

No. 81129
IN THE SUPREME COURT OF THE STATE OF NEVADA

US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE SPECIALTY
UNDERWRITING AND RESIDENTIAL FINANCE TRUST AND MORTGAGE
LOAN ASSET-BACKED CERTIFICATES SERIES 2006-B64
Plaintiff—Appellant,

Electronically Filed
Mar 22 2022 04:21 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

THUNDER PROPERTIES, INC. AND WESTLAND REAL ESTATE
DEVELOPMENT AND INVESTMENTS,
Defendants—Respondents.

APPEAL

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

RESPONDENT’S PETITION FOR REHEARING

Roger P. Croteau, Esq.
Nevada Bar No. 4958
Timothy E. Rhoda, Esq.
Nevada Bar No. 7878
ROGER P. CROTEAU AND ASSOCIATES, LTD
2810 W. Charleston Boulevard, Suite 75
Las Vegas, Nevada 89102
Telephone: (702) 254-7775
Facsimile: (702) 228-7719
Attorneys for Defendant/Respondent Thunder Properties, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
NRAP 26.1 DISCLOSURE	vi
INTRODUCTION	1
ARGUMENT	2
1. PURPOSES OF A STATUTE OF LIMITATIONS	2
2. IT IS WELL ESTABLISHED THAT STATUTES OF LIMITATION COMMENCE WHEN AN ACTION ACCRUES	4
3. A LIEN HOLDER’S CLAIMS RELATED TO A HOMEOWNERS ASSOCIATION LIEN FORECLOSURE SALE ACCRUE AT THE TIME OF THE HOA FORECLOSURE SALE OR, AT THE LATEST, UPON RECORDING OF THE ASSOCIATED FORECLOSURE DEED	4
4. NO BASIS EXISTS TO TOLL THE STATUTE OF LIMITATIONS	10
CONCLUSION	14
CERTIFICATE OF COMPLIANCE	16
CERTIFICATE OF SERVICE	18

TABLE OF AUTHORITIES

Cases

<i>Allen v. Webb</i> , 87 Nev. 261, 485 P.2d 677 (Nev. 1971)	3
<i>Bank of Am., N.A. v. Antelope Homeowners' Ass'n</i> , No. 2:16-cv-449, 2017 U.S. Dist. LEXIS 13092, 2017 WL 421652 (D. Nev. Jan. 30, 2017) (Mahan, J.)	6
<i>Berberich v. Bank of Am., N.A.</i> , 460 P.3d 440 (Nev. 2020)	12, 13, 14
<i>Chase Secur. Corp. v. Donaldson</i> , 325 U.S. 304 (1945)	2
<i>Clark v. Robison</i> , 113 Nev. 949, 944 P.2d 788 (1997)	3
<i>Cumming v. San Bernardino Redev. Agency</i> , 101 Cal. App. 4th 1229, 125 Cal. Rptr. 2d 42 (Ct. App. 2002)	3
<i>FDIC v. Rhodes</i> , 130 Nev. 893, 336 P.3d 961 (2014)	2, 3
<i>Estate of Davis v. Davis</i> , 2011 UT App 343, 265 P.3d 813	11
<i>Job's Peak Ranch Cmty. Ass'n v. Douglas County</i> , No. 55572, 2015 Nev. Unpub. LEXIS 1006, 2015 WL 5056232 (Nev. Aug. 25, 2015)	3
<i>JPMorgan Chase Bank, Nat'l Ass'n v. SFR Invs. Pool I, Ltd. Liab. Co.</i> , 475 P.3d 52 (Nev. 2020)	7
<i>Las Vegas Dev. Grp., LLC v. Blaha</i> , 416 P.3d 233 (Nev. 2018)	13

<i>Nationstar Mortg. LLC v. Amber Hills II Homeowners Ass'n</i> , No. 2:15-cv-01433, 2016 U.S. Dist. LEXIS 43592, 2016 WL 1298108 (D. Nev. Mar. 31, 2016) (Gordon, J.)	6
<i>Nationstar Mortg., LLC v. Falls at Hidden Canyon Homeowners Ass'n</i> , No. 2:15-cv-01287-RCJ-NJK, 2017 U.S. Dist. LEXIS 91343 (D. Nev. June 14, 2017)	5
<i>Petersen v. Bruen</i> , 106 Nev. 271, 792 P.2d 18 (1990)	2, 10, 11
<i>PNC Bank, Nat'l Ass'n v. Saticoy Bay LLC Series 9320 Mt. Cash Ave. UT 103</i> , 395 P.3d 511 (Nev. 2017) (unpublished)	5
<i>PNC Bank, N.A. v. Saticoy Bay, LLC Series 4208 Rolling Stone Dr. Tr.</i> , 398 P.3d 290 (Nev. 2017) (unpublished)	5
<i>Scott v. Mortg. Elec. Registration Sys., Inc.</i> , 605 F. App'x 598 (9th Cir. 2015)	7
<i>Weeping Hollow Ave. Tr. v. Spencer</i> , 831 F.3d 1110 (9th Cir. 2016)	6
<i>White v. Sheldon</i> , 4 Nev. 280 (1868)	3
<i>Winn v. Sunrise Hosp. & Med. Ctr.</i> , 128 Nev. 246, 277 P.3d 458 (2012)	2
<u>Statutes</u>	
12 U.S.C. § 4617(b)(12)	6
NRS Chapter 107	8
NRS Chapter 116	1

NRS 11.080	13
NRS 11.220	1
NRS 107.080	8, 9
NRS 107.080(4)	9
NRS 107.080(5)	9
NRS 107.080(5)-(7)	9
NRS 107.080(6)	9
NRS 107.080(7)	9
NRS 116.3116(2)	5

Rules

NRAP 26.1(a)	vi
NRAP 40(a)(2)	1
NRAP 40(c)(2)	1

Other Sources

51 Am.Jur.2d Limitation of Actions §18, 19 (1970)	2
Black's Law Dictionary at 19 (5th ed. 1979)	3

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Thunder Properties, Inc. (“*Thunder*”) is a Nevada corporation. Thunder is a privately owned corporation with no publicly held corporation owning 10% or more of its stock. Thunder is represented by Roger P. Croteau and Timothy E. Rhoda of Roger P. Croteau & Associates, Ltd.

INTRODUCTION

Thunder hereby petitions this Court for rehearing of this matter pursuant to Rules 40(a)(2) and 40(c)(2) of the Nevada Rules of Appellate Procedure. This court may grant rehearing if it: (1) overlooked or misapprehended a material fact in the record or a material question of law in the case, or (2) overlooked, misapplied, or failed to consider a statute, procedural rule, regulation, or decision directly controlling a dispositive issue in the case. NRAP 40(c).

Thunder does not disagree with this Court's determination herein that the 4-year catch-all limitations period of NRS 11.220 governs the time in which a lienholder must file suit to contest the force and effect of a homeowners association lien foreclosure sale conducted under the authority of NRS Chapter 116. However, Thunder asks the Court to reconsider the "trigger" which causes this limitations period to begin to run. Specifically, Thunder asks this Court to reconsider its statement that "the limitations period does not begin to run until the lienholder receives notice of some affirmative action by the titleholder to repudiate the lien or that is otherwise inconsistent with the lien's continued existence." (Order, p. 11.) This statement misapplies statutory law and prior precedent of this Court.

ARGUMENT

1. PURPOSES OF A STATUTE OF LIMITATIONS

The statute of limitations serves to prohibit suits "after a period of time that follows the accrual of the cause of action." *FDIC v. Rhodes*, 130 Nev. 893, 899, 336 P.3d 961, 965 (2014). "[S]uch limitation periods are meant to provide a concrete time frame within which a plaintiff must file a lawsuit and after which a defendant is afforded a level of security." *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 257, 277 P.3d 458, 465 (2012). The public policies embodied in statutes of limitation are important considerations because they "stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 19 (1990) (citing 51 Am.Jur.2d Limitation of Actions §18 (1970)). "Statutes of limitation find their justification in necessity and convenience rather than logic, and it has been said that they represent expedience rather than principles." 51 Am.Jur.2d Limitation of Actions §19, p. 603 (citing *Chase Secur. Corp. v. Donaldson*, 325 U.S. 304 (1945)).

//

//

//

**2. IT IS WELL ESTABLISHED THAT STATUTES OF LIMITATION
COMMENCE WHEN AN ACTION ACCRUES**

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. *Clark v. Robison*, 113 Nev. 949, 951, 944 P.2d 788, 789 (1997). Citing *White v. Sheldon*, 4 Nev. 280, 288-289 (1868). See also *FDIC*, 130 Nev. at 899, 336 P.3d at 965. (Statute of limitations prohibits suits "after a period of time that follows the accrual of the cause of action."). A cause of action "accrues" when a suit may be maintained thereon. *Clark*, 113 Nev. at 951, 944 P.2d at 789. See also Black's Law Dictionary at 19 (5th ed. 1979).

"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 v. Douglas County*, No. 55572, 2015 Nev. Unpub. LEXIS 1006, 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*, 87 Nev. 261, 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).

3. **A LIEN HOLDER'S CLAIMS RELATED TO A HOMEOWNERS ASSOCIATION LIEN FORECLOSURE SALE ACCRUE AT THE TIME OF THE HOA FORECLOSURE SALE OR, AT THE LATEST, UPON RECORDING OF THE ASSOCIATED FORECLOSURE DEED**

As discussed above, a cause of action "accrues" when a suit may be maintained thereon. A lienholder's claims for relief related to a homeowners association lien foreclosure sale accrues at the time the sale takes place. At that point in time, a lienholder may immediately maintain a suit regarding the force and effect of the sale upon its security interest. Alternatively, at the latest, a lienholder may maintain a suit after the associated foreclosure deed is recorded. The recording of the deed confirms that the foreclosure sale took place and that a change of ownership occurred. Notably, this change of ownership almost certainly constitutes a breach of the borrower's obligations under the due on sale clause contained in nearly every deed of trust.

The continued validity of a lienholder's security interest in real property that is the subject of a homeowners association lien foreclosure sale is called into

question at the time of the foreclosure sale due to NRS 116.3116(2), which gives priority to that portion of a homeowners association lien consisting of unpaid HOA assessments accrued during the "nine months immediately preceding institution of an action to enforce the lien." *Nationstar Mortg., LLC v. Falls at Hidden Canyon Homeowners Ass'n*, No. 2:15-cv-01287-RCJ-NJK, 2017 U.S. Dist. LEXIS 91343, at *6-7 (D. Nev. June 14, 2017). This is the case because, pursuant to decisions from this Court, the association's notices constitute at the very least prima facie evidence that the association foreclosed on the superpriority portion of the lien. See *PNC Bank, Nat'l Ass'n v. Saticoy Bay LLC Series 9320 Mt. Cash Ave. UT 103*, 395 P.3d 511 (Nev. 2017) (unpublished); *PNC Bank, N.A. v. Saticoy Bay, LLC Series 4208 Rolling Stone Dr. Tr.*, 398 P.3d 290 (Nev. 2017) (unpublished).

It is clear that a lienholder may bring an action seeking a declaration that a homeowners association lien foreclosure sale did not extinguish its deed of trust at any time after the foreclosure sale. Since the lienholder (1) possesses notice of the foreclosure sale; (2) has personal knowledge of its own actions or inactions related to the sale; and (3) knows the lien foreclosed upon presumptively contains a superpriority component, the lienholder possesses all the facts necessary to support any contention that the sale was ineffective to extinguish its deed of trust

at that point in time. This conclusion has been supported by numerous courts. See *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.*"); *Bank of Am., N.A. v. Antelope Homeowners' Ass'n*, No. 2:16-cv-449, 2017 U.S. Dist. LEXIS 13092, 2017 WL 421652, at *3 (D. Nev. Jan. 30, 2017) (Mahan, J.) ("The foreclosure sale took place on March 2, 2011. BANA filed the underlying complaint on March 2, 2016. Thus, BANA's quiet title claim was timely filed within the five-year limitations period set forth in NRS 11.070."); *Nationstar Mortg. LLC v. Amber Hills II Homeowners Ass'n*, No. 2:15-cv-01433, 2016 U.S. Dist. LEXIS 43592, 2016 WL 1298108, at *3 (D. Nev. Mar. 31, 2016) (Gordon, J.) ("Because Nationstar brought its action within five years of possessing an interest in the property, its quiet title claim is timely.").

Even this Court has held that the time period to bring an action to enforce the so-called "Federal Foreclosure Bar" of 12 U.S.C. §4617(j)(3) in the context of real property that was the subject of a homeowners association lien foreclosure sale commences on the date of the sale, stating as follows:

HERA provides that if the claim sounds in contract, the statute of limitations is either six years or "the period applicable under State law," whichever is longer. 12 U.S.C. § 4617(b)(12)(A)(i). Nevada law

also imposes a six-year statute of limitations on an action arising out of a contract. NRS 11.190(1)(b). We therefore conclude that Chase had six years **from the foreclosure sale** to bring its claims.

JPMorgan Chase Bank, Nat'l Ass'n v. SFR Invs. Pool 1, Ltd. Liab. Co., 475 P.3d 52, 57 (Nev. 2020). (Emphasis added). Notably, although this Court could have held that it was necessary for the title holder to repudiate the lien or otherwise provide notice of some contention that the lien was extinguished in order to trigger the six-year statute of limitation at issue in *JPMorgan Chase*, it did not do so. Instead, this Court held that Chase “had six years from the foreclosure sale.” There is no good basis to hold differently in the instant matter. This is the case because the all of a lienholder’s claims accrue at the time of the foreclosure sale and not thereafter.

At the latest, the four-year period in which a bank must contest the force and effect of a homeowners association lien foreclosure sale should be deemed to commence upon recording of the associated foreclosure deed. *Scott v. Mortg. Elec. Registration Sys., Inc.*, 605 F. App'x 598, 600 (9th Cir. 2015) (“the earliest date on which the Scotts could have filed this quiet title action was . . . when Noble allegedly first recorded the property in her name using the forged deed.”). To the extent that there might be any doubt that the foreclosure sale took place, this doubt would be eliminated by the recording of the deed. Moreover, analogous

Nevada law regarding foreclosure sales conducted pursuant to NRS Chapter 107 supports a determination that the operative limitations periods to contest a sale commence at the time of the sale.

In the case of the foreclosure of a first deed of trust by a deed of trust holder, a party wishing to contest the foreclosure possesses only a 30 to 90 day window in which it may contest the sale pursuant to Nevada law. These time periods commence running upon either (1) the date of the foreclosure sale; or (2) the date on which the trustee's deed upon sale is recorded. Specifically, NRS 107.080 provides in pertinent part as follows:

5. Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption. Except as otherwise provided in subsection 7, a sale made pursuant to this section must be declared void by any court of competent jurisdiction in the county where the sale took place if:

(a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section;

(b) Except as otherwise provided in subsection 6, an action is commenced in the county where the sale took place **within 30 days after the date on which the trustee's deed upon sale is recorded** pursuant to subsection 10 in the office of the county recorder of the county in which the property is located; and

...

6. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of subsection 4 to the grantor, to the person who holds the title of record on the date the notice of default and election to sell is recorded, to each trustor or to any other person entitled to such notice, the person who did not receive such proper notice may commence an action pursuant to subsection 5 **within 90 days after the date of the sale.**

7. Upon expiration of the time for commencing an action which is set forth in subsections 5 and 6, any failure to comply with the provisions of this section or any other provision of this chapter does not affect the rights of a bona fide purchaser as described in NRS 111.180.

NRS 107.080(5)-(7) (Emphasis added). There is no requirement for additional notice in order to commence the running of the periods of limitation of NRS 107.080. On the contrary, pursuant to NRS 107.080(6), the statute provides that even a party **who did not receive notice of a foreclosure sale** is barred from filing suit to declare the sale void 90 days after the date of the sale. This is despite the fact that notice to the potential plaintiff was statutorily required.

Upon the expiration of the 30 or 60 day time period of NRS 107.080(5) and (6), an otherwise valid foreclosure sale conducted pursuant to NRS Chapter 107 may not be voided and the rights of a bona fide purchaser may not be affected. See NRS 107.080(7). **This is the case even when an offended party was not provided with statutorily required notice.** See NRS 107.080(4). It hardly makes sense that the purchaser at a homeowners association lien foreclosure sale

is required to provide notice to a lienholder of the effect of the sale at which it acquired real property. Nonetheless, this Court's decision creates exactly such an obligation. Strangely, this obligation is placed upon not the foreclosing entity that was responsible for carrying out the foreclosure sale but upon the purchaser who had nothing to do with the manner in which the sale was conducted.

Placing an obligation upon a good faith purchaser to notify a lienholder that its lien was extinguished in order to start the running of the applicable statute of limitations is contrary to Nevada law. Aside from the fact that no such obligation exists, there is simply no basis upon which to hold that the applicable statute of limitation does not commence running despite the fact that an associated claim has accrued. Nevada law dictates that periods of limitation commence upon the accrual of claims. In the case of a homeowners association lien foreclosure sale, any and all associated claim accrue upon completion of the sale.

4. NO BASIS EXISTS TO TOLL THE STATUTE OF LIMITATIONS

The general rule concerning statutes of limitation is that a cause of action accrues when a wrong occurs and a party sustains injuries for which relief could be sought. *Petersen v. Bruen*, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990). An exception to the general rule has been recognized by this Court and many others in the form of the so-called "discovery rule." Under the discovery rule, the statutory

period of limitations is tolled until the injured party discovers or reasonably should have discovered facts supporting a cause of action. *Id.*, 106 Nev. 271 at 274, 792 P.2d at 20. Although the Court did not mention the discovery rule in the decision at bar, it effectively applied it in this matter.

"The discovery rule may apply in either of two mutually exclusive settings: if a statutory discovery rule applies or if an equitable discovery rule applies."

Estate of Davis v. Davis, 2011 UT App 343, ¶ 8, 265 P.3d 813, 816. A statutory discovery rule applies when the statute "by its own terms, mandates application of the discovery rule." *Id.*, 2011 App 343, ¶ 8, 265 P.3d 813, 816. In contrast, the equitable discovery rule will toll a statute of limitations if "a plaintiff does not become aware of the cause of action because of the defendant's concealment or misleading conduct," or if "the case presents exceptional circumstances and the application of the general rule would be irrational or unjust, regardless of any showing that the defendant has prevented the discovery of the cause of action."

Petersen, 106 Nev. 271 at 280, 792 P.2d at 24. Where the discovery rule is applied, the burden shifts to the plaintiff to prove the time and method of discovering the injury. *Id.* The discovery rule does not apply when a plaintiff knows of the factual elements of its cause of action long before the statute of limitations ran. *Id.*, 106 Nev. at 276, 792 P.2d at 21.

In the vast majority of cases involving homeowners association lien foreclosure sales, there is no legitimate dispute that the lienholder received actual notice of the foreclosure sale. Similarly, as discussed in Thunder's briefs herein, a lienholder possesses personal knowledge of the specific facts surrounding a particular homeowners association lien foreclosure sale and its efforts, if any, to protect itself. For example, a lienholder is fully and uniquely aware of whether it tendered or attempted to tender the superpriority portion of the lien foreclosed upon in advance of the homeowners association lien foreclosure sale. This is directly opposed to the purchasers at the homeowners association lien foreclosure sales who, prior to 2015, in nearly all cases possessed no knowledge whatsoever of any communications that may have taken place between a homeowners association's agent and a lienholder. Under such circumstances, the discovery rule should not apply to this action. Nor is this Court's decision in *Berberich v. Bank of America, N.A.*, 136 Nev. 93, 460 P.3d 440 (2020), upon which this Court relied, on point.

In *Berberich*, this Court held that the limitations period in which a title holder of real property may file an action to recover its property is triggered when the plaintiff is ejected from the property or has had the validity or legality of his or her ownership or possession of the property called into question. *Berberich*, 460

P.3d at 443. In coming to this conclusion, this Court analyzed NRS 11.080, which provides as follows:

No action for the recovery of real property, or for the recovery of the possession thereof other than mining claims, shall be maintained, unless it appears that the plaintiff or the plaintiff's ancestor, predecessor or grantor was seized or possessed of the premises in question, within 5 years before the commencement thereof.

NRS 11.080. Critically, NRS 11.080 applies only to a plaintiff who was “seized or possessed of the premises in question.” As a result, in *Berberich*, this Court clarified that “the limitations period provided by NRS 11.080 only starts to run when the plaintiff has been deprived of ownership or possession of the property. *Berberich*, 460 P.3d at 442. NRS 11.080 is wholly inapplicable to a lienholder who simply possesses a security interest in real property. However, the applicable statute of limitation in *Berberich* clearly commences running when a foreclosure sale takes place and purports to divest the title holder of ownership. By analogy, a homeowners association lien foreclosure sale also commences the running of the 4-year statute of limitation at issue here.

NRS 11.080 is a statute that explicitly provides a person who was seized or possessed of real property with a five year period in which it may seek to recover said property after it is taken away from her. As in *Las Vegas Dev. Grp., Ltd. Liab. Co. v. Blaha*, 134 Nev. 252, 416 P.3d 233 (2018), this clearly occurs when a

lienholder forecloses upon a deed of trust and effects a change of ownership. It is at this point in time – the date of the foreclosure sale at which the title holder is purportedly divested of title – when the 5-year statute of limitation of NRS 11.080 commences running. This comports with *Berberich*, wherein this Court held that “the [5-year] limitations period [of NRS 11.080] is triggered when the plaintiff is ejected from the property or has had the validity or legality of his or her ownership or possession of the property called into question. *Berberich*, 460 P.3d at 443.

A lienholder is not “seized or possessed” of real property like a title holder. However, it is readily apparent that the statute of limitations governing a claim by a former title holder to recover real property commences running at the time of the foreclosure sale at which she is divested of title. In this sense, *Berberich* is analogous to this matter. In both cases, the statute of limitations is triggered at the time of the foreclosure sale which ostensibly affected the potential plaintiff’s rights – not at some nebulous time thereafter.

CONCLUSION

For the reasons set forth herein, Respondent respectfully urges this Court to reconsider its determination that the limitations period in which a lien holder may file suit to contest the force and effect of a homeowners association lien foreclosure sale does not begin to run until the lienholder receives notice of some

affirmative action by the titleholder to repudiate the lien or that is otherwise inconsistent with the lien's continued existence. There is no good reason to depart from the well-established rule that periods of limitation commence running when a cause of action accrues. Because a lienholder's claims related to a homeowners association lien foreclosure sale have fully accrued at the time of the foreclosure sale, the applicable 4-year period of limitations must commence at that time.

DATED this 22nd day of March, 2022.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda

ROGER P. CROTEAU, ESQ.

Nevada Bar No. 4958

TIMOTHY E. RHODA, ESQ.

Nevada Bar No. 7878

2810 West Charleston Boulevard, #75

Las Vegas, Nevada 89102

(702) 254-7775

Attorney for Respondent

THUNDER PROPERTIES, INC.

CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using WordPerfect X9 with 14 point, double spaced Times New Roman font.
2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 3445 words. Counsel has relied upon the word count application of the word processing program in this regard.
3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the

accompanying brief is not in conformity with the requirements of the
Nevada Rules of Appellate Procedure

DATED this 22nd day of March, 2022.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda

ROGER P. CROTEAU, ESQ.

Nevada Bar No. 4958

TIMOTHY E. RHODA, ESQ.

Nevada Bar No. 7878

2810 West Charleston Boulevard, #75

Las Vegas, Nevada 89102

(702) 254-7775

Attorney for Respondent

THUNDER PROPERTIES, INC.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 22nd day of March, 2022, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

- X VIA ELECTRONIC SERVICE: through the Nevada Supreme Court's efile and serve system.
- _____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.
- _____ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.
- _____ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda

An employee or agent of ROGER P.
CROTEAU & ASSOCIATES, LTD.