never contradicted U.S. Bank's interest, so Thunder cannot extinguish U.S. Bank's interest through possession. *See Wilfon v. Cyril Hampel 1985 Trust*, 781 P.2d 769, 770–71 (Nev. 1989) (in a prescriptive easement case, hostility requirement failed because claimant's physical use of the property was consistent with other party's claimed interest).

Thunder has failed to produce evidence from which a reasonable jury could find that the statute of limitations had run when U.S. Bank filed its lawsuit. U.S. Bank is entitled to summary judgment on this issue.

B. Woodland's Foreclosure Is Void under *Bourne Valley*

Thunder's claim to the property depends on the validity of Woodland's foreclosure. The validity of Woodland's foreclosure depends on the statute that authorized it. And the statute that authorized Woodland's sale has been ruled facially unconstitutional by the Ninth Circuit. *Bourne Valley Court Trust v. Wells Fargo Bank, NA*, 832 F.3d 1154, 1160 ("Nevada Revised Statutes section 116.3116's 'opt-in' notice scheme facially violated mortgage lenders' constitutional due process rights.").

Foreclosure sales under NRS chapter 116 involve state action, so they must provide the minimum notice required by the Due Process Clause. *Id.* at 1159–60. But before its amendment in 2015, NRS chapter 116 did not require notice to lienholders before a sale unless the lienholders had requested notice. *Id.* at 1159. This "opt-in" notice scheme did not satisfy the minimum requirements of due process. *Id.* at 1158. Because NRS chapter 116 purported to extinguish lienholders' interests without constitutionally adequate notice, it was facially unconstitutional. *Id.* at 1160.

"An unconstitutional law is void, and is as no law." *Journigan v. Duffy*, 552 F.2d 283, 289 (9th Cir. 1977), quoting *Ex parte Siebold*, 100 U.S. 371, 376–77 (1879). In *Journigan*, a criminal case, the facial unconstitutionality of the law "[went] to the very authority of the state to hale [the defendant] into court." *Id.* In this case, NRS chapter 116's facial unconstitutionality goes to the very authority of the HOA to extinguish liens through foreclosure.

To argue that U.S. Bank had actual notice of the foreclosure is to miss the point. In order to hold a statute facially unconstitutional, a court must conclude "that no set of circumstances exists under which the [statute] would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). In holding NRS chapter 116 facially unconstitutional, that is precisely what the Ninth Circuit held: because NRS chapter 116 did not require notice to all lienholders, it could not constitutionally

1 extinguish any lienholder's interest—even if the lienholder, like the lienholder in *Bourne Valley*, fails
2 to "present evidence that it did not receive notice." *Bourne Valley*, 832 F.3d at 1157.

3 Because NRS chapter 116 was unconstitutional, it could not authorize the HOA to extinguish
4 U.S. Bank's deed of trust. The deed of trust survived. *See Las Vegas Dev. Group v. Steven*, No. 2:15-
5 cv-01128-RCJ-CWH, 2016 WL 7115989, at *3 (D. Nev. Dec. 6, 2016) ("The *Bourne Valley* ruling
6 is enough to settle the quiet title and declaratory judgment claims in favor of [the bank] as a matter
7 of law as to the HOA's foreclosure."); *Bank of New York Mellon*, No. 3:16-cv-00436-RCJ-WGC,
8 2016 WL 7116010, at *3 (D. Nev. Dec. 6, 2016) (same).

9 C. The Sale Was Commercially Unreasonable

10 1. The mortgagee protection clause led to a grossly inadequate sales price.

11 Under Nevada law, when "fraud, unfairness, or oppression" leads to a "an inadequate price,"
12 the foreclosure may be "set aside."¹ *Shadow Wood HOA v. N.Y. Community Bancorp*, 366 P.3d
13 1105, 1112 (Nev. 2016). As indicated by the Restatement relied upon by the Nevada Supreme Court
14 in *Shadow Wood*, 366 P.3d at 1112-1113, "[w]hile gross inadequacy cannot be precisely defined in
15 terms of a specific percentage of fair market value, generally a court is **warranted in setting aside a**
16 **sale where the price is less than 20 percent of the fair market value[.]**" *Id.* (quoting Restatement
17 § 8.3 cmt. b (1997) (emphasis added)).

18 In this case, the HOA was able to acquire the property for itself for \$5,562.25, a mere 4.7%
19 of its \$119,000 fair market value. (Exhibit H; Exhibit I at LUBAWY000003.) "[I]f there be great
20 inadequacy, slight circumstances of unfairness in the conduct of the party benefitted by the sale will
21 be sufficient to justify setting it aside. It is difficult to formulate any rule more definite than this, and
22 each case must stand on its own particular facts." *Ballentyne v. Smith*, 205 U.S. 285, 290 (1907).
23 U.S. Bank has clearly established the lack of any dispute as to the grossly inadequate sales price.

24 Any further requirement to show fraud or unfairness is likewise easily satisfied. The
25 foreclosing HOA promised through its CC&Rs that "[a] breach by an Owner of *any* of the provisions
26

27 ¹ U.S. Bank maintains that a foreclosure price below 20% of fair market value is conclusive proof of
28 "fraud, unfairness, or oppression."

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of this Declaration,"—for instance, a breach of the covenant to pay monthly assessments—"shall not defeat or render invalid the lien of any Deed of Trust made in good faith and for value." (Exhibit D at 49 (emphasis added).) This publicly recorded promise warned potential bidders that any title they acquired through the HOA's foreclosure would be subject to the senior deed of trust.

In 2014, the Nevada Supreme Court held that, under NRS 116.1104, mortgagee protection clauses like Woodland's do not prevent HOA foreclosures from extinguishing senior deeds of trust. *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408, 419 (Nev. 2014). But when Woodland held the foreclosure sale at issue in this case, the *SFR Investment* decision was still three and a half years in the future. The legal effect of mortgagee protection clauses was uncertain, and at least some members of the Nevada real estate community must have believed they were effective. If they did not, then there would have been no reason for Woodland and other HOAs to include mortgagee protection clauses in their CC&Rs ten years after NRS 116.1104 was adopted.

The risk that the senior deed of trust would survive the sale, a risk exacerbated by the HOA's public promise that it would in fact survive the sale, discouraged bidders as a matter of law. The HOA's false promise constitutes fraud and unfairness, from which the HOA itself benefitted by acquiring the property for a tiny fraction of its worth. *See ZYZZX2 v. Dizon*, No. 13- cv-1307 JCM (PAL), 2016 WL 1181666, at *5 (D. Nev. Mar. 25, 2016) (grossly inadequate sale price, coupled with the HOA's representations in its recorded CC&R's that its sale would not impair the rights of the beneficiary under the senior deed of trust, warranted setting aside the sale). Under Nevada law, the sale should be set aside.

2. *Thunder and its predecessors were not bona fide purchasers.*

Thunder may argue that it should be allowed to benefit from the HOA's grossly inadequate sale because it and its predecessors were unaware of any specific defect in the sale. U.S. Bank believes such specific notice is unnecessary. To qualify as a *bona fide* purchaser, a purchaser must show that it purchased the property (1) for value, and (2) without notice of a competing or superior interest in the same property. *See Berge v. Fredericks*, 591 P.2d 246, 247 (Nev. 1979). Thunder cannot be a bona fide purchaser because it had notice of U.S. Bank's competing claim.

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But even if Nevada law required notice of a specific sale defect, Thunder had such notice. Thunder and its predecessors had record notice of the HOA's mortgagee protection clause, which was publicly recorded long before the foreclosure sale. (*Compare* Exhibit D with Exhibit H.) Further, Thunder had record notice of the low foreclosure price. (*See* Exhibit H.) Thunder also had an established business practice of checking online estimates of properties' value before buying them. (**Exhibit M**, Deposition of Thunder's 30(b)(6) Representative, at 13–16.) And from the estimated value of the property and the publicly recorded foreclosure deed, Thunder could easily have determined that the sale was unfair and the foreclosure price was grossly inadequate.

If Thunder failed to notice these problems with the sale, it cannot blame inexperience or naiveté. Thunder's owner and operator, Jon Jentz, has been a realtor for nearly fifty years. (*Id.* at 7.) He has bought Nevada foreclosure properties through no fewer than three different investment vehicles: Thunder, Airmotive Investments, and Las Vegas Development Group. (*Id.* at 11–12.) When Thunder bought HOA foreclosure properties, Mr. Jentz was fully aware of the risks. He knew his title would be subordinate to the bank if the bank had tendered the superpriority amount of the HOA's lien (*id.* at 20)—but he did not inquire about whether tender occurred in this case (*id.* at 23). He knew purchasing HOA foreclosure properties invited lawsuits from lenders defending their deeds of trust, yet he did not bother to investigate whether there was a deed of trust on this property before buying it. (*Id.* at 19, 23.)

When asked whether he expected litigation resulting from his purchase of the property, Mr. Jentz acknowledged, "Probably." (*Id.* at 28.) When asked whether expected litigation affected the price Thunder paid for properties, he admitted, "You know it probably did." (*Id.* at 18.) Because of the expected litigation, Thunder was able to acquire its interest in the property for a mere \$7,000. (**Exhibit N**, Thunder's Answers to Interrogatories, at 6.)

Thunder did not expect good title to the property, and it did not pay for good title to the property. When it bought the property, it knew it was buying a lawsuit. Thunder was a risk-taking speculator, not a bona fide purchaser.

//

D. *SFR Investments* Should Not be Applied Retroactively.

When *SFR Investments* was decided on September 18, 2014, it displaced more than twenty years of practice regarding the priority between first deeds of trust and HOA assessment liens. The decision should not be applied retroactively to permit extinguishment of the senior deed of trust. In *Chevron Oil Co. v. Huson*, 404 U.S. 97, 106-07 (1971), the United States Supreme Court expanded the application of the doctrine of non-retroactivity outside the criminal area, in both constitutional and non-constitutional cases. The Court noted:

In our cases dealing with the non-retroactivity question, we have generally considered three separate factors. First, the decision to be applied non-retroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, (citation omitted) or by deciding an issue of first impression whose resolution was not clearly foreshadowed (citation omitted). Second, it has been stressed that "we must... weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation." (Citation omitted.) Finally, we have weighed the inequity imposed by retroactive application, for "[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of non-retroactivity." (Citation omitted.)

Id. at 107.

The first factor of *Chevron Oil Co.* is pertinent for this analysis. *SFR Investments* was not clearly foreshadowed. The *SFR Investments* decision recognized, "Nevada's state and federal district courts are divided on whether NRS 116.3116 establishes a true priority lien." *SFR Investments*, 334 P.3d at 412. *SFR Investments* should be applied only prospectively, because it establishes a new principle of law, deciding an issue of first impression not clearly foreshadowed and overruling clear past precedent on which litigants may have relied.

In another similar case, this Court held retroactive application of *SFR Investments* was improper. In *Christina Trust v. S&P Homes*, No. 2:15-cv-01534-RCJ-VCF, 2015 WL 6962860 (D. Nev. Nov. 9, 2015), this court explained:

It is not disputed that both the state and federal trial courts were in sharp disagreement as to whether an HOA Sale under NRS 116.3116 extinguished a prior-recorded first mortgage, and that the practice in the real estate industry prior to the announcement of the Nevada Supreme Court's controversial decision was to treat such sale as not extinguishing first mortgages . . . At best, the [*SFR Investments* decision] decided an issue of first impression whose resolution was not clearly foreshadowed.

1 *Id.* at *4. This court also held retroactive application of *SFR Investments* did not further the purpose
 2 of the HOA super-priority rule and the extinguishment of a first deed of trust through an HOA sale
 3 "where the extinguishment rule was not only unclear but presumed within the relevant industry at the
 4 time of the foreclosure sale to be to the contrary, would be an extremely, not just a substantially,
 5 inequitable result." *Id.* at *5.² This court should do the same again here.

6 **VI. CONCLUSION**

7 Thunder's claim to the property depends on a foreclosure sale that was both unconstitutional
 8 and commercially unreasonable. Thunder is not a bona fide purchaser who can appeal to equity or
 9 the recording act to protect it from U.S. Bank's superior interest. And Thunder's statute of limitations
 10 defense fails because it relies on inapplicable statutes and because Thunder has not met its burden of
 11 production.

12 U.S. Bank is entitled to summary judgment.

13 DATED this 19th day of April, 2017.

14 **AKERMAN LLP**

15 */s/ Vatana Lay*

16 MELANIE D. MORGAN, ESQ.

17 Nevada Bar No. 8215

18 VATANA LAY, ESQ.

19 Nevada Bar No. 12993

20 1160 Town Center Drive, Suite 330

21 Las Vegas, Nevada 89144

22 *Attorneys for Plaintiff US Bank National Association,*
 23 *as Trustee for the Specialty Underwriting and*
 24 *Residential Finance Trust Mortgage Loan Asset-*
 25 *Backed Certificates Series 2006-BC4*

26 _____
 27 ² The court also noted *Chevron Oil Co.* "cited ten of its own cases dating as far back as the Civil
 28 War for the rule limiting the retroactivity of 'judicial decisions' not only in criminal cases but also 'in
 cases of nonconstitutional, noncriminal state law.'" *Id.* at *4.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 19th day of April, 2017, and pursuant to Federal Rule of Civil Procedure 5, I filed and served a true and correct copy of the foregoing **U.S. BANK NATIONAL ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT** via the Court's CM/ECF system on the following:

Roger P. Croteau, Esq.
Timothy Rhoda, Esq.
ROGER P. CROTEAU & ASSOCIATES, LTD.
9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
*Attorneys for Thunder Properties Inc. and
Westland Real Estate Development and
Investments*

/s/ Chelsie Willey

An employee of AKERMAN LLP

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**INDEX OF EXHIBITS TO U.S. BANK NATIONAL ASSOCIATION'S
MOTION FOR SUMMARY JUDGMENT
Case No.: 3:16-cv-00501-RCJ-WGC**

Exhibit A	Deed of Trust Recorded May 30, 2006
Exhibit B	Corporate Assignment of Deed of Trust Recorded September 29, 2008
Exhibit C	Corporate Assignment of Deed of Trust Recorded July 24, 2009
Exhibit D	CC&R's
Exhibit E	Notice of Delinquent Assessment and Claim of Lien Recorded February 17, 2010
Exhibit F	Notice of Default and Election to Sell Recorded April 26, 2010
Exhibit G	Notice of Homeowners Association Sale Recorded December 20, 2010
Exhibit H	Deed in Foreclosure of Assessment Lien Recorded February 10, 2011
Exhibit I	Declaration of Matthew Lubawy
Exhibit J	Quitclaim Deed to Westland Real Estate Recorded April 30, 2013
Exhibit K	Quitclaim Deed to Thunder Properties Recorded August 26, 2013
Exhibit L	Thunder Properties Financial Records
Exhibit M	Deposition of Jon Jentz
Exhibit N	Thunder Properties, Inc.'s Responses to Plaintiff's First Set of Interrogatories

EXHIBIT A

**Deed of Trust Recorded May 30,
2006**

P.O. Box 8800
Dayton, OH 45401-8800

Prepared By: ANN NICKELS
National City

[Space Above This Line For Recording Data]

SH

DEED OF TRUST

DEFINITIONS

Borrower is the trustor under this Security Instrument.
(C) "Lender" is INTEGRITY 1ST FINANCIAL, LLC

under the terms of this Security Instrument,
AMERICAN TITLE COMPANY
ETZKE LANE #100 RENO NV 89511

(E) "Note" means the promissory note
The Note states that Borrower

TWO HUNDRED TWO THOUSAND & 00/100 Dollars
(U.S. \$ 212,672.00) plus interest. Borrower has promised to pay this debt in regular Periodic

☐ Balloon Rider ☐ Planned Unit Development Rider ☐ 1st Priority Rider
☐ VA Rider ☐ Biweekly Payment Rider ☐ Other(s) [specify]

(I) "Local Statutes, Regulations, and Ordinances" means all local statutes, regulations, and ordinances, as well as all applicable final, non-appellate judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other

any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the property; (ii) maintenance, repair, or replacement of the property; (iii) conveyance in lieu of condemnation; or (iv) any other expense or liability.

payment of, or default on, the

(K) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the

[REDACTED]

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

TRANSFER OF RIGHTS IN THE PROPERTY

[REDACTED] all renewals, extensions and amendments and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trust, in trust, with power of sale, the following described property located in the

[REDACTED]

[REDACTED]

be secured by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the

[REDACTED] are hereby conveyed and has the right to grant and convey [REDACTED], except for encumbrances of record. Borrower warrants against all claims and demands, subject to any encumbrances.

THIS SECURITY INSTRUMENT contains uniform covenants for national use and non-uniform provisions adopted by institution to constitute a uniform security instrument covering real

[REDACTED]

payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes during the term of this Security Instrument, as the phrase "earnings and payments" appearing in this Security Instrument, be deemed to include the obligation of Borrower to pay Escrow Items directly, pursuant to a separate agreement, or to pay the amount due for an Escrow Item, Lender may exercise its right to demand that Borrower shall then be obligated under Section 9 to repay to Lender any and all amounts due to Lender as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall

be deemed to have agreed to pay to Lender the amount of any such payment within the time period specified in the notice. Lender shall not be required to pay to Borrower any interest or earnings on the Funds, but Lender shall, without charge, give to Borrower, without charge, an annual accounting of the Funds as required by RESPA. If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the shortage of Funds in accordance with RESPA. Lender shall not be required to pay to Borrower any interest or earnings on the Funds, but Lender shall, without charge, give to Borrower, without charge, an annual accounting of the Funds as required by RESPA. If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the shortage of Funds in accordance with RESPA.

ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any, to the extent that these items are Escrow Items to be paid from the Funds provided in Section 3. Borrower shall promptly defend and pay from the Funds provided in Section 3, any and all claims, damages, costs, and expenses, including reasonable attorney's fees, incurred by Lender in connection with the enforcement of the lien, but only so long as Borrower has not been found liable for the claim, damages, costs, and expenses, including reasonable attorney's fees, incurred by Lender in connection with the enforcement of the lien while these proceedings are pending, or the proceedings are concluded, or (c) secure from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, lightning, explosion, flood, wind, theft, vandalism, and any other hazards including, but not limited to, perils requiring but not limited to, fire insurance. This insurance shall be maintained for the periods that Lender requires. What Lender requires during the term of the Loan, subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require

proceeds therefrom, including a property in the property, or the consumable in the property, signifying that, or liability and might provide position on future conditions. They were not intended to effect. Borrower acknowledges that the cost of the insurance coverage is required to significantly exceed the cost of insurance that Borrower could have obtained, but amounts obtained by Lender under this Section 5 shall become additional debt of Borrower.

[illegible]

carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. If the carrier does not offer to settle the claim, then Lender may, at its option, either (a) pay the amount of the claim to the insured under the insurance policy, or (b) any other of Borrower's rights (other than the right to recover the amount of the claim) under all insurance policies covering the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the

Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further damage to the Property. If insurance proceeds are paid in connection with damage to, or the destruction of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has not made payment for the repair or restoration. Lender may disburse proceeds for the repairs and restoration in a lump sum or in a series of payments as the work is completed. If the insurance or a claimant does not agree to the amount to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

(a) Borrower fails to perform the obligations and covenants contained in this Security Instrument, (b) there is a legal proceeding that might result in the loss of the Property and/or rights under this Security Instrument (such as a proceeding for condemnation, for condemnation or forfeiture, for enforcement of a lien which may result in the loss of the Property or to enforce laws or regulations), or (c) Borrower has been asked to insure the Property, then Borrower shall do and pay for whatever is reasonable or appropriate to protect, preserve, defend, or enforce the rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease.

[illegible]

Any such agreement will not affect the accuracy with respect to the validity of any other terms of the Letter of Understanding with respect to the contract. The United States Government hereby certifies that the terms of the Letter of Understanding will be used in the same manner as the terms of the Letter of Understanding.

As used in this Security Instrument, (a) words of the masculine gender shall mean and include corresponding neuter words; (b) words of the singular gender shall mean and include the plural and vice versa; and (c) words importing the singular shall include any action.

President of the Synagogue is a HONORARY MEMBER in good standing. Accepted as an Honorary Member, "on the basis of his demonstrated ability in 1981-1982, including his role in the development and implementation of the 1982-1983 annual budget, and his demonstrated leadership in the Jewish Community Center of the Greater Los Angeles Area."

1. *Construction of the instrument*—The study instrument was constructed based on the findings of the literature review and the results of the focus group discussions. The instrument was constructed based on the findings of the literature review and the results of the focus group discussions. The instrument was constructed based on the findings of the literature review and the results of the focus group discussions.

20. Sale of Note; Change of Lender. Lender may sell or assign all or a partial interest in the Note (together with this Security Agreement) to any third party without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments.

[illegible]

judicial action (as either an
pursuant to this Security
the other party has breached any provision of, or
such Borrower or Lender has notified the other party
compliance with the requirements of Section 15) of such alleged breach and afforded the other party herein a

hazardous materials, asbestos, lead, and radioactive materials; (b)
the Property is located that relate
includes any response action,
remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition"
means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous

action, by any governmental or regulatory agency, or private party, including the Borrower and any

substance, and (e) any condition caused by the p
adversely affects the value of the Property. If Bor
any governmental or regulatory authority, or any private party, that any removal or other remediation or any



Witnesses:

BRYAN RODRIGUEZ (Seal)
-Borrower



-Borrower (Seal) _____ (Seal)
-Borrower



Borrower Borrower





This instrument was ack  by
Bryan L. Rodriguez





Exhibit "A"



PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 25th day of

The Property includes, together with other such

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

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents, including but not limited to the (i) Declaration; (ii) articles of incorporation; and (iii) any bylaws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

[REDACTED] maintains, with a generally satisfactory to Lender and which provides insurance coverage in the amounts (including

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

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any [REDACTED] paid to Lender, Lender [REDACTED] instrument, whether or not [REDACTED] when the proceeds are paid to Lender.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable

[REDACTED] Lender's prior written consent, either partition or subdivide the Property or consent to: (i) [REDACTED] termination of the PUD, except for abandonment or termination [REDACTED] of substantial destruction by fire or other casualty or in the case [REDACTED] of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" [REDACTED] benefit of Lender; (iii) [REDACTED] termination of professional self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public [REDACTED]

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

-Borrower

-Borrower

 -7R (0411)

Page 3 of 3

Form 3150 1/01

This Adjustable Rate Rider is made this 25th day of May 2006 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note as amended and supplemented by the Interest Only Payment Period Note Addendum to [REDACTED] by the "Note") to **INTEGRITY 1ST FINANCIAL, LLC**

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

[REDACTED] **CHANGE AT ANY ONE PAY.**

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

"Change Date,"

[REDACTED] Date, my interest rate will be based on an Index. The "Index" is the six month interest rate (LIBOR) which is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market, as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

If the Index is no longer available, the Note Holder will determine an index based upon comparable

(ii) **Principal and Interest Payments** Due beginning with the first Principal and Interest Due Date. For monthly payments due beginning with the first Principal and Interest Due Date, the Note Holder will determine the amount of the payment by multiplying the amount of the principal due at the first Change Date by the interest rate in effect at the first Change Date and adding the amount of the principal due at the first Change Date to the result. The result will be the new amount of my monthly payment.

(D) **Limits on Interest Rate Changes.** The interest rate I am required to pay at the first Change Date will not be greater than 11.000 % of

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effect be given and also the title and tel the notice.

B. TRANSFER OF THE LOAN TO A NEW BORROWER



Section 18 of the Security Instrument is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18:

1. **Transfer of the Property.** The transfer of the property to a new borrower shall be subject to the approval of the Lender. The Lender shall have the right to require the transferor to provide a copy of the deed to the property to the Lender. The Lender shall have the right to require the transferor to provide a copy of the deed to the property to the Lender. The Lender shall have the right to require the transferor to provide a copy of the deed to the property to the Lender.

agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and



	(Seal)		(Seal)
<u>BRYAN RODRIGUEZ</u>	Borrower	<u>MICHELLE RODRIGUEZ</u>	Borrower
_____	(Seal)	_____	(Seal)
	Borrower		Borrower



6 Month LIBOR Interest Only Rider - Mediate Form
120 Interest Only Payments

MST:JRS

Page 3 of 3

(01/05)

EXHIBIT B

Corporate Assignment of Deed of Trust Recorded September 29, 2008



Old Loan: [REDACTED] 34107
APN / Tax ID: 536-412-26

This area for recording under use

Cornor

of Trust



complete legal description.

therein described or referred to, the money due and to become due thereon with
interest, and all rights accrued on

Gregory T. Emmons, LLC



[REDACTED]

On the 20th day of June, 2013, before me, Hope M. Harvey, Notary Public

Personally appeared Renee Durham, who is the Supervisor of said corporation

Personally known to me --CHH

Proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their



[REDACTED]

EXHIBIT C

Corporate Assignment of Deed of Trust Recorded July 24, 2009

Page 1 of 2

APN / Tax ID: 556-412-26

This area for recording office use

Corporate Assignment of Deed of Trust**Mortgage Loan Asset-Backed Certificates Series 2006-BC4****Residential Finance Trust**

of Woodford Village, Trust No. 447, filed in the office of the county
and Nevada State Public Administrator on 11/11/06 of official records, and
related to the 10,2006 is recorded as 3214080 of official records.

herein described or referred to, the money due and to become due thereon with
to accrue under this Deed of Trust.

behalf of which the person(s) acted, executed the instrument.

Edw. H. Bennett



EXHIBIT D

CC&R's



2444548
05/04/2009
1 of 85

WHEN RECORDED, MAIL TO:

Dave Davis, Esq.
Hale Lane Peek Dennison
Howard and Anderson
100 W. Liberty St., 10th Floor
Reno, Nevada 89501

99-18607 PC

**AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WOODLAND VILLAGE**

2444548
05/04/2008
58 of 65

Deed of Trust shall take the Lot free of any claims for unpaid assessments or Association charges against the encumbered Lot that accrue greater than six (6) months prior to the time such beneficiary so acquires ownership of the Lot; provided, however, after the foreclosure of any such Deed of Trust, such Lot shall remain subject to the Declaration; and the amount of all regular and special assessments, to the extent they relate to expenses incurred subsequent to such foreclosure sale, shall be assessed hereunder to the grantee or purchaser thereunder.

9.4 Breach of Covenants. A breach by an Owner of any of the provisions of this Declaration, shall not defeat or render invalid the lien of any Deed of Trust made in good faith and for value as to the Village or any portion thereof; provided, however, the provisions of this Declaration shall be binding upon the Owners whose title thereto is acquired under foreclosure, trustee's sale, or otherwise.

9.5 Notice to Eligible Mortgage Holders, Insurers and Guarantors. The holder of any First Deed of Trust shall be entitled to become an "Eligible Mortgage Holder" pursuant to the provisions of this Declaration and any insurer or guarantor of a First Deed of Trust shall be entitled to become an "Eligible Insurer" hereunder by notifying the Association of its name, address and the address of the Lot encumbered by the First Deed of Trust which it holds or insures in the manner provided in Section 11.5 below. Such notification shall be deemed to be a request with respect to such Lot for written notice from the Association of: (i) any default in the payment of Assessments which remains uncured for a period of sixty (60) days; (ii) any condemnation or casualty loss that affects a material portion of the Village or the Lot; (iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (iv) any proposed action described in Section 9.9 below. The Association shall give written notice to Eligible Mortgage Holders in accordance with the provisions of this Section 9.5 and in the manner prescribed in Section 11.5 below. Any holder of a First Deed of Trust encumbering any Lot or any portion of the Property who does not so request notice, shall not be deemed to be an Eligible Mortgage Holder under the terms of this Declaration. Unless and until notice is given to the Association as provided in this Declaration by a mortgage holder, insurer or guarantor, such mortgage holder, insurer or guarantor shall not be entitled to notice of default, nor to any right, distribution or notice pursuant to this Declaration.

9.6 Insurance Proceeds and Condemnation Awards. No provision of this Declaration or the Articles shall give an Owner, or any other party, priority over any rights of the holders of First Deeds of Trust in the case of a distribution to Owners of insurance proceeds or condemnation awards.

9.7 Appearance at Meetings. Because of its financial interest in the Village, any beneficiary of a First Deed of Trust may appear (but cannot vote) at meetings of the Members and the Board, and may draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or Assessments.

ARTICLE IX

9.1 Encumbrance of Lots Permitted. Any Owner may encumber such Owner's Lot with a Deed of Trust.

9.3 ***Non-Liability for Unpaid Assessments.*** Any beneficiary of a First Deed of Trust who acquires title to a Lot pursuant to the judicial or non-judicial foreclosure remedies provided in the Deed of Trust shall take the Lot free of any claims for unpaid assessments or Association charges against the encumbered Lot that accrue greater than six (6) months prior to the time such beneficiary so acquires ownership of the Lot; provided, however, after the foreclosure of any such Deed of Trust, such Lot shall remain subject to the Declaration; and the amount of all regular and special assessments, to the extent they relate to expenses incurred subsequent to such foreclosure sale, shall be assessed hereunder to the grantee or purchaser thereunder.

9.5 **Notice to Eligible Mortgage Holders, Insurers and Guarantors.** The holder of any First Deed of Trust shall be entitled to become an "Eligible Mortgage Holder" pursuant to the provisions of this Declaration and any insurer or guarantor of a First Deed of Trust shall be entitled to become an "Eligible Insurer" hereunder by notifying the Association of its name, address and the address of the Lot encumbered by the First Deed of Trust which it holds or insures in the manner provided in Section 12.5 below. Such notification shall be deemed to be a request with respect to such Lot for written notice from the Association of: (i) any default in the payment of Assessments which remains uncured for a period of sixty (60) days; (ii) any condemnation or casualty loss that affects a material portion of the Village or the Lot; (iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (iv) any proposed action described in Section 9.9 below. The Association shall give written notice to Eligible Mortgage Holders in accordance with the provisions of this Section 9.5 and in the manner prescribed in Section 12.5 below. Any holder of a First Deed of Trust encumbering any Lot or any portion of

Hale Lane Peek Dennison Howard and Anderson
Attorneys and Counsellors at Law
Reno, Nevada
(702) 327-1000

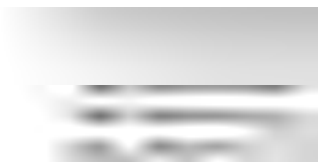
105

EXHIBIT E

Notice of Delinquent Assessment and Claim of Lien Recorded February 17, 2010



Page 1 of 3



by:

ite 200



HOMEOWNERS ASSOCIATION

I, the undersigned, hereby affirm that the attached document, including any
al security number of



Gavle A. Kern, Esq.



Gayle A. Kern, Esq.
Gayle A. Kern, Ltd.

000

pursuant to NRS 110.3110 for the services performed which were to be and were actually furnished, used and performed. The amount claimed by Association is claimed by Association against the following described property located in Washoe, State of Nevada, commonly known as 17655 Little Peak Court more particularly described as follows:

Lot 1150 as shown on the Map of WOODLAND VILLAGE PHASE 13, Tract No. 4457, filed in the office of the County Recorder of Washoe County, State of Nevada, on March 23, 2005 as

constitute a lien against the property and accruing late charges, fees, foreclosure fees, transfer charges, as provided in the COVENANTS, CONDITIONS AND RESTRICTIONS, recorded 5/4/2000, as Document No. 2444548 of Official Records of Washoe County, State of Nevada, and any supplements or amendments thereto.

upon said property and buildings and other improvements thereon, as above described, upon the land which the same is erected, and for the same as may be and for the costs of preparation and recording of this instrument, the whole of said property being for the proper use and occupancy of said buildings and other improvements

THIS INSTRUMENT BEING FOR THE PURPOSE OF RECORDING AS A FIRST MORTGAGE OF THE PROPERTY

DATED: February 16, 2010

Gayle A. Kern, Esq., Attorney

Body of Woodland Village

COUNTY OF WASHOE) ss.

This instrument was acknowledged before me on February 16, 2010
by Gayle A. Kern, Esq.

EXHIBIT F

Notice of Default and Election to Sell Recorded April 26, 2010

When recorded mail to:
Phil Frink & Associates, Inc.

5

**WARNING! IF [REDACTED] IT SPECIFIED IN
THIS NOTICE, [REDACTED] E, EVEN IF THE
AMOUNT IS IN DISPUTE!**

Pursuant to NRS 116.3116, Phil Frink & Associates, Inc., located at 1895 Plumas St., Ste 5,

The total due as of this date is \$2,649.94.

Pursuant to NRS 116.3316, the sale of the real property situate in the County of Washoe, State of Nevada and being more particularly described as follows:

Lot 1150 as shown on the Map of WOODLAND VILLAGE PHASE13, Tract No. 4457, filed in



Dated April 14, 2010

Phil Frink & Associates, Inc., as Agent for
Woodland Village Association



STATE OF NEVADA)
)ss
COUNTY OF WASHOE)

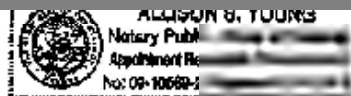


EXHIBIT G

Notice of Homeowners Association Sale Recorded December 20, 2010

When recorded return to:
Phil Frink & Associates, Inc.
1895 Plumas Street, Suite 5
Reno, NV 89509

ADK3-EEC-A10-08

AMOUNT IS IN DISPUTE, YOU COULD LOSE YOUR HOME, EVEN IF THE
DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL PHIL FRANK
AT 775-324-2567. IF YOU ARE INTERESTED IN A FORECLOSURE SE
829-9907 IMMEDIATELY.

[illegible]

OFFICIAL RECORDS, A
RECORDED MAY 16, 20

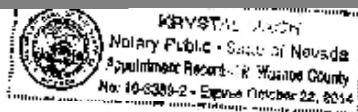
AMENDMENT
FFICIAL RECORDS.

for the purpose of satisfy
\$3,011.99, plus late charge
advances and costs of the Homeowners Association or it's Agent, under the terms of the

BY: Allison Young, Foreclosure Officer

DO NOT PUBLISH BELOW THIS LINE

NOTARY PUBLIC



Land Situate in the Reno Judicial Township
Publish Notice of Homeowners Association Sale in the Reno Gazette Journal
Three times on December 20, 2016; December 27, 2016; January 3, 2017.

EXHIBIT H

Deed in Foreclosure of Assessment Lien Recorded February 10, 2011

RPTT: \$24.60

When recorded mail to:
 Mail Tax Statements to:
 Woodland Village Association
 c/o Gayle A. Kern, Ltd.
 5421 Kietzke Lane, Ste 200

163 and 116.31164 did
 sell under foreclosure of the (Name of last mortgagee) (Name of Lender)
 Rodriguez and Michelle Rodriguez (Name of mortgagor) (Name of mortgagor)
 Document Number 3850376, of Official Records in Washoe County, said property and same
 having remained unpaid and the Grantor having recorded a Notice of Default and Election to Sell
 On 2011 the Deed of Trust (Mortgage) of Official Records of Washoe County of
 and the (Name of last mortgagee) (Name of Lender) (Name of mortgagor) (Name of mortgagor)
 and the (Name of last mortgagee) (Name of Lender) (Name of mortgagor) (Name of mortgagor)
 and the (Name of last mortgagee) (Name of Lender) (Name of mortgagor) (Name of mortgagor)

circumstances, without equity or right of redemption and real property located in the County of

13. TRACT NO. 4457.
 FILED IN THE OFFICE OF THE CLERK OF THE SUPERIOR COURT OF THE STATE OF NEVADA, ON MARCH 23, 2011, BY THE CLERK OF THE SUPERIOR COURT OF THE STATE OF NEVADA, AMENDED BY CERTIFICATE OF AMENDMENT RECORDED MAY 16, 2011, IN THE OFFICE OF THE CLERK OF THE SUPERIOR COURT OF THE STATE OF NEVADA, NO. 3214080 OF OFFICIAL RECORDS.



DATED: February 10, 2011

Phil Frink & Associates, Inc., as Agent for The
Managing Body of Woodland Village Association

Phil Frink



Kristina Mae
NOTARY PUBLIC



EXHIBIT I

Declaration of Matthew Lubawy

MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
VATANA LAY, ESQ.
Nevada Bar No. 12993
AKERMAN LLP
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: melanie.morgan@akerman.com
Email: vatana.lay@akerman.com

Attorneys for Plaintiff US Bank National Association, as Trustee for the Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates Series 2006-BC4

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

US BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR THE SPECIALTY
UNDERWRITING AND RESIDENTIAL
FINANCE TRUST MORTGAGE LOAN
ASSET-BACKED CERTIFICATES SERIES
2006-BC4,

Plaintiff,

vs.

WOODLAND VILLAGE HOMEOWNERS
ASSOCIATION; WESTLAND REAL ESTATE
DEVELOPMENT AND INVESTMENTS;
THUNDER PROPERTIES, INC.; AND PHIL
FRINK & ASSOCIATES, INC.,

Defendants.

Case No.: 3:16-cv-00501-RCJ-WGC

**DECLARATION OF MATTHEW J.
LUBAWY**

I, Matthew J. Lubawy, under penalty of perjury, declare as follows:

1. I am a 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.

AKERMAN LLP

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

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 *U.S. Bank National Association, as Trustee for the Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates Series 2006-BC4 v. Woodland Village Homeowners Association et al.* filed in the United States District Court, District of Nevada, Case No. 3:16-cv-00501-RCJ-WGC.

5. I am a licensed Nevada Appraiser and Senior Managing Director of Valbridge Property Advisors.

6. I possess a CVA designation from the National Association of Certified Valuers and Analysts and an MAI designation from the Appraisal Institute.

7. I have conducted a retroactive appraisal analysis of the property located at 17655 Little Peak Court, Cold Springs, Nevada 89508. 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.

8. 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.

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

10. 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 18 day of April, 2017.

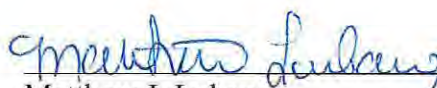

Matthew J. Lubawy

EXHIBIT 1

Appraisal Report

RESIDENTIAL APPRAISAL SUMMARY REPORT

File No.: 17-0003

SUBJECT	Property Address: 17655 Little Peak Ct		City: Reno		State: NV		Zip Code: 89508	
	County: Washoe		Legal Description: Woodland Village Phase 13, Lot 1150					
	Assessor's Parcel #: 556-412-26		Tax Year: 2011-12		R.E. Taxes: \$ 1,078.81		Special Assessments: \$ 0 known	
	Current Owner of Record: Bryan & Michelle Rodriguez *		Occupant: <input checked="" type="checkbox"/> Owner		<input type="checkbox"/> Tenant		<input type="checkbox"/> Vacant	
ASSIGNMENT	Project Type: <input type="checkbox"/> PUD <input type="checkbox"/> Condominium <input type="checkbox"/> Cooperative <input type="checkbox"/> Other (describe)		HOA: \$ Unknown		<input type="checkbox"/> per year		<input checked="" type="checkbox"/> per month	
	Market Area Name: Cold Springs		Map Reference: N/A		Census Tract: 26.13			
	The purpose of this appraisal is to develop an opinion of: <input type="checkbox"/> Market Value (as defined), or <input checked="" type="checkbox"/> other type of value (describe) Fair Market Value							
	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							
MARKET AREA DESCRIPTION	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)							
	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: Litigation * as of February 10, 2011							
	Intended User(s) (by name or type): Akerman, LLP							
SITE DESCRIPTION	Client: Akerman, LLP		Address: 1160 Town Center Dr, Ste. 330, Las Vegas, NV 89144					
	Appraiser: Tammy L. Howard		Address: 3034 S. Durango Drive, Suite 100, Las Vegas, NV 89117					
	Location: <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban <input type="checkbox"/> Rural		Predominant Occupancy: <input checked="" type="checkbox"/> Owner		One-Unit Housing		Present Land Use	
	Built up: <input type="checkbox"/> Over 75% <input checked="" type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%		<input type="checkbox"/> Tenant		PRICE (\$000)		AGE (yrs)	
DESCRIPTION OF THE IMPROVEMENTS	Growth rate: <input type="checkbox"/> Rapid <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Slow		<input type="checkbox"/> Vacant (0-5%)		25 Low New		One-Unit 50 %	
	Property values: <input type="checkbox"/> Increasing <input checked="" type="checkbox"/> Stable <input checked="" type="checkbox"/> Declining		<input checked="" type="checkbox"/> Vacant (>5%)		375 High 45		2-4 Unit %	
	Demand/supply: <input type="checkbox"/> Shortage <input checked="" type="checkbox"/> In Balance <input type="checkbox"/> Over Supply		Marketing time: <input checked="" type="checkbox"/> Under 3 Mos. <input type="checkbox"/> 3-6 Mos. <input type="checkbox"/> Over 6 Mos.		150 Pred 15		Multi-Unit 10 %	
	Market Area Boundaries, Description, and Market Conditions (including support for the above characteristics and trends):		The nbhd. is located 20 miles NW of downtown Reno in the town of Cold Springs. It is bound on the west by the California border, the north by the alignment of Jackpot Road, the east by White Lake Parkway (alignment of) and the south by US Highway 395. This area includes a compatible mix of tract style SFR's, mobile homes and apartments. White Lake, a dried up lake bed, borders the nbhd on the south. The area has a compatible range of ages and quality. The area has an adequate mix of public schools, parks, shops, & general conveniences. Access is good via the freeway system and local streets. The reasonable exposure time for the subject property at the opinion of market value stated in this report is 60-90 days. Data obtained from the Washoe County Assessor's Office indicates sales price had been declining slightly in the previous 12 months. Average overall appeal and marketability. The price range noted above is based on sales; the value range could potentially be higher.					
GENERAL DESCRIPTION	Dimensions: Irregular, see parcel map		Site Area: 6,675 sf		<input type="checkbox"/> Corner Lot <input checked="" type="checkbox"/> Cul de Sac			
	Zoning Classification: MDS		Description: Medium Density Suburban		Topography: Level			
	Zoning Compliance: <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Legal nonconforming (grandfathered) <input type="checkbox"/> Illegal <input type="checkbox"/> No zoning		Utilities: Public <input checked="" type="checkbox"/> Other <input type="checkbox"/>		Size: Typical for neighborhood			
	Electricity: <input checked="" type="checkbox"/> Gas: <input checked="" type="checkbox"/> Water: <input checked="" type="checkbox"/> Sanitary Sewer: <input checked="" type="checkbox"/> Storm Sewer: <input type="checkbox"/> Unknown		Off-site Improvements: Street Asphalt, Curb/Gutter Concrete, Sidewalk Concrete, Street Lights Electric, Alley None		Shape: Irregular			
EXTERIOR DESCRIPTION	FEMA Spec'l Flood Hazard Area: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		FEMA Flood Zone: X		FEMA Map #: 32031C 3039G		FEMA Map Date: 3/16/2009	
	Highest & Best Use as improved: <input checked="" type="checkbox"/> Present use, or <input type="checkbox"/> Other use (explain)		Actual Use as of Effective Date: Single family residential					
	Summary of Highest & Best Use: The highest and best use is as it exists, a single family residence for owner occupancy.		Site Comments: No apparent adverse easements, encroachment, environmental conditions, illegal or legal nonconforming zoning uses noted at the time of the inspection; however, inspection was made without the benefit of a title report or survey.					
FOUNDATION	General Description		Exterior Description		Foundation		Basement	
	# of Units: 1 <input type="checkbox"/> Acc. Unit		Foundation: Masonry		Slab: No		Area Sq. Ft. <input checked="" type="checkbox"/> None	
	# of Stories: 2		Exterior Walls: Hardboard		Crawl Space: Yes		% Finished: N/A	
	Type: <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att.		Roof Surface: Comp. shingle		Basement: None		Ceiling:	
HEATING	Design (Style): Standard/2 story		Gutters & Dwnspts: None		Sump Pump: <input type="checkbox"/> N/A		Walls:	
	<input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Und.Cons.		Window Type: Fixed/Sliding		Dampness: <input type="checkbox"/> None/Noted		Floor:	
	Actual Age (Yrs.): 6		Storm/Screens: WovenMesh		Settlement: None/Noted		Outside Entry:	
	Effective Age (Yrs.): 2							
COOLING	Interior Description		Appliances		Attic		Amenities	
	Floors: Assume tile/carpet		Refrigerator: <input type="checkbox"/> None		<input type="checkbox"/> Fireplaces(s) # None		Woodstove(s) #	
	Walls: Assume drywall/paint		Range/Oven: <input checked="" type="checkbox"/> Stairs: <input type="checkbox"/> Patio: Open		<input type="checkbox"/> Deck: None		Garage: # of cars (2 Tot.)	
	Trim/Finish: Assume wood/paint		Disposal: <input checked="" type="checkbox"/> Drop Stair: <input type="checkbox"/> Scuttle: <input checked="" type="checkbox"/> Porch: Yes		<input type="checkbox"/> Fence: Wood		Attach. 2	
DETACH.	Bath Floor: Assume tile		Fan/Hood: <input checked="" type="checkbox"/> Floor: <input type="checkbox"/> Heated: <input checked="" type="checkbox"/> Washer/Dryer: <input type="checkbox"/> Finished: <input type="checkbox"/>		Pool: None		Blt.-In:	
	Bath Wainscot: Fiberglass/tile/equiv.						Carport:	
	Doors: Assume raised panel						Driveway:	
	Countertops: Assume solid surface						Surface: Concrete	
ADDITIONAL FEATURES	Finished area above grade contains: 5 Rooms		3 Bedrooms		2.5 Bath(s)		1,624 Square Feet of Gross Living Area Above Grade	
	Additional features: Assume tile/carpet flooring, standard cabinets with solid surface countertops, overhead lights/fans, front and rear drought tolerant landscaping, wood fence enclosed rear yard							
	Describe the condition of the property (including physical, functional and external obsolescence): As of the effective date of this appraisal, the subject property is assumed to be in average condition. We are not aware of any major repairs, renovation, or remodeling that had been done or needed to be done as of the date of value. The effective age is based on the appraiser's view of the property from Google Maps/photographs. Exterior photographs were obtained from Google Maps and Washoe County Assessor's website; a physical inspection of the subject property and comparables has not been made by these appraisers. An extraordinary assumption is made that the interior is in similar condition as the exterior and that the condition was similar at the effective date of this appraisal. The use of the extraordinary assumption may have affected the assignment results.							
	*Personal property items are not included herein. The interior description has been based on public records.							

File No.: 17-0003

1/2007

[illegible]

Supplemental Addendum

File No. 17-0003

Owner	Bryan & Michelle Rodriguez *				
Property Address	17655 Little Peak Ct				
City	Reno	County	Washoe	State	NV Zip Code 89508
Client	Akerman, LLP				

Purpose: The purpose of this appraisal is to form an opinion of the fair market value for the subject property as of the effective date which is a retrospective date of February 10, 2011.

Intended User: Akerman, LLP. No other users are intended by the Appraiser. Appraiser shall consider the intended users when determining the level of detail to be provided in the Appraisal Report.

Intended Use: Litigation. No other use is intended by the Appraiser. The intended use as stated shall be used by the Appraiser in determining the appropriate Scope of Work for the assignment.

Scope of Appraisal:

Upon receiving this assignment from the client we identified the intended users of the report, confirmed that the effective date of the appraisal is to be consistent with a retrospective date provided by the client. Next the real property being appraised was identified and available property-specific data was collected through public records, various data services and or MLS database.

As agreed by the client, an exterior inspection of the subject property was not made by the appraisers signing this report; rather we have viewed aeriels and street photographs of the subject and comparable sales from Google Maps, Washoe County Assessor and MLS if available. However, the appraisers signing this report are familiar with the Reno market.

A visual observation of the unobstructed, exposed surfaces of accessible areas from standing height was performed on the exterior areas of the subject property for valuation purposes only. The appraiser is NOT a "home inspector" and can only report conditions based on the visual observation noted above. The appraiser DOES NOT warrant any part/whole of the subject property environmental conditions or other conditions that would require a licensed professional such as; identifying the existence of Lead Based paint, Mold, Soil Slippage, Hazardous Waste, Radon Gas etc. We did not test the subject's mechanical systems; the appraiser is not an expert with regard to mechanical issues or electrical, plumbing, roof, foundation systems, or State, City, County, Building Code compliance etc.

The appraiser's review of the photographs and public records included noting the apparent condition, quality, utility, amenities and architectural style. Measurements and room counts used in this report came from county records. Zoning data was obtained from public records, office files, and or city/county planning offices. The collected data was then used to develop a profile of the subject property and analyze the highest and best use of the subject property.

The appraiser performed a search of the local market area for the most similar closed comparable sales, pending/contingent sales and active listings. The accessible sales were inspected from Google Maps and aeriels. The sales were confirmed and verified from public records, various data services, MLS and when necessary with an agent, the owner, or the title company. Interior/exterior upgrade adjustments may be made to one or more of the comparables due to information obtained from the appraiser's view of the property (Google Maps and aeriels) and/or information obtained from the multiple listing service (MLS) or other public record sources that might be available. Where available, the appraiser has reviewed interior photographs provided by listing agents on the comparables to obtain a better understanding of these properties. The sales data was then analyzed and a value opinion derived.

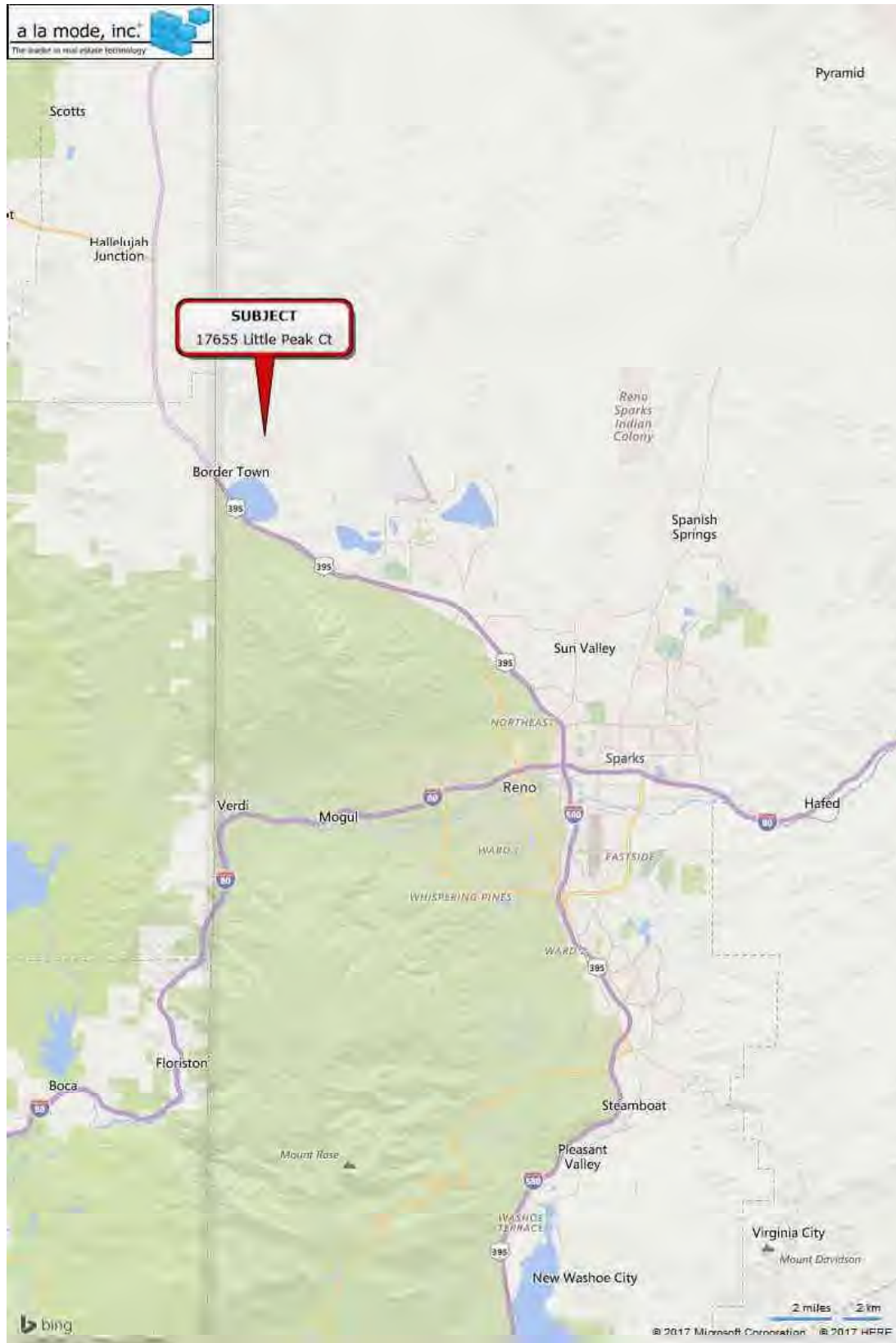
In the preparation of this report, we have relied on data from county records, multiple listing service, title companies, etc. We believe this report to be complete and accurate, however, should any error or omission be subsequently discovered, we reserve the right to correct it.

Sales Comparison Analysis:

For the purpose of this appraisal, when conflict between county records and appraiser inspection were noted, appraiser inspection was used. For the purpose of this appraisal, data obtained from county records was used.

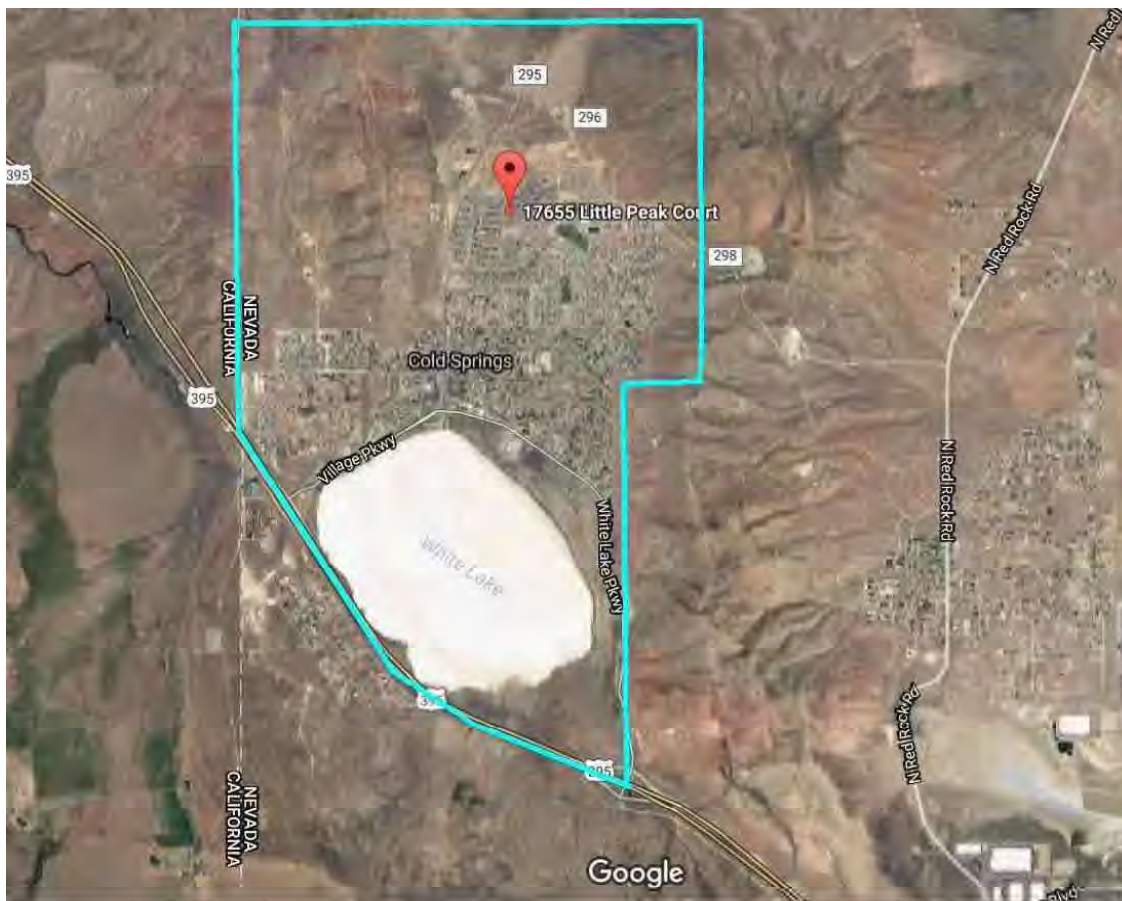
Location Map

Owner	Bryan & Michelle Rodriguez *				
Property Address	17655 Little Peak Ct				
City	Reno	County	Washoe	State	NV Zip Code 89508
Client	Akerman, LLP				



Neighborhood Map

Owner	Bryan & Michelle Rodriguez *				
Property Address	17655 Little Peak Ct				
City	Reno	County	Washoe	State	NV Zip Code 89508
Client	Akerman, LLP				



Aerial View

Owner	Bryan & Michelle Rodriguez *				
Property Address	17655 Little Peak Ct				
City	Reno	County	Washoe	State	NV Zip Code 89508
Client	Akerman, LLP				



Aerial View Close Up

Owner	Bryan & Michelle Rodriguez *				
Property Address	17655 Little Peak Ct				
City	Reno	County	Washoe	State	NV Zip Code 89508
Client	Akerman, LLP				



Assessor's Parcel Map Close Up

Owner	Bryan & Michelle Rodriguez *				
Property Address	17655 Little Peak Ct				
City	Reno	County	Washoe	State	NV
Client	Akerman, LLP				
				Zip Code	89508



Subject Photo Page

Owner	Bryan & Michelle Rodriguez *				
Property Address	17655 Little Peak Ct				
City	Reno	County	Washoe	State	NV Zip Code 89508
Client	Akerman, LLP				

**Subject Front**

17655 Little Peak Ct
 Sales Price 0.00
 Gross Living Area 1,624
 Total Rooms 5
 Total Bedrooms 3
 Total Bathrooms 2.5
 Location Average
 View None
 Site 6,675 SF/CDS
 Quality Average, typical
 Age 6

Photo from Washoe
 County Assessor
 Website

**Front view**

Google Maps

**Street scene**

Looking west along
 Little Peak Court,
 subject is on the left
 at the rear of the
 photo

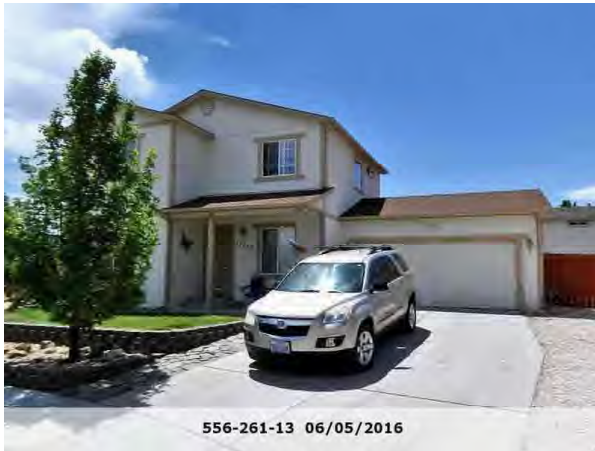
Comparable Sale Location Map

Owner	Bryan & Michelle Rodriguez *				
Property Address	17655 Little Peak Ct				
City	Reno	County	Washoe	State	NV Zip Code 89508
Client	Akerman, LLP				



Comparable Photo Page

Owner	Bryan & Michelle Rodriguez *					
Property Address	17655 Little Peak Ct					
City	Reno	County	Washoe	State	NV	Zip Code 89508
Client	Akerman, LLP					



556-261-13 06/05/2016

Comparable 1

17700 Boxelder Ct

Prox. to Subject 0.27 miles S
 Sales Price 119,900
 Gross Living Area 1,624
 Total Rooms 5
 Total Bedrooms 3
 Total Bathrooms 2.5
 Location Average
 View None
 Site 8,173 SF/CDS
 Quality Average
 Age 7 years

Photo from Washoe County
Assessor's Office Website



556-342-14 06/04/2016

Comparable 2

17925 Drift Creek Ct

Prox. to Subject 0.33 miles SW
 Sales Price 130,000
 Gross Living Area 1,777
 Total Rooms 5
 Total Bedrooms 3
 Total Bathrooms 2
 Location Average
 View None
 Site 7,684 SF/CDS
 Quality Average
 Age 7 years

Photo from Washoe County
Assessor's Office Website



556-441-06 06/05/2016

Comparable 3

17345 Aquamarine Dr

Prox. to Subject 0.88 miles E
 Sales Price 135,000
 Gross Living Area 1,777
 Total Rooms 5
 Total Bedrooms 3
 Total Bathrooms 2
 Location Average
 View None
 Site 8,783 SF/CDS
 Quality Average
 Age 7 years

Photo from Washoe County
Assessors Office Website

Assumptions, Limiting Conditions & Scope of Work

File No.: 17-0003

Property Address: 17655 Little Peak Ct City: Reno State: NV Zip Code: 89508

Client: Akerman, LLP Address: 1160 Town Center Dr, Ste. 330, Las Vegas, NV 89144

Appraiser: Tammy L. Howard Address: 3034 S. Durango Drive, Suite 100, Las Vegas, NV 89117

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.):

An exterior inspection of the property was not performed at this time; information regarding the subject has been obtained from Google Maps, Washoe County Assessor records and MLS if available (as agreed by the client). An extraordinary assumption is made the interior is in similar condition as the exterior (as viewed from the stated sources) and that these conditions were similar on the retrospective date of value. The use of the extraordinary assumption may have affected the assignment results.

The purpose of this appraisal is for a "non lender" appraisal. It should be noted that the appraisers's data and comparables utilized were retrieved as of the inspection date noted within the body of the report. This report is intended for use by the Client that is named on page 1 of this report.

Measurements and room counts used in this report come from information obtained from Washoe County Assessor's Office.

The sales were confirmed and verified from public records, various data services, MLS and when necessary with an agent, the owner or the title company.

In the preparation of this report, we have relied on data from county records, multiple listing service, title companies, etc. We believe this report to be complete and accurate, however, should any error or omission be subsequently discovered, we reserve the right to correct it.

Certifications

Client Name: Matthew Lukow	Client Address: 1180 Towne Pl. Suite 100, Las Vegas, NV 89114
Appraiser: Matthew Lukow	Appraiser Address: 1180 Towne Pl. Suite 100, Las Vegas, NV 89114

APPRAISER'S CERTIFICATION

I certify that to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The credibility of the report or its source is by the state under the report, and conclusions are limited only by the reported assumptions and findings, conditions, and are my personal, unbiased, and unbiased professional opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the subject that is the subject of this report or to the parties involved with this assignment.
- My professional assignment was not contingent upon development of a particular professional result.
- My compensation for performing 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, or the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the assignment of this report.
- My analyses, opinions, and conclusions were unbiased, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
- I did not base, either partially or completely, my analysis on the opinion of value of the appraiser upon the basis, value, religion, sex, handicap, familial status, or national origin of either the prospective owner or occupant of the subject property or of the present owner or occupant of the property in the vicinity of the subject property.
- Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
- Unless otherwise indicated, I have provided a full and fair disclosure of all known facts that may affect the value of the property.

Additional Certifications:

The appraiser's 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 Practice of the Appraisal Institute.

The use of this report is subject to the requirements of the Appraisal Institute's standards to review by directly authorized representatives.

As of the date of this report, Matthew Lukow, MA, has completed the continuing education program in the 40-hour institute.

The appraiser's state registration certification has not been revoked, suspended, or annulled.

Disclosure of Prior Appraisal and/or Other Services:

I certify that, to the best of my knowledge and belief, I have not performed a prior appraisal or other service on or for the subject property within the 3-year period immediately preceding the completion of this appraisal assignment.

DEFINITION OF FAIR MARKET VALUE:

The price which a willing buyer would pay to a willing seller, with no artificial restrictions on the sale, and the property is adapted and rights in reasonable appraised.

Source: Unruh v. Straight, 96 Nev. 684, 686; 615 P.2d 247 (1980)

Client Name: Matthew Lukow	Client Address: 1180 Towne Pl. Suite 100, Las Vegas, NV 89114
Appraiser: Matthew Lukow	Appraiser Address: 1180 Towne Pl. Suite 100, Las Vegas, NV 89114

SIGNATURES

Appraiser: **Matthew Lukow**

Company: **Matthew Lukow Appraisals**

Phone: **(702) 251-1111** Fax: **(702) 251-1111**

E-Mail: **mlukow@matlukow.com**

State: **NV** License: **000000000000000000**

Appraisal Date: **04/19/2017**

Appraisal Time: **10:00 AM**

Appraisal Location: **1180 Towne Pl. Suite 100, Las Vegas, NV 89114**

Appraisal Purpose: **General Purpose**

Appraisal Type: **General Purpose**

Appraisal Method: **General Purpose**

Appraisal Notes: **General Purpose**

GP RESIDENTIAL

Docket 81129 Document 2020-43170

AA137

Qualifications of Tammy L. Howard
 Senior Appraiser
 Valbridge Property Advisors | Lubawy & Associates, Inc.

Independent Valuations for a Variable World

State Certifications

State of Nevada
 License #A0000253-CG

Education

Attended University of
 Nevada, Las Vegas 1988-89
 Graduated Plainwell High
 School, MI, 1980

Contact Details

702-242-9369 (p)
 702-242-6391 (f)

Valbridge Property Advisors |
 Lubawy & Associates
 3034 S. Durango Drive
 Suite 100
 Las Vegas, NV 89117

www.valbridge.com
torourke@valbridge.com

Related Courses/Workshops

Real Estate Appraisal Principles
 Residential Valuation
 Uniform Standards of Professional Appraisal Practice
 Basic Valuation Procedures
 Residential Case Studies
 Case Studies in Law & Ethics
 Forensic Real Property Appraising
 FHA Appraisal Inspections from the Ground Up
 Litigation Appraisal & Expert Testimony
 Real Estate Law Fund II
 Income Property Analysis
 Market Extraction
 Factory Built Housing
 Income Capitalization

Experience

Senior Appraiser

Valbridge Property Advisors | Lubawy & Associates (2013-Present)

Senior Appraiser

Lubawy & Associates (June 2012-2013)

Senior Appraiser

Grubb & Ellis-Landsauer Valuation (Oct 2010-May 2012)

Associate Appraiser

Integra Realty Resources | Shell Lowe & Associates (1985-2010)

Appraisal/valuation and consulting assignments include apartment buildings; retail buildings and shopping centers; office buildings; industrial buildings; religious and special purpose properties including schools and houses of worship; residential subdivisions; and vacant industrial, commercial and residential land. Assignments have been concentrated in Nevada.

APPRAISER CERTIFICATE

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

NOT TRANSFERABLE

REAL ESTATE DIVISION

NOT TRANSFERABLE

This is to Certify That: TAMMY L HOWARD

Certificate Number: A.0000253-CG

Is duly authorized to act as a CERTIFIED GENERAL APPRAISER from the issue date to the expiration date at the business address stated here in, unless the certificate is sooner revoked, cancelled, withdrawn, or invalidated.

Issue Date: June 30, 2015

Expire Date: June 30, 2017

In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statutes, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business.

FOR: VALBRIDGE PROPERTY ADVISORS
3034 S DURANGO DR #100
LAS VEGAS, NV 89117

REAL ESTATE DIVISION

JOSEPH (JD) DECKER
Administrator



Qualifications of Matthew Lubawy, MAI, CVA, CMEA
 Senior Managing Director
 Valbridge Property Advisors | Lubawy & Associates, Inc.



Independent Valuations for a Variable World

State Certifications

Nevada License
 # A9000044-CG

Arizona License
 #31821

Education

Bachelor of Science
 Business Administration
 University of Nevada, Las Vegas

Contact Details

702-242-9369 (p)
 702-242-6391 (f)

Valbridge Property Advisors |
 Lubawy & Associates, Inc.
 3034 S. Durango Dr. #100
 Las Vegas, NV 89117
www.valbridge.com
mlubawy@valbridge.com

Memberships/Affiliations

Member: Appraisal Institute - MAI Designation #10653
 Director - (2008 - 2011)
 President of Las Vegas Chapter (1998 - 1999)
 1st V.P. of Las Vegas Chapter (1997 - 1998)
 2nd V.P. of Las Vegas Chapter (1996 - 1997)
 Member: NACVA - CVA Designation (Certified Valuation
 Analyst for business valuation)
 Member: NEBB Institute - CMEA Designation for Machinery
 and Equipment
 Board Member: Valbridge Property Advisors -
 Vice-Chairman of the Board of Directors
 (2011 - Present)
 Member: International Right of Way Association
 Member: National Association of Realtors
 Member: GLVAR
 Board Member: Nevada State Development Corporation
 Chairman of the Board (2008-Present)

Experience

Senior Managing Director
 Valbridge Property Advisors | Lubawy & Associates (2013 to Present)

Principal
 Lubawy & Associates (1994-2013)

Independent Fee Appraiser and Real Estate Consultant
 Timothy R. Morse and Associates (1992 - 1994)

Staff Appraiser/Assistant Vice President
 First Interstate Bank (1988 - 1992)

Independent Fee Appraiser and Real Estate Consultant
 The Clark Companies (1987 - 1988)

APPRAISER CERTIFICATE

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

NOT TRANSFERABLE

REAL ESTATE DIVISION

NOT TRANSFERABLE

This is to Certify That : MATTHEW J LUBAWY

Certificate Number: A.0000044-CG

Is duly authorized to act as a CERTIFIED GENERAL APPRAISER from the issue date to the expiration date at the business address stated here in, unless the certificate is sooner revoked, cancelled, withdrawn, or invalidated.

Issue Date: March 31, 2015

Expire Date: April 30, 2017

In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statutes, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business.

FOR: VALBRIDGE PROPERTY ADVISORS
3034 S DURANGO DR #100
LAS VEGAS, NV 89117

REAL ESTATE DIVISION

JOSEPH (JD) DECKER
Administrator



MATTHEW LUBAWY, MAI DEPOSITIONS/TRIAL TESTIMONY

DEPOSITIONS

NEVADA STATE DISTRICT COURT

- **Branch Banking and Trust Company, et al., vs. Joe D. Thomas, et al.,** (Case #A-12-670622-B)
Date: August 9, 2013
Attorneys: Gabriel Blumberg, Gordon Silver- Attorneys for Defendant; Allison Noto, Sylvester & Polednak, Attorneys for Plaintiff
Our File No: 13-0108-000
- **Richard & Bie-Shia K. Chu, et al. vs. Alan Schachtman, et al.,** (Case #A572474)
Date: November 19, 2014
Attorneys: Scott Coston, Burdman & Coston - Attorneys for Plaintiff; Jeff Garofalo, Lee, Hernandez, Landrum & Garofalo, Attorneys for Defendant
Our File No: 14-0195-001
- **SFR Investment Pool 1, LLC. vs. Nationstar Mortgage, LLC., Sandra Salas, Does 1 through X and ROE Corporations I through X** (Case #A-13-684596-C)
Date: July 1, 2015
Attorneys: Karen L. Hanks, Howard Kim & Associates - Attorneys for Plaintiff; Melanie D. Morgan, Akerman, LLP - Attorneys for Defendant
Our File No: 15-1013
- **Ignacio Gutierrez vs. SFR Investments Pool 1, LLC; Nevada Association Services, Inc., Horizon Heights Homeowners Association; KB Home Mortgage Company, , DOE Individuals I through X, ROE Corporations and Organization I through X.**

SFR Investments Pool 1, LLC. vs. Ignacio Gutierrez; Nationstar Mortgage, LLC, Countrywide Home Loans, Inc., Does I-X; and Roes 1-10, inclusive (Case #A-13-684715-C)
Date: August 5, 2015
Attorneys: Karen L. Hanks, Howard Kim & Associates - Attorneys for Plaintiff; Akerman, LLP, Attorneys for Defendant
Our File No: 15-1021

**MATTHEW LUBAWY, MAI
DEPOSITIONS (continued)**

Hodgepodge, LLC. vs. Blood Family Trust U/A/D 10/25/90, by and through its Trustees, John R. Blood and Paula Blood, Does I-X; and ROE Entities I-X, inclusive
(Case #A-15-719153-B)

Date: November 10, 2015

Attorneys: Erika Pike Turner with Garman, Turner, Gordon – Attorneys for Plaintiff;
Jeff Sylvester with Sylvester & Polednak, LTD, Attorneys for Defendant

Our File No: 15-0131-001 & 002

Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank. vs. Nevada Title Company (Case #2:14-cv-01567-GMN-GWF)

Date: December 21, 2015

Attorneys: Emilia P.E. Morris, Mortgage Recovery Law Group LLP. – Attorneys for Plaintiff;

Scott Burris with Wilson Elser Moskowitz Edelman & Dicker, LLP, Attorneys for Defendant

Our File No: 15-1070

Carrington Mortgage Services, LLC vs Saticoy Bay LLC Series 6709 Brick House; Cactus Springs at Fairfax Village Homeowners Association; Hampton & Hampton Collections, LLC (Case #2:15-cv-01852 APG-PAL)

Date: June 3, 2016

Attorneys: Maximiliano D. Couvillier, III, Black & Lobello – Attorneys for Plaintiff;

Robert S. Larsen and David T. Gluth, Gordon & Rees LLP - Attorneys for Defendant

Our File No: 16-0057

U.S. DISTRICT COURT

- **George F. Tibsherany, Inc. vs. The Midby Companies, LLC** (Case #CV-S-05-0613-LDG-GWF)

Date: December 11, 2006

Attorneys: Nicholas M. Wiczorek (Morris, Polich, and Purdy, LLPO),
William L. Coulthard (Harrison, Kemp & Jones), John Wendland (Weil & Drage, APC), Scott R. Cook (Gordon & Rees), Aviva Gordon (Ellis & Gordon)

Judge: Lloyd D. George

Our File No: 06-301

FEDERAL BANKRUPTCY COURT

- **Whitton Corporation** (Case #BK-S-10-32680-BAM)
Date: April 13, 2011
Attorneys: Rodney M. Jean and Mohamed A. Iqbal, Jr., (Lionel Sawyer Collins)
- **Marion Manor, LLC** (Case No. BK-S-11-28020-BAM)
Date: February 24, 2012
Attorneys: Chris Kaup and Lars Evensen with Holland & Hart; David J. Winterton & Associates, Ltd.
- **Desert Inn Management Company, LTD.** (Case No. BK-S-12-16719-LBR)
Date: January 29, 2013
Attorneys: Eric T. Gjerdingen, Gordon Silver & Jeffrey Willis, Snell & Wilmer

TRIAL TESTIMONY

NEVADA STATE DISTRICT COURT

- **Bank of Nevada vs. Monterey Industrial, LLC; and Maria Guadalupe De Tostado,** (Case #A-10-623435-C)
Date: March 15, 2011
Attorney: Michael D. Mazur, ESQ
Judge: Jessie Walsh
- **Alliance Homes LLC (Bank of NV) vs. N. Las Vegas II, LLC; Frank T. Ferraro, Jr.; Christopher Paskvan; Tom Fehrman,** (Case #A-10-610698-C)
Date: April 15, 2011
Attorneys: H. Stanley Johnson, CJD Law Group LLC; James B. Ball, Poli and Ball, PLC
Judge: Nancy L. Allf
- **Bank of Nevada vs. Pebble Pines, LLC and Quiet Moon, LLC,** (Case #A-11-637410-C)
Date: June 3, 2011
Attorney: Stephanie Hardie Allen - Kaempfer Crowell Penshaw Gronauer & Fiorentino
Judge: Jerry A. Wiese
Our File No: 10-468

- **NV Energy v. Copperfield Investment & Development Co.**
(Case # A-09-604760-C) testified on behalf of Plaintiff
Date: October 27, 2011
Attorneys: Plaintiff attorney: Kirby Gruchow (Leach, Johnson, Song & Gruchow)
Defendant attorney: John M. Netzorg
Judge: Susan Johnson
- **Bank of Nevada v. Classic Productions, LLC**
(Case # A-10-626894-C) testified on behalf of Plaintiff
Date: August 27, 2012
Attorneys: Plaintiff attorney: Michael D. Mazur
Defendant attorney: Lucas M. Gjovig
Judge: Jerry A. Wiese

- **Taylor Emanuel v. Richard Jones, et al.**
(Case # A-10-611339-B) testified on behalf Defendant/Counter Claimant –
Bank of Las Vegas
Date: August 28, 2012
Attorneys: Defendant/Counter Claimant attorney: Nicole Lovelock
(Holland & Hart, LLP)
Plaintiff attorney: David J. Winterton
Judge: Elizabeth Gonzalez
- **November 2005 Land Investors, LLC, et al. vs. Nevada Power Co.**
(Case # A-10-611150-C – testified on behalf of Defendant – Nevada Power Company
Date: June 28 & July 1, 2013
Attorneys: Defendant: William E. Peterson & Janine C. Prupas, Snell & Wilmer (Snell &
Wilmer, LLP)
Plaintiff attorney: J. Randall Jones & Eric M. Pepperman (Kemp, Jones & Coulthard,
LLP) & Mark E. Ferrario (Greenberg Traurig)
Judge: Gloria Sturman
- **Branch Banking and Trust Company, et al., vs. Joe D. Thomas, et al.,** (Case #A-12-670622-B)
Date: September 9, 2013
Attorneys: Gabriel Blumberg, Gordon Silver– Attorneys for Defendant; Allison Noto,
Sylvester & Polednak, Attorneys for Plaintiff
Our File No: 13-0108-000
Judge: Elizabeth Gonzalez
- **Branch Banking and Trust Company, et al., vs. Joe D. Thomas, et al.,** (Case #A-12-670622-B)
Date: September 9, 2013
Attorneys: Gabriel Blumberg, Gordon Silver– Attorneys for Defendant; Allison Noto,
Sylvester & Polednak, Attorneys for Plaintiff
Our File No: 13-0108-000
Judge: Elizabeth Gonzalez
- **Nevada State Bank vs. David Fandel,** (Case #A-14-697643-B)
Date: August 24, 2015
Attorneys: Erika Pike Turner, Garman Turner Gordon, LLP– Attorney for Plaintiff, John
Gutke, Attorney for Defendants;
Our File No: 134-0254-000 and 13-0255-000
Judge: Mark Denton

- **2010-1 CRE Venture LLC vs. OHDB, LLC., Lawrence Doyle, Joseph Lamarca, Stan Wasserkrug, John Hessling, Keith Lyon and Bonnie Chu** (Case #A-13-680017-B)
Date: November 30, 2015
Attorneys: Alina Shell, McLetchie Shell, LLC- Attorney for Defendant, Leslie S. Godfrey, Greenberg Traurig, LLP, Attorney for Plaintiff;
Our File No: 15-0004-001
Judge: Susan W. Scann

U.S. DISTRICT COURT

- **FDIC as receiver for Community Bank of Nevada vs. Glen Smith & Glen Development Company LLC** (Case #A575592)
Date: January 10, 2011
Attorneys: Spencer H. Gunnerson, Kemp, Jones & Coulthard; Aaron Shipley, McDonald Carano Wilson
Judge: Elizabeth Gonzales
Our File No: 09-251

FEDERAL BANKRUPTCY COURT

- **Francis K. Poirier vs. Sean R. Harron and Elise M. Harron** (Bankruptcy Case #09-22463-mkn)
Date: November 9, 2010
Attorneys: Michael Stein and Erica J. Stutman of Snell & Wilmer
Chief Judge: Mike K. Nakagawa
Our File No: 1007-001C (Residential)
- **Francis K. Poirier vs. Sean R. Harron and Elise M. Harron** (Bankruptcy Case #09-22463-mkn)
Date: January 13, 2011
Attorneys: Michael Stein and Erica J. Stutman of Snell & Wilmer
Chief Judge: Mike K. Nakagawa
Our File No: 1007-001C (Residential)
- **Whitton Corporation** (Case #BK-S-10-32680-BAM)
Date: June 3, 2011
Attorneys: Rodney M. Jean and Mohamed A. Iqbal, Jr., (Lionel Sawyer Collins); David Snyder and Brett Axelrod (Fox Rothschild)
Judge: Bruce A. Markell

- **Marion Manor, LLC** (Bankruptcy Case No. BK-S-11-28020-BAM)
Date: February 28-29, 2011 and March 9, 2011
Attorneys: Tenille Pereira, (David J. Winterton & Associates, Ltd.) Debtor's
Attorneys; Lars K. Evensen, (Holland & Hart, LLP) Creditor's Attorney
Judge: Bruce A. Markell
Our File No: 11-272



3034 S. Durango Drive
Suite 100
Las Vegas, NV 89117
702-242-9369 phone
702-242-6391 fax
valbridge.com

Fee Schedule

Expert Witness Testimony	\$400/hr.
Deposition and Court Testimony	\$400/hr.
Supplemental Work, Research, Trial Preparation	\$400/hr.

Three-hour minimum for deposition and testimony.

If deposition or Court Testimony is cancelled within 24 hours of scheduled appearance, client will be billed for 50% of the three-hour minimum, in addition to any preparation time.

EXHIBIT J

Quitclaim Deed to Westland Real Estate Recorded April 30, 2013

5421 Kietzke Lane, Suite 200
Reno, NV 89511

Mail Tax Statements to:

QUIT CLAIM DEED

Woodland Village, () does hereby quit claim all
interest it may own, if any, () Investments, as Grantee,
in the real property situate in the County of Washoe, State of Nevada, commonly known as

Executed this 23 day of April, 2013.

WOODLAND VILLAGE ASSOCIATION

[REDACTED]

APN: 556-412-26

State of Nevada)
)
County of Washoe)

[REDACTED]


NOTARY PUBLIC



EXHIBIT K

Quitclaim Deed to Thunder Properties Recorded August 26, 2013

WHEN RECORDED MAIL TO:
MAIL TAX STATEMENTS TO:
Thunder Properties Corp. a Nevada Corporation
397 Third Ave. Suite A
Chula Vista, CA 91910

Escrow No. N/A

The undersigned hereby affirms that this document
submitted for recording does not contain the social
security number of any person or entity.

DOC # 4273151

08/26/2013 04:58:56 PM

Requested By

JON JENTZ

Washoe County Recorder

Lawrence R. Burdick - Recorder

Fee: \$17.00 RPTT: \$28.70

Page 1 of 1



APN : 556-412-26

Space Above for Recorder's Use Only

R.P.T.T. \$

QUITCLAIM DEED

THIS INDENTURE WITNESSETH: Westland

A VALLABLE CONSIDERATION, receipt of which is hereby acknowledged, has been made by
Thunder Properties Corp., Grantee all that real property in the County of Washoe, State of Nevada,
commonly known as 17655 Little Peak Court, Reno, Nevada 89505.

LOT 1150 AS SHOWN ON THE MAP OF WASHOE COUNTY
IN THE OFFICE OF THE COUNTY RECORDER
MARCH 23, 2005, AS FILE NO. 3186546 OF 1
CERTIFICATE OF ASSIGNMENT RECORDED MAY 16, 2005 AS DOCUMENT NO. 3214080 OF

It is the express intent of the grantor, being the spouse of the grantee, to convey all right, title and interest
of the grantor, community or otherwise, in and to the herein described property, to the grantee as his/her
sole and separate property.

Westland Real Estate Development Trust, Trustee.

[Signature]
Grantor *Dale Tittlemier, Owner*

Grantor

California
STATE OF NEVADA } ss:
COUNTY OF *Orange*

This instrument was acknowledged before me on *August 12, 2013*
by *Dale Tittlemier*

[Signature]
NOTARY PUBLIC

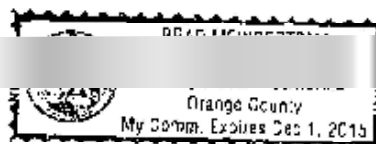


EXHIBIT L

Thunder Properties Financial Records

11:55 AM

01/12/17

Actual Basis

Jon Jentz 2011
Transaction Detail By Account
January 1, 2011 through January 12, 2017

Type	Date	Num	Name	Memo	Class	Clr	Split	Amount	Balance
Rental Income									
Deposit	10/02/2013	002	Tucker	Deposit	Little Pea...		Wells Fargo...	1,100.00	1,100.00
Deposit	11/12/2013		Tucker	Deposit	Little Pea...		Wells Fargo...	1,100.00	2,200.00
Deposit	02/03/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	1,100.00	3,300.00
Deposit	02/03/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	1,100.00	4,400.00
Deposit	04/11/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	1,100.00	5,500.00
Deposit	04/14/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	6,000.00
Deposit	04/14/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	6,500.00
Deposit	04/14/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	100.00	6,600.00
Deposit	05/23/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	1,100.00	7,700.00
Deposit	06/30/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	1,100.00	8,800.00
Deposit	07/03/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	1,100.00	9,900.00
Deposit	08/06/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	1,100.00	11,000.00
Deposit	08/26/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	11,500.00
Deposit	08/30/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	12,000.00
Deposit	08/30/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	100.00	12,100.00
Deposit	08/30/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	12,600.00
Deposit	10/06/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	13,100.00
Deposit	10/08/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	100.00	13,200.00
Deposit	10/27/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	1,100.00	14,300.00
Deposit	12/01/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	14,800.00
Deposit	12/01/2014		Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	100.00	15,300.00
Deposit	12/01/2014	1117	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	15,400.00
Deposit	12/01/2014	1116	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	15,900.00
Deposit	12/01/2014	1118	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	100.00	16,400.00
Deposit	02/03/2015	59171...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	16,900.00
Deposit	02/04/2015	59171...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	17,400.00
Deposit	02/04/2015	59171...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	17,900.00
Deposit	02/04/2015	59171...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	18,400.00
Deposit	03/03/2015	20610...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	18,900.00
Deposit	03/03/2015	20610...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	19,400.00
Deposit	03/27/2015	20610...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	19,900.00
Deposit	03/27/2015	20610...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	20,400.00
Deposit	04/29/2015	59200...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	100.00	20,900.00
Deposit	04/29/2015	59200...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	100.00	21,400.00
Deposit	04/29/2015	59200...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	1,000.00	22,000.00
Deposit	05/07/2015	20611...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	1,000.00	23,000.00
Deposit	05/07/2015	20611...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	1,000.00	24,000.00
Deposit	07/06/2015	20611...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	1,000.00	25,000.00
Deposit	07/06/2015	20611...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	1,000.00	26,000.00
Deposit	07/27/2015	59190...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	26,500.00
Deposit	07/27/2015	59190...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	500.00	27,000.00
Deposit	07/27/2015	20607...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	1,000.00	28,000.00
Deposit	09/02/2015	20645...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	1,000.00	29,000.00
Deposit	10/01/2015	20645...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	100.00	29,100.00
Deposit	10/01/2015	20645...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	1,000.00	30,100.00
Deposit	11/04/2015	20645...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	100.00	30,200.00
Deposit	11/04/2015	20645...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	1,000.00	31,200.00
Deposit	12/01/2015	20645...	Little Peak 17655	Deposit	Little Pea...		Wells Fargo...	1,000.00	32,200.00

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04/12/17

Accrual Basis

Jon Jentz 2011
Transaction Detail By Account
 January 1, 2011 through January 12, 2017

Type	Date	Num	Name	Memo	Class	Clr	Spdt	Amount	Balance
Deposit	12/01/2015	20546...	Little Peak 17655	Deposit Paye...	Little Pea...		Wells Fargo - ...	100.00	27,500.00
Deposit	01/04/2016	20546...	Little Peak 17655	Deposit Paye...	Little Pea...		Wells Fargo - ...	1,000.00	28,500.00
Deposit	01/04/2016	20546...	Little Peak 17655	Deposit Paye...	Little Pea...		Wells Fargo - ...	100.00	28,600.00
Deposit	02/02/2015	20545...	Little Peak 17655	Deposit Paye...	Little Pea...		Wells Fargo - ...	1,000.00	29,600.00
Deposit	02/02/2016	20545...	Little Peak 17655	Deposit Paye...	Little Pea...		Wells Fargo - ...	100.00	29,700.00
Deposit	03/04/2015	20545...	Little Peak 17655	Deposit Paye...	Little Pea...		Wells Fargo - ...	1,000.00	30,700.00
Deposit	03/04/2016	20545...	Little Peak 17655	Deposit Paye...	Little Pea...		Wells Fargo - ...	100.00	30,800.00
Deposit	04/04/2016	20545...	Little Peak 17655	Deposit Paye...	Little Pea...		Wells Fargo - ...	500.00	31,300.00
Deposit	04/04/2016	20545...	Little Peak 17655	Deposit Paye...	Little Pea...		Wells Fargo - ...	500.00	31,800.00
Deposit	05/02/2016	20551...	Little Peak 17655	Deposit Paye...	Little Pea...		Wells Fargo - ...	1,000.00	32,800.00
Deposit	05/02/2016	20551...	Little Peak 17655	Deposit Paye...	Little Pea...		Wells Fargo - ...	100.00	33,800.00
Deposit	05/27/2016	20551...	Little Peak 17655	05/27/16 04.3	Little Pea...		Wells Fargo - ...	1,100.00	34,900.00
Deposit	07/05/2016	20577...	Little Peak 17655	Deposit Paye...	Little Pea...		Almotive Inve...	1,200.00	36,100.00
Deposit	08/01/2016	20577...	Little Peak 17655	Deposit Paye...	Little Pea...		Wells Fargo - ...	7,000.00	39,100.00
Deposit	08/01/2016	20577...	Little Peak 17655	Deposit Paye...	Little Pea...		Wells Fargo - ...	200.00	39,300.00
Deposit	08/29/2016	20580...	Little Peak 17655	08/29/16 01.3	Little Pea...		Wells Fargo - ...	1,200.00	37,800.00
Deposit	10/03/2016	20580...	Little Peak 17655	10/03/16 01.4	Little Pea...		Wells Fargo - ...	1,200.00	39,000.00
Deposit	11/01/2016	20580...	Little Peak 17655	Deposit Paye...	Little Pea...		Wells Fargo - ...	1,000.00	40,000.00
Deposit	11/01/2016	20580...	Little Peak 17655	Deposit Paye...	Little Pea...		Wells Fargo - ...	200.00	40,200.00
Deposit	11/30/2016	20580...	Little Peak 17655	11/30/16 01.1	Little Pea...		Wells Fargo - ...	1,200.00	41,400.00
Deposit	01/03/2017	20580...	Little Peak 17655	Deposit Paye...	Little Pea...		Wells Fargo - ...	1,000.00	42,400.00
Deposit	01/03/2017	20580...	Little Peak 17655	Deposit Paye...	Little Pea...		Wells Fargo - ...	200.00	42,600.00
Total Rental Income									42,600.00
PO-HOA									
Check	05/12/2013		Thienner, Dar	Purchase	Little Pea...		Wells Fargo - ...	-6,500.00	-6,500.00
Check	08/12/2013		Peterson, Jade	Purchase	Little Pea...		Wells Fargo - ...	-7,500.00	-14,000.00
Total PO-HOA									-14,000.00
HOA Fees									
Bill	09/20/2013	60032...	Woodland Village A...	17655 Little P...	Little Pea...		Accounts Paya...	-102.00	-102.00
Bill	12/17/2013	60032...	Woodland Village A...	17655 Little P...	Little Pea...		Accounts Paya...	-102.00	-204.00
Bill	03/17/2014	60032...	Woodland Village A...	17655 Little P...	Little Pea...		Accounts Paya...	-102.00	-306.00
Bill	06/18/2014	60032...	Woodland Village A...	17655 Little P...	Little Pea...		Accounts Paya...	-102.00	-408.00
Bill	09/18/2014	60032...	Woodland Village A...	17655 Little P...	Little Pea...		Accounts Paya...	-102.00	-510.00
Check	12/22/2014		Woodland Village A...	RECURRING...	Little Pea...		Wells Fargo - ...	-482.00	-992.00
Check	03/20/2015		Woodland Village A...	RECURRING...	Little Pea...		Wells Fargo - ...	-402.00	-1,394.00
Check	03/22/2015		Woodland Village A...	ONLINE xxx6...	Little Pea...		Wells Fargo - ...	-16.48	-1,410.48
Check	05/22/2015		Woodland Village A...	RECURRING...	Little Pea...		Wells Fargo - ...	-102.00	-1,512.48
Check	03/22/2016		Woodland Village A...	RECURRING...	Little Pea...		Wells Fargo - ...	-102.00	-1,614.48
Check	12/22/2016		Woodland Village A...	RECURRING...	Little Pea...		Wells Fargo - ...	-102.00	-1,716.48
Check	03/22/2016		Woodland Village A...	RECURRING...	Little Pea...		Wells Fargo - ...	-102.00	-1,818.48
Check	05/12/2016		Woodland Village A...	ONLINE xxx6...	Little Pea...		Wells Fargo - ...	-102.00	-1,920.48
Check	03/20/2016		Woodland Village A...	RECURRING...	Little Pea...		Wells Fargo - ...	-102.00	-2,022.48
Check	12/20/2016		Woodland Village A...	RECURRING...	Little Pea...		Wells Fargo - ...	-102.00	-2,124.48
Total HOA Fees									-2,124.48

11:56 AM

01/12/17

Accrual Basis

Jon Jentz 2011
Transaction Detail By Account
 January 1, 2011 through January 12, 2017

Type	Date	Num	Name	Mem	Class	Split	Amount	Balance
Landscaping and Groundskeeping								
Bill	08/31/2013	A-2045	A Falcon On The Re...	17555 Little P...	Little Pea...	Accounts Paya...	-2,798.00	-2,798.00
Total Landscaping and Groundskeeping								
Legal Fees								
Bill	09/06/2016	12485	Roger P. Croteau & ...		Little Pea...	Accounts Paya...		
Bill	10/11/2016	12586	Roger P. Croteau & ...		Little Pea...	Accounts Paya...		
Bill	11/17/2016	12663	Roger P. Croteau & ...		Little Pea...	Accounts Paya...		
Bill	12/19/2016	12733	Roger P. Croteau & ...		Little Pea...	Accounts Paya...		
Total Legal Fees								
Taxes - Property								
Bill	09/20/2014	55641	washoe county treas...	17655 Little P...	Little Pea...	Accounts Paya...	-828.70	-828.70
Check	07/22/2015		washoe county treas...	ON-LINE xxx4...	Little Pea...	Wells Fargo - ...	-569.05	-1,397.75
Check	11/16/2015		washoe county treas...	ON-LINE xxx4...	Little Pea...	Wells Fargo - ...	-560.04	-1,957.79
Check	07/13/2016		washoe county treas...	RECJRRING	Little Pea...	Wells Fargo - ...	-40.95	-2,007.74
Check	03/04/2016		washoe county treas...	ON-LINE xxx4...	Little Pea...	Almadive Inve...	-285.30	-2,293.04
Check	01/17/2017		washoe county treas...	ON-LINE xxx4...	Little Pea...	Almadive Inve...	-285.30	-2,578.34
Total Taxes - Property								
Utilities								
Bill	11/15/2013	23087...	Washoe County Wa...	17655 Little P...	Little Pea...	Accounts Paya...	-79.98	-79.98
Bill	11/27/2013	23087...	Washoe County Utility	17655 Little P...	Little Pea...	Accounts Paya...	-39.99	-119.97
Bill	12/31/2013	23087...	Washoe County Utility	17655 Little P...	Little Pea...	Accounts Paya...	-159.96	-279.93
Bill	01/31/2014	23087...	Washoe County Utility	17655 Little P...	Little Pea...	Accounts Paya...	-40.64	-320.57
Bill	02/28/2014	23087...	Washoe County Utility	17655 Little P...	Little Pea...	Accounts Paya...	-211.24	-531.81
Bill	03/31/2014	23087...	Washoe County Utility	17655 Little P...	Little Pea...	Accounts Paya...	-40.64	-572.45
Bill	10/22/2014	30057...	Washoe County Wa...	17655 Little P...	Little Pea...	Accounts Paya...	-272.33	-844.78
Check	10/28/2014	47	Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-40.64	-885.42
Check	11/18/2014		Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-56.89	-942.31
Check	02/05/2015		Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-53.91	-996.22
Check	03/19/2015		Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-40.95	-1,037.17
Check	04/16/2015		Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-40.95	-1,078.12
Check	05/19/2015		Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-1,129.83	-2,207.95
Check	06/15/2015		Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-40.95	-2,248.90
Check	07/02/2015		Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-1,211.78	-3,460.68
Check	08/17/2015		Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-40.95	-3,501.63
Check	09/14/2015		Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-40.95	-3,542.58
Check	10/06/2015		Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-40.95	-3,583.53
Check	11/06/2015		Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-40.95	-3,624.48
Check	12/14/2015		Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-40.95	-3,665.43
Check	02/11/2016		Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-41.23	-3,706.66
Check	03/11/2016		Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-41.59	-3,748.25
Check	04/16/2016		Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-41.59	-3,789.84
Check	05/13/2016		Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-41.59	-3,831.43
Check	06/20/2016		Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-41.59	-3,873.02
Check	07/18/2016		Washoe County Utility	ON-LINE xxx...	Little Pea...	Wells Fargo - ...	-41.59	-3,914.61

11:56 AM

01/12/17

Actual Basis

Jon Jentz 2011
Transaction Detail By Account
January 1, 2011 through January 12, 2017

Type	Date	Num	Name	Memo	Class	Ch	Split	Amount	Balance
Check	08/11/2016		Washoe County Utility	ON-LINE xxxx	Little Pae		Automotive Inve	-41.59	-1,707.86
Check	09/16/2016		Washoe County Utility	ON-LINE xxxx	Little Pae		Automotive Inve	-41.59	-1,749.25
Check	10/17/2016		Washoe County Utility	ON-LINE xxxx	Little Pae		Automotive Inve	-41.59	-1,790.84
Check	11/14/2016		Washoe County Utility	ON-LINE xxxx	Little Pae		Automotive Inve	-41.59	-1,832.43
Check	12/19/2016		Washoe County Utility	ON-LINE xxxx	Little Pae		Automotive Inve	-41.59	-1,874.02
Total Utilities								-1,874.02	-1,874.02

TOTAL

EXHIBIT M

Deposition of Jon Jentz

Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

Page 1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3

4 US BANK NATIONAL ASSOCIATION, AS)
TRUSTEE FOR THE SPECIALTY) CASE NO. 3:16-CV-00501-RCJ-WGC
5 UNDERWRITING AND RESIDENTIAL)
FINANCE TRUST MORTGAGE LOAN)
6 ASSET-BACKED CERTIFICATES SERIES)
2006-BC4,)

7)
Plaintiffs,)

8)
vs.)

9)
WOODLAND VILLAGE HOMEOWNERS)
10 ASSOCIATION; WESTLAND REAL ESTATE)
DEVELOPMENT AND INVESTMENTS;)
11 THUNDER PROPERTIES, INC.; AND)
PHIL FRINK & ASSOCIATES, INC.,)

12)
Defendants.)

13 _____)

14

15

16 DEPOSITION OF JON JENTZ

17 30(b)(6) REPRESENTATIVE OF THUNDER PROPERTIES, INC.

18 Taken on Wednesday, March 8, 2017

19 At 1:00 p.m.

20 At All-American Court Reporters

21 1160 N Town Center Drive

22 Suite 300

23 Las Vegas, Nevada

24

25 REPORTED BY: SHIFRA MOSCOVITZ, CCR NO. 938

**CERTIFIED
COPY**

Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

Page 2

1 APPEARANCES:

2 For US Bank National Association:

3 VATANA LAY, ESQ.
4 AKERMAN, LLP
5 1160 Town Center Drive
6 Suite 330
7 Las Vegas, Nevada 89144
8 (702) 634-5000

7

8 For Westland Real Estate Development and Investments,
9 Thunder Properties, Inc.:

9

10 ROGER P. CROTEAU, ESQ.
11 ROGER P. CROTEAU & ASSOCIATES, LTD.
12 9110 West Post Road
13 Suite 100
14 Las Vegas, Nevada 89148
15 (702) 761-3846

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Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

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EXAMINATION

3

WITNESS:
Jon Jentz

PAGE

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Examination by:
Mr. Lay

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EXHIBITS

11

EXHIBIT

PAGE

12

A

Notice of Deposition

4

13

B

Printout from the Secretary of
State website

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C

Foreclosure Deed

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15

D

Quit Claim Deed

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E

Quit Claim Deed

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Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

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1 LAS VEGAS, NEVADA; MARCH 8, 2017

2 1:00 P.M.

3 -oOo-

4 (NRCF Rule 30(b)(4) waived by the parties prior to the
5 commencement of the deposition.)

6 (FRCP Rule 30(b)(5) waived by the parties prior to the
7 commencement of the deposition.)

8 (Exhibits A-B were marked for
9 identification.)

10 (In an off-the-record discussion held prior to the
11 commencement of the deposition proceedings, counsel
12 agreed to waive the court reporter requirements
13 under Rule 30(b)(4) of the Nevada Rules of Civil
14 Procedure.)

15 Thereupon--

16 JON JENTZ,
17 was called as a witness, and having been first duly sworn,
18 was examined and testified as follows:

19 EXAMINATION

20 BY MR. LAY:

21 Q. Good afternoon, my name is Vatana Lay and
22 I am here for US Bank. Can you please state your
23 full name and spell your last?

24 A. Jon Jentz, J-E-N-T-Z.

25 Q. And you are familiar with the deposition

Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

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1 Q. Do you currently work?

2 A. Sort of, I manage my own property.

3 Q. So is that your current occupation, like
4 property manager?

5 A. Realtor is probably my current occupation.

6 Q. Okay. And do you own your own company?

7 A. Yes.

8 Q. Okay. What company is that?

9 A. Balboa Realty. I am partners with my
10 brother.

11 Q. How long have you been principal of Balboa
12 Realty?

13 A. I think since '73.

14 Q. And there is two principals, yourself and
15 your brother?

16 A. Yes.

17 Q. So you have you been in the real estate
18 business since 1973 then?

19 A. Yes, a little before that.

20 Q. How long would you say you have been in
21 real estate?

22 A. I think I got my first license in '68 or
23 '69.

24 Q. Okay. You have been doing real estate
25 investment for a while?

Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

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1 Texas, I think that's it.

2 Q. Okay. So currently, is Thunder only
3 purchasing properties in California and Nevada then?

4 A. Thunder has only purchased properties in
5 Nevada.

6 Q. So Thunder is only purchasing properties
7 in Nevada. And you individually, are you currently
8 still investing in properties in California and
9 Nevada?

10 A. Yes.

11 Q. And how many properties would you say
12 Thunder purchased in 2016?

13 A. Probably one or two.

14 Q. What about 2015?

15 A. Probably seven or eight.

16 Q. 2014?

17 A. Probably 50.

18 Q. Fifty. And are you yourself affiliated
19 with any other entities that also invest in
20 purchasing properties?

21 A. Yes.

22 Q. Which entities are those?

23 A. Airmotive Investments, Las Vegas
24 Development Group, and LVDG, which is a subpart of
25 Las Vegas Development Group.

Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

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1 MR. CROTEAU: I am going to object, based
2 on he is a 30(b)(6) witness. So in terms of
3 his other business affairs.

4 A. Sahara East is another entity, Washington
5 212, yes, a few others.

6 Q. Okay. Are the entities that you just
7 mentioned, do they purchase properties in just
8 Nevada?

9 A. No.

10 Q. Okay.

11 A. Some of them.

12 Q. But not all of them?

13 A. Yes.

14 Q. Do you know which ones of those, the ones
15 that only purchase properties in Nevada?

16 A. I think Las Vegas Development Only
17 purchased in Nevada. I think Airmotive Investments
18 only purchased properties in Nevada.

19 Q. And then for Thunder, Airmotive and LVDG,
20 were those properties, properties from HOA
21 foreclosure sales or were there other types of
22 sales?

23 A. Other types of sales.

24 Q. So generally, how did Thunder become aware
25 that a property was going to be coming up for sale?

Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

Page 13

1 MR. CROTEAU: Objection. Vague and
2 ambiguous. This particular property?

3 MR. LAY: Just in general, for it's
4 business purposes. He said that Thunder
5 purchased and rented out properties.

6 Q. So when it wanted to purchase properties,
7 how did it become aware they were going up for sale?

8 A. Primarily through Foreclosure Radar, now
9 it's called Property Radar. That was the primary.

10 Q. So was this a site that Thunder would
11 visit on a regular basis just to see what is going
12 up for sale?

13 A. Yes, it was a paid site.

14 Q. Just generally, what did Thunder do to
15 prepare for a sale once it decided, hey, this is a
16 property we are going to look at?

17 A. We looked at the properties that were
18 coming up for sale and typically what I am going to
19 call normal houses, not condos, not really expensive
20 houses, houses that I found would make it good in
21 the rental market, middle income priced houses. We
22 look at the areas where they are in and look for the
23 rental value of the house and typically drove by to
24 look at the overall condition that I could tell
25 whether it was occupied, whether it was vacant, and

Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

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1 then they use this website, Property Warehouse, that
2 had a link to Zillow, and you could look at a
3 picture of it typically and what the market value or
4 rental and so forth was. That's probably about it.

5 Q. Okay. Did you or did Thunder document any
6 of this research in any way?

7 A. Probably did at the time, but nothing was
8 kept.

9 Q. When you say probably did at the time, how
10 would it have been done at the time?

11 A. Driving by you might look at 20 properties
12 and only three or four would actually go to auction,
13 and you would write down vacant, not vacant, good
14 condition, better than average, below average, good
15 area, bad area, just so when I came in the next day
16 I refreshed what the general condition and area of
17 the property was.

18 Q. So you are saying you would have taken
19 hand written notes?

20 A. Yes.

21 Q. And then earlier you testified that one of
22 the sites that you would look at is Zillow?

23 A. Well, it was a link from Property Radar
24 where you could click on it and it took you to
25 Zillow on that property. And had the Zillow

Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

Page 15

1 information on it.

2 Q. Would it take you to the Zillow website?

3 A. Yes.

4 Q. And I think you testified that part of the
5 information that Zillow gives is the market value of
6 the property?

7 A. Well, it gives what they call a Zillow
8 value, it gives a rental value, it gives, if it's
9 listed for rent or for sale it gives you that value.

10 Q. What are you focusing on when you are on
11 the zillow website, what information is important to
12 you?

13 A. Rental, mine was looking at renting this
14 house and what I would receive for it.

15 Q. Did you ever look at what the Zillow value
16 of the property was?

17 A. You mean the Zillow value?

18 Q. Yes.

19 A. Yes, I probably did.

20 Q. And was there a reason you would look at
21 that?

22 A. Well, it just was there. I mean it was
23 listed on Property Radar, what they would call a
24 value assigned to it, so that's always a starting
25 point, and it probably told you a lot of area, and

Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

Page 16

1 the size of the area. I mean square footage was
2 another item you would look at, number of bedrooms.

3 Q. Would the Zillow value or the value on the
4 Property Radar website, would that affect your
5 decision making in terms of whether or not to
6 purchase the property?

7 A. I don't know, probably not, but I guess at
8 times it could. If I saw a property listed for a
9 million dollars I probably did not chase that
10 property. I was looking for kind of a range of what
11 I could get in rental value. And Zillow did a very
12 good job on tracking homes, did a very bad job on
13 custom homes or when there is only two and there is
14 no comparables in the neighborhood.

15 Q. Prior to buying property did Thunder ever
16 try to get a title report on the property?

17 A. I don't think so.

18 Q. And prior to purchasing a property did
19 Thunder ever acquire from the HOA or the HOA's
20 collection company if any attempts were made to pay
21 off liens on the property?

22 A. No.

23 Q. Would it concern you if there were liens
24 on the property?

25 A. I would certainly have an interest.

Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

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1 decision.

2 Q. Okay. How did Thunder make its
3 determination on how much to bid for a particular
4 property?

5 A. Well, that changed over time, I guess.

6 Q. Let's see, this sale took place in 2011.
7 So back in 2011 what was the factors Thunder
8 considered?

9 A. I didn't know about this property sold at
10 the auction. I was made aware of it after the
11 auction.

12 Q. Okay. So at the time that Thunder
13 purchased this property, what were the factors that
14 Thunder considered in terms of how much Thunder
15 would pay for this property?

16 A. Primarily rental value, how long it would
17 take for me to get my money back.

18 Q. Did the fact that there was a deed of
19 trust recorded against the property ever factor into
20 how much Thunder would pay for the property?

21 MR. CROTEAU: Objection. Calls for legal
22 conclusion, vague and ambiguous.

23 A. You know it probably did.

24 Q. And how would it factor in?

25 A. As I said before, the cleaner the property

Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

Page 19

1 was the less I felt I had was going to be tied up
2 and have to spend money in lawsuits.

3 Q. So the fact that there was a deed of trust
4 recorded against the property, did that make Thunder
5 believe that there may be a future lawsuit?

6 A. Yes.

7 Q. For this particular property, did the HOA
8 ever contact you or Thunder to let Thunder know it
9 was going up for foreclosure sale?

10 A. No.

11 Q. What about Phil Frink and Associates, did
12 they contact Thunder to let you know that the
13 property was going up for foreclosure sale?

14 A. I don't know.

15 Q. Does Thunder ever contact HOA's or Phil
16 Frink to request to ask if there are other
17 properties going up for sale?

18 A. At some point, yes.

19 Q. And can you elaborate what you mean by at
20 some point?

21 A. The early stages not so, at the later
22 stages, where they would contact some of the HOA's
23 if they had any properties that they had purchased
24 by the HOA that they wanted to sell, may call the
25 HOA or actually the foreclosure company and ask

Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

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1 whether that sale was going tomorrow or so, that
2 type.

3 Q. Okay. Have you ever heard the term super
4 priority lien?

5 A. Yes.

6 Q. And what was Thunder's understanding of
7 that term in 2011?

8 A. Well, Thunder did not exist in 2011.

9 Q. 2012, what was Thunder's understanding in
10 2012?

11 A. We were acknowledging, at least part of
12 that time, that the HOA, if the lender had not paid
13 some proportion of, and I think it started out as
14 six or nine months portion of that, it was inferior
15 to the HOA sale.

16 Q. Okay. Did Thunder have an understanding
17 in 2012 as to whether a lender could prevent their
18 lien from becoming inferior to the HOA's?

19 A. Yes.

20 Q. And how would the lender do that?

21 A. It would pay the, I think it would start
22 out with six months, and then it went to nine months
23 of dues, and there was a question of what was
24 included in those dues at that time, and we didn't
25 know.

Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

Page 23

1 Q. So are you, I am not quite understanding,
2 so are you saying that it was common at the HOA
3 foreclosure sales for the person auctioning off the
4 property to announce if a super priority portion was
5 paid off?

6 A. Most of the foreclosure companies, yes.

7 Q. So did you ever ask Westland if they knew
8 if the super priority portion of this property was
9 paid off before Thunder purchased it?

10 A. Not that I recall.

11 Q. Did Thunder ever check to see if there was
12 a deed of trust recorded against the property before
13 purchasing it?

14 A. Not that I recall.

15 Q. Did anybody from Thunder actually attend
16 the foreclosure auction for this property?

17 A. No.

18 (Exhibit C was marked for
19 identification.)

20 Q. In this printout that you did, I see an
21 entry here that there was a Thunder property back in
22 2000?

23 A. That was nothing to do with me or I don't
24 know who that was.

25 Q. Got it. So let's take a look at Exhibit

Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

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1 A. Yes.

2 Q. For this property, did you believe that
3 there may be future litigation when you purchased
4 it?

5 A. Probably.

6 Q. And the Westland Real Estate Development
7 Investment, that's the entity that Thunder purchased
8 this property from, correct?

9 A. Yes.

10 Q. Prior to the purchase of this property was
11 there any relationship between Thunder and Westland?

12 A. No.

13 Q. And who from Thunder negotiated the
14 purchase of this property?

15 A. Me.

16 Q. Okay. Do you recall who from Westland you
17 were negotiating with?

18 A. This deal.

19 Q. And you said that somebody from Westland
20 contacted the property manager for Thunder?

21 A. Somebody sent out a flyer, I think. I
22 don't know if they contacted, but they had sent out
23 flyers that they had these properties for sale.

24 Q. And what did the negotiations consist of;
25 was it in person, via e-mail, via telephone?

Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

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1 CERTIFICATE OF REPORTER

2

3 I, Shifra Moscovitz, Certified Court Reporter,
4 State of Nevada, do hereby certify:

5 That I reported the deposition of JON JENTZ,
6 commencing on Wednesday, March 8, 2017, at 1:00 p.m.


7 That prior to being deposed, the witness was duly
8 sworn by me to testify to the truth. That I thereafter
9 transcribed my said shorthand notes into typewriting and
10 that the typewritten transcript is a complete, true and
11 accurate transcription of my said shorthand notes. That
12 prior to the conclusion of the proceedings, the reading and
13 signing was not requested by the witness or a party.

14 I further certify that I am not a relative or
15 employee of counsel of any of the parties, nor a relative or
16 employee of the parties involved in said action, nor a
17 person financially interested in the action.

18 In witness whereof, I hereunto subscribe my name
19 at Las Vegas, Nevada, this 21st day of March, 2017.

20

21


SHIFRA MOSCOVITZ, CCR No. 938

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Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

Page 2

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2 For US Bank National Association:

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Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

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Jon Jentz March 8, 2017
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19 EXAMINATION

20 BY MR. LAY:

21 Q. Good afternoon, my name is Vatana Lay and
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24 A. Jon Jentz, J-E-N-T-Z.

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Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

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Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

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Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

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24 value assigned to it, so that's always a starting
25 point, and it probably told you a lot of area, and

Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

Page 16

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2 another item you would look at, number of bedrooms.

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13 custom homes or when there is only two and there is
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16 try to get a title report on the property?

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18 Q. And prior to purchasing a property did
19 Thunder ever acquire from the HOA or the HOA's
20 collection company if any attempts were made to pay
21 off liens on the property?

22 A. No.

23 Q. Would it concern you if there were liens
24 on the property?

25 A. I would certainly have an interest.

Jon Jentz March 8, 2017
30(b)(6) Representative of Thunder Properties, Inc.

Page 32

1 CERTIFICATE OF REPORTER

2

3 I, Shifra Moscovitz, Certified Court Reporter,
4 State of Nevada, do hereby certify:

5 That I reported the deposition of JON JENTZ,
6 commencing on Wednesday, March 8, 2017, at 1:00 p.m.


7 That prior to being deposed, the witness was duly
8 sworn by me to testify to the truth. That I thereafter
9 transcribed my said shorthand notes into typewriting and
10 that the typewritten transcript is a complete, true and
11 accurate transcription of my said shorthand notes. That
12 prior to the conclusion of the proceedings, the reading and
13 signing was not requested by the witness or a party.

14 I further certify that I am not a relative or
15 employee of counsel of any of the parties, nor a relative or
16 employee of the parties involved in said action, nor a
17 person financially interested in the action.

18 In witness whereof, I hereunto subscribe my name
19 at Las Vegas, Nevada, this 21st day of March, 2017.

20

21


SHIFRA MOSCOVITZ, CCR No. 938

22

23

24

25

EXHIBIT N

Thunder Properties, Inc.’s Responses to Plaintiff’s First Set of Interrogatories

ROGER P. CROTEAU & ASSOCIATES, LTD.
 • 9120 W. Post Road, Suite 100 • Las Vegas, Nevada 89148 •
 Telephone: (702) 254-7775 • Facsimile (702) 228-7719

1 ROGER P. CROTEAU, ESQ.
 Nevada Bar No. 4958
 2 TIMOTHY E. RHODA, ESQ.
 Nevada Bar No. 7878
 3 ROGER P. CROTEAU & ASSOCIATES, LTD.
 9120 West Post Road, Suite 100
 4 Las Vegas, Nevada 89148
 (702) 254-7775
 5 (702) 228-7719 (facsimile)
croteaulaw@croteaulaw.com
 6 *Attorney for Defendant*
THUNDER PROPERTIES, INC.

8
 9 UNITED STATES DISTRICT COURT
 10 DISTRICT OF NEVADA

11 ***

12 US BANK NATIONAL ASSOCIATION, AS)
 TRUSTEE FOR THE SPECIALTY)
 13 UNDERWRITING AND RESIDENTIAL)
 FINANCE TRUST AND MORTGAGE LOAN)
 14 ASSET-BACKED CERTIFICATES SERIES)
 2006-BC4,)

Case No. 3:16-cv-00501-RCJ-WGC

15 Plaintiff,)
 16)

17 vs.)

18 WOODLAND VILLAGE; WESTLAND REAL)
 ESTATE DEVELOPMENT AND)
 19 INVESTMENTS; THUNDER PROPERTIES,)
 INC.; AND PHIL FRINK & ASSOCIATES,)
 INC.,)

20 Defendants.)
 21 _____)

22 **THUNDER PROPERTIES, INC.'S RESPONSES**
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

23 COMES NOW, Defendant, THUNDER PROPERTIES, INC., by and through its attorneys
 24 of record, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby submits its Responses to
 25 Plaintiff's First Set of Interrogatories, as follows:

26 **PRELIMINARY STATEMENT**

27 Defendant, THUNDER PROPERTIES, INC. (hereinafter "*Responding Party*"), has not yet
 28

ROGER P. CROTEAU & ASSOCIATES, LTD.
 • 9120 W. Post Road, Suite 100 • Las Vegas, Nevada 89148 •
 Telephone: (702) 254-7775 • Facsimile (702) 228-7719

completed its discovery and investigation for the preparation of this case for trial. Accordingly, the answers set forth herein are provided without prejudice to the Responding Party's right to produce any subsequent discovered facts or interpretations thereof and/or to add, modify or otherwise change or amend the answers herein. The information hereinafter set forth is true and correct to the best of the Responding Party's knowledge at this particular time, but is subject to correction for inadvertent errors or omissions, if any such error or omissions are found to exist.

GENERAL OBJECTIONS

Responding Party objects to these Interrogatories on the basis that the definitions, explanatory notes and instructions are so complex, numerous and burdensome that they create an unreasonable and undue burden upon Responding Party. In addition, the definitions, explanatory notes and instructions cause the Interrogatories to reach an objectionable breadth, ambiguity, complexity and vagueness, and call for information and/or documents which are irrelevant, not calculated to lead to the discovery of admissible evidence, protected by the attorney-client privilege or attorney work-product doctrine, and are beyond the permissible scope of discovery.

Responding Party further objects to any answer or response protected by the attorney-client privilege, or the attorney work-product doctrine.

Responding Party further objects to any answer or response irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

No response, nor subsequent response, constitutes a waiver of any other objection pursuant to these Interrogatories or to other similar requests that may be propounded at a later time.

Responding Party reserves its right to supplement these response as deemed necessary.

Subject to the general objections made above, Responding Party responds to each Interrogatory as follows:

INTERROGATORY NO. 1:

IDENTIFY any PERSON providing substantive information to respond to U.S. Bank's First Set of Requests for Production, Requests for Admission, and these Interrogatories, including identification of the requests or interrogatories with which that PERSON assisted.

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1 confusing. Without waiving said objections, Responding Party states as follows: The HOA and/or
 2 its agent were obligated to provide notice to all holders of secured interests in the subject property.
 3 The HOA Foreclosure Deed states on its face that all requirements of law regarding the mailing of
 4 copies of notices and the posting and publication of the Notice of Sale were complied with.
 5 Responding Party lacks personal knowledge regarding the notices that were provided to the Plaintiff;
 6 however, Responding Party relies upon the recitals and representations contained in the HOA
 7 Foreclosure Deed, which are conclusive as a matter of law.

8 **INTERROGATORY NO. 9:**

9 Provide a summary of any funds or resources YOU have expended in regard to the
 10 PROPERTY, including listing the date of each expenditure, the amount, and the reason for the
 11 expenditure.

12 **ANSWER TO INTERROGATORY NO. 9:**

13 Objection. This Interrogatory is overly broad, overly burdensome, vague, ambiguous and
 14 confusing. Furthermore, this Interrogatory is not reasonably calculated to lead to the discovery of
 15 relevant, admissible evidence. Without waiving said objections, Responding Party states as follows:
 16 Responding Party paid \$7,000.00 to purchase the Property from Westland. Since acquiring the
 17 Subject Property, Responding Party has paid HOA assessments, property taxes and other expenses
 18 commonly associated with the ownership and rental of real property. These expenses are itemized
 19 on the Quickbooks report and/or cash flow statements disclosed in conjunction with Responding
 20 Party's Response to Request for Production served concurrently herewith. Responding Party has
 21 also incurred legal fees in association with this litigation.

22 **INTERROGATORY NO. 10:**

23 IDENTIFY any rent or other income YOU have received related to the PROPERTY from
 24 your acquisition of the property to the present, including the date any income was received, the
 25 amount of the income, and the source of the income.

26 **ANSWER TO INTERROGATORY NO. 10:**

27 Objection. This Interrogatory is overly broad, overly burdensome, vague, ambiguous and
 28 confusing. Furthermore, this Interrogatory is not reasonably calculated to lead to the discovery of

INTERROGATORY NO. 24:

IDENTIFY all properties YOU purchased at or following a foreclosure sale between January 1, 2008, to the present, including the property address, the foreclosing entity, the date, and the purchase price.

ANSWER TO INTERROGATORY NO. 24:

Objection. This Interrogatory is overly broad, overly burdensome, vague, ambiguous and confusing. Moreover, this Interrogatory is not reasonably calculated to lead to the discovery of relevant, admissible evidence. Furthermore, this Interrogatory exceeds the number allowed by the Federal Rules of Civil Procedure. Without waiving said objections, Responding Party states as follows: Responding Party has purchased numerous properties at foreclosure sales.

INTERROGATORY NO. 25:

IDENTIFY the current record owner of the PROPERTY.

ANSWER TO INTERROGATORY NO. 25:

Objection. This Interrogatory exceeds the number allowed by the Federal Rules of Civil Procedure. Without waiving said objections, Responding Party states as follows: Thunder Properties, Inc.

DATED this 8th day of February, 2017.

ROGER P. CROTEAU & ASSOCIATES, LTD.

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VERIFICATION

STATE OF NEVADA)
) SS.
 COUNTY OF CLARK)

JON JENTZ, being first duly sworn, deposes and says: that he is the President of Thunder Properties, Inc., a party in the above entitled action; that he has read the foregoing Answers to Interrogatories, knows the contents thereof, and that the same is true of his own knowledge, except for those matters therein alleged on information and belief, and as to those matters he believes them to be true.


 JON JENTZ

SUBSCRIBED AND SWORN to before me
 this 8th day of February, 2017.


 NOTARY PUBLIC



UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

U.S. BANK NATIONAL ASSOCIATION,

Plaintiff,

vs.

WOODLAND VILLAGE et al.,

Defendants.

3:16-cv-00501-RCJ-WGC

ORDER

This case arises from a residential foreclosure by the Woodland Village Homeowners Association (“the HOA”) for failure to pay HOA fees. Pending before the Court is Defendant Thunder Properties, Inc.’s (“Thunder”) Motion to Dismiss, (ECF No. 39), and Plaintiff’s Motion for Summary Judgment, (ECF No. 42).

I. FACTS AND PROCEDURAL BACKGROUND

In 2006, non-party homeowners obtained a \$212,672 mortgage loan to purchase property located at 17655 Little Peak Court, Cold Springs, Nevada 89508 (the “Property”). Plaintiff U.S. Bank (“Plaintiff”) acquired the note and Deed of Trust (“DOT”) by Corporate Assignment of Deed of Trust recorded July 24, 2009. (Compl. ¶ 15, ECF No. 1.)

On February 17, 2010, as a result of the homeowners’ failure to pay HOA fees, the HOA recorded a lien for delinquent assessment. (*Id.* at ¶ 16.) The HOA later foreclosed, and on February 10, 2011, the HOA acquired the Property with a credit bid of \$5,562.25. (*Id.* at ¶¶ 25–

26.) The deed of sale was recorded on February 10, 2011. Subsequently, the HOA transferred its interest in the Property to Defendant Westland Real Estate Development and Investments (“Westland”) by way of quitclaim deed recorded April 30, 2013. (*Id.* at ¶ 27.) Westland then transferred its interest in the Property to Defendant Thunder by way of quitclaim deed recorded August 26, 2013. (*Id.* at ¶ 28.) The chain of title indicates that Thunder is the current owner of the Property.

On August 25, 2016, Plaintiff brought this action for quiet title and declaratory relief, violation of NRS 116.1113, wrongful foreclosure, and injunctive relief. On December 6, 2016, the Court dismissed all of Plaintiff’s Complaint save its quiet title/declaratory judgment claim against Westland and Thunder. (Order, ECF No. 32.) Thunder now moves the Court to dismiss the remaining claim against it. (Mot. Dismiss, ECF No. 39.) Plaintiff also moves for summary judgment in its favor. (Mot. Summ. J., ECF No. 42.)

II. LEGAL STANDARDS

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief” in order to “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Conley v. Gibson*, 355 U.S. 41, 47 (1957). Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action that fails to state a claim upon which relief can be granted. A motion to dismiss under Rule 12(b)(6) tests the complaint’s sufficiency. *See N. Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir. 1983). When considering a motion to dismiss under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the complaint does not give the defendant fair notice of a legally cognizable claim and the grounds on which it rests. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering whether the complaint is sufficient to state a claim, the court will take all material allegations as true and construe them in

1 the light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th
2 Cir. 1986). The court, however, is not required to accept as true allegations that are merely
3 conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden*
4 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

5 A formulaic recitation of a cause of action with conclusory allegations is not sufficient; a
6 plaintiff must plead facts pertaining to his own case making a violation “plausible,” not just
7 “possible.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677–79 (2009) (citing *Twombly*, 550 U.S. at 556)
8 (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
9 draw the reasonable inference that the defendant is liable for the misconduct alleged.”). That is,
10 under the modern interpretation of Rule 8(a), a plaintiff must not only specify or imply a
11 cognizable cause of action (*Conley* review), but also must allege the facts of his case so that the
12 court can determine whether the plaintiff has any basis for relief under the cause of action he has
13 specified or implied, assuming the facts are as he alleges (*Twombly-Iqbal* review).

14 “Generally, a district court may not consider any material beyond the pleadings in ruling
15 on a Rule 12(b)(6) motion. However, material which is properly submitted as part of the
16 complaint may be considered on a motion to dismiss.” *Hal Roach Studios, Inc. v. Richard Feiner*
17 *& Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citation omitted). Similarly, “documents
18 whose contents are alleged in a complaint and whose authenticity no party questions, but which
19 are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6)
20 motion to dismiss” without converting the motion to dismiss into a motion for summary
21 judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994). Moreover, under Federal Rule
22 of Evidence 201, a court may take judicial notice of “matters of public record.” *Mack v. S. Bay*
23 *Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Otherwise, if the district court
24 considers materials outside of the pleadings, the motion to dismiss is converted into a motion for

summary judgment. *See Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001).

III. ANALYSIS

As the Court previously held in its order of dismissal on December 6, 2016, a five-year statute of limitations applies to Plaintiff's quiet title claims and the limitations period began to run at the time of the foreclosure sale. (Order 6, ECF No. 32.) *See also Weeping Hollow Ave. Tr. v. Spencer*, 831 F.3d 1110, 1114 (9th Cir. 2016) (emphasis added) ("Under Nevada law, Spencer could have brought claims challenging the HOA foreclosure sale *within five years of the sale.*"); *Scott v. Mortg. Elec. Registration Sys., Inc.*, 605 F. App'x 598, 600 (9th Cir. 2015); *Bank of Am., N.A. v. Antelope Homeowners' Ass'n*, No. 2:16-cv-449, 2017 WL 421652, at *3 (D. Nev. Jan. 30, 2017) (Mahan, J.); *Nationstar Mortg. LLC v. Amber Hills II Homeowners Ass'n*, No. 2:15-cv-01433, 2016 WL 1298108, at *3 (D. Nev. Mar. 31, 2016) (Gordon, J.). The Court dismissed the quiet title claim with respect to Defendants the HOA and Phil Frink, but declined to dismiss the claim against Westland and Thunder because they had not moved for dismissal and they acquired their interest in the Property within the five-year statute of limitations period.

It is clear from the Complaint that Plaintiff alleges no independent defect in the assignments to Westland and Thunder other than the invalidity of the underlying HOA foreclosure sale. Therefore, because Plaintiff seeks to quiet title in itself on the basis of the sale, which took place more than five years prior to the filing of the Complaint, its claim is time-barred. A contrary ruling would defeat the purpose of the statute of limitations, essentially "restarting" the running of the statute each time a subsequent assignment of the Property was recorded. As the Court noted in its prior order, Plaintiff's interest in the Property was called into question at the time of the foreclosure sale due to NRS 116.3116(2), which gives priority to that portion of an HOA lien consisting solely of unpaid HOA assessments accrued during the "nine

1 months immediately preceding institution of an action to enforce the lien.” A foreclosure deed
2 was recorded on February 10, 2011, and clearly stated that the grantee had purchased all right,
3 title, and interest of the current vested owner. Plaintiff could have brought its action to quiet title
4 against the HOA at any time following the HOA’s foreclosure sale, in order to obtain a
5 declaration that the sale had not extinguished its interest in the Property.

6 Therefore, the Court will dismiss Plaintiff’s quiet title claim as pled against Westland and
7 Thunder. The claim for injunctive relief is also dismissed as moot.

8 **CONCLUSION**

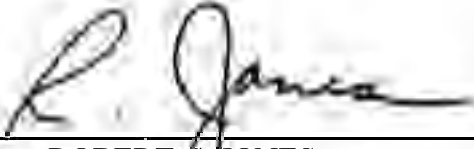
9 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 39) is GRANTED.

10 IT IS FURTHER ORDERED that the Motion for Summary Judgment (ECF No. 42) is
11 DENIED as moot.

12 The Clerk of the Court shall enter judgment against Plaintiff and close the case.

13 IT IS SO ORDERED. June 14, 2017

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ROBERT C. JONES
United States District Judge

AO 450 (Rev. 5/85) Judgment in a Civil Case ⊕

UNITED STATES DISTRICT COURT

**** DISTRICT OF NEVADA

U.S. BANK NATIONAL ASSOCIATION,

Plaintiff,

JUDGMENT IN A CIVIL CASE

V.

CASE NUMBER: 3:16-cv-00501-RCJ-WGC

WOODLAND VILLAGE, et al.,

Defendants.

— **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

— **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

X **Decision by Court.** This action came to be considered before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Defendant Thunder Properties Inc.'s Motion to Dismiss (ECF No. 39) is **GRANTED**. Judgment is hereby entered in favor of Defendant, and against Plaintiff.

June 14, 2017

DEBRA K. KEMPI
Clerk

/s/ D. R. Morgan
Deputy Clerk

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*Attorneys for Plaintiff US Bank National
Association, as Trustee for the Specialty
Underwriting and Residential Finance Trust
Mortgage Loan Asset-Backed Certificates
Series 2006-BC4*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

US BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR THE SPECIALTY
UNDERWRITING AND RESIDENTIAL
FINANCE TRUST MORTGAGE LOAN
ASSET-BACKED CERTIFICATES
SERIES 2006-BC4,

Plaintiff,

vs.

WOODLAND VILLAGE HOMEOWNERS
ASSOCIATION; WESTLAND REAL ESTATE
DEVELOPMENT AND INVESTMENTS;
THUNDER PROPERTIES, INC.; AND PHIL
FRINK & ASSOCIATES, INC.,

Defendants.

Case No.: 3:16-cv-00501-RCJ-WGC

**U.S. BANK NATIONAL ASSOCIATION'S
NOTICE OF APPEAL**

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1 Notice is hereby given that U.S. Bank National Association, as Trustee for the Specialty
 2 Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates Series 2006-
 3 BC4 (**U.S. Bank**), plaintiff in the above named case, hereby appeals to the United States Court of
 4 Appeals for the Ninth Circuit from the 14 June 2017 order granting defendant Thunder Properties
 5 Inc.'s motion to dismiss, entering judgment against U.S. Bank, and closing the case (ECF No. 45).

6 DATED this 12th day of July, 2017.

7 **AKERMAN LLP**

8 */s/ Vatana Lay, Esq.*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on the 12th day of July, 2017, I caused to be served a true and correct copy of the foregoing **NOTICE OF APPEAL** in the following manner:

(Electronic Service) Pursuant to FRCP 5(b), the above referenced document was electronically filed on the date hereof with the Clerk of the Court for the United States District Court by using the Court's CM/ECF system and served through the Court's Notice of electronic filing system automatically generated to those parties registered on the Court's Master E-Service List.

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CIRCUIT RULE 3-2(B) REPRESENTATION STATEMENT

Pursuant to Ninth Circuit Rule 3-2(b), U.S. Bank attaches this Representation Statement to its **NOTICE OF APPEAL** identifying all parties to this action along with the names, addresses and telephone number of their respective counsel, if any.

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