

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

SFR INVESTMENTS POOL 1, LLC,

Appellant/Cross-Respondent,

vs.

U.S. BANK N.A. AS TRUSTEE FOR  
THE CERTIFICATEHOLDERS OF  
THE LXS 2006-4N TRUST FUND,  
ERRONEOUSLY PLED AS U.S.  
BANK, N.A., A NATIONAL  
BANKING ASSOCIATION; AND  
NATIONSTAR MORTGAGE LLC,  
A FOREIGN LIMITED LIABILITY

Respondents/Cross-Appellants.

Electronically Filed  
Oct 05 2020 04:23 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
**Supreme Court No. 81293**  
District Court Case No. A-14-70558-1

**DOCKETING STATEMENT  
CIVIL APPEALS**

**GENERAL INFORMATION**

Appellant must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

**WARNING**

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

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

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

1. Judicial District Eighth Department XXVI  
County Clark Judge Hon. Gloria J. Sturman  
District Ct. Case No. A-14-705563-C

**2. Attorney filing this docketing statement:**

Attorney Donna M. Wittig, Esq. Telephone 702-634-5000

Firm: Akerman LLP

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

Client(s) Nationstar Mortgage LLC and U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank, N.A.

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

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

Attorney Jacqueline A. Gilbert Telephone: 702-485-3300

Firm SFR Investments Pool 1, LLC

Address 7625 Dean Martin Drive, Suite 110, Las Vegas, Nevada 89139

Client(s) SFR Investments Pool 1, LLC

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

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal:               |
| <input type="checkbox"/> Judgment after jury verdict           | <input type="checkbox"/> Lack of jurisdiction     |
| <input type="checkbox"/> Summary judgment                      | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment                      | <input type="checkbox"/> Failure to prosecute     |

- |   |   |
|---|---|
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify):                   |

**5. Does this appeal raise issues concerning any of the following? N/A**

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

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal: None

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition: None

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

Cross-Respondent alleges it owns the property located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148, Assessor Parcel No. 163-30-312-007 free and clear of all liens as a result of an HOA foreclosure sale. Alessi & Koenig, LLC filed a complaint in interpleader for declaratory relief to have the court determine the distribution of the excess proceeds of the HOA foreclosure sale. The district court granted final judgment in favor of Cross-Appellants after a bench trial before the Honorable Gloria Sturman. Cross-Appellants now appeals the court's Finding of Facts, Conclusions of Law and Judgment, to the extent the district court addressed Cross-Respondent's NRS 106.240 argument. That argument was not properly pled before the court below and should not be considered by this court on appeal.



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

1. Whether the deed of trust remained as an encumbrance to title following the HOA foreclosure sale.
2. Whether the district court correctly ruled that the tender satisfied the superpriority portion of the lien prior to the sale and protected the Deed of Trust.
3. Whether the district court erred in addressing Cross-Respondent's NRS 106.240 argument.

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

This case is similar to many others pending before the Nevada Supreme Court in that it raises several issues regarding the application of NRS 116.3116 (as it existed before amended by the Nevada legislature in 2015) and, specifically, the effect of presale satisfaction of the superpriority portion of the HOA's lien upon a deed of trust.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first impression

- ☐ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain:

This appeal involves several significant issues related to NRS 116.3116. Cross-Appellants do not seek reversal of any part of this court's decision construing NRS 116.3116 in *SFR Investments Pool 2, LLC v. U.S. Bank, N.A.* 334 P.3d 408 (Nev. 2014); however, a decision regarding the issues in this appeal could be binding on many other pending cases.

**13. Assignment to the Court of Appeals or retention in the Supreme Court.**

Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter should be retained by the Supreme Court pursuant to NRAP 17(a)(11), as it presents an issue of statewide importance. Further, NRAP 17(b)(6) indirectly supports the Supreme Court retaining jurisdiction because this case centers on a dispute over property with an estimated value in excess of \$75,000.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 1 day

Was it a bench or jury trial? Bench Trial

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

No.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from April 30, 2020**

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

N/A

**17. Date written notice of entry of judgment or order was served May 4, 2020**

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

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

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

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

Was service by: \_\_\_\_\_

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** Cross-Respondent: June 3, 2020, amended September 8, 2020; Cross-Appellants: August 12, 2020

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

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

NRAP 4(a)(1)

### **SUBSTANTIVE APPEALABILITY**

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

(a)

☒ NRAP 3A(b)(1) ☐ NRS 38.205

☐ NRAP 3A(b)(2) ☐ NRS 233B.150

☐ NRAP 3A(b)(3) ☐ NRS 703.376

☐ Other (specify) \_\_\_\_\_

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The district court's April 30, 2020 Findings of Facts, Conclusions of Law and Judgment is the final judgment in the action between the remaining parties.

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

(a) Parties:

1. Cross-Appellant Nationstar Mortgage LLC
2. Cross-Appellant U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank
3. Cross-Respondent SFR Investments Pool 1, LLC
4. Alessi & Koenig, LLC
5. Stacy Moore
6. Magnolia Gotera
7. Kristin Jordal, as trustee for the JBWNO Revocable Living Trust
8. Republic Silver State Disposal dba Republic Services

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

- Republic Silver State Disposal dba Republic Services was served but never appeared.
- Magnolia Gotera was served but never appeared. A default was entered on December 10, 2014 as to Alessi & Koenig, LLC's claims, and a default was entered on June 27, 2018 as to SFR Investments Pool 1, LLC's claims.
- Stacy Moore was served but never appeared. A default was entered on August 17, 2015, and a default was entered on June 27, 2018 as to SFR Investments Pool 1, LLC's claims.
- Kristin Jordal, as trustee for the JBWNO Revocable Living Trust was voluntarily dismissed on June 20, 2016.
- An order granting motion to withdraw as Alessi & Koenig, LLC's counsel was entered on May 15, 2018. Alessi & Koenig, LLC has not appeared in this case since.

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

- Alessi & Koenig, LLC alleged claims against Stacy Moore, Magnolia Gotera, Kristin Jordal. as trustee for the JBWNO Revocable Living Trust, U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank, Nationstar Mortgage LLC, Republic Silver State Disposal dba Republic Services for declaratory relief which remain unresolved.

- U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank alleged claims against Alessi & Koenig, LLC for quiet title and declaratory relief which were resolved by the April 30, 2020 order. The wrongful foreclosure/statutorily defective foreclosure, negligence, negligence per se, unjust enrichment, and breach of the covenant claims which remain unresolved.

- U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank alleged claims against SFR Investments Pool 1, LLC for quiet title, declaratory relief which were resolved by the April 30, 2020 order. The unjust enrichment claim was dismissed by the July 17, 2020 order.

- SFR Investments Pool 1, LLC alleged claims against U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank, Nationstar Mortgage LLC, Kristin Jordal. as trustee for the JBWNO Revocable Living Trust and Magnolia Gotera for quiet title and declaratory relief which were resolved by the April 30, 2020 order. The slander of title claim against Nationstar was dismissed by the July 17, 2020 order.

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

☐ Yes

☒ No

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

(a) Specify the claims remaining pending below: See question 23.

(b) Specify the parties remaining below: See question 22.

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

☒ Yes

☐ No

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

☒ Yes

☐ No

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

**27. Attach file-stamped copies of the following documents:**

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

## VERIFICATION

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

Nationstar Mortgage LLC; U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank  
Name of Appellant

Donna M. Wittig, Esq.  
Name of counsel of record

October 5, 2020  
Date

/s/ Donna M .Wittig  
Signature of Counsel of Record

Clark County, Nevada  
State and county where signed



## CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of October, 2020, I served a copy of this completed docketing statement upon all counsel of record:

- ☒ By electronically filing, the foregoing **Docketing Statement** with the Clerk of the Court for the Nevada Supreme Court by using the Court's electronic file and serve system. I 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; and/or
- ☐ By personally serving it upon him/her; and/or
- ☒ By mailing it by first class mail on October 6, 2020, with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Jacqueline A. Gilbert, Esq.  
Diana S. Ebron, Esq.  
Karen L. Hanks, Esq.  
KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139

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.

Dated this 5th day of October, 2020

/s/ Carla Llarena

Signature

## CIVIL COVER SHEET

A- 14- 705563- C

CLARK County, Nevada

XX

Case No.

(Assigned by Clerk's Office)

**I. Party Information**

Plaintiff(s) (name/address/phone): Alessi &amp; Koenig, LLC

Defendant(s) (name/address/phone): Stacy Moore; Magnolia Gotera; JWBNO Revocable Living Trust; U.S. Bank, N.A.; Nationstar Mortgage, LLC; Republic Silver State Disposal, Inc., dba Republic Services

Attorney (name/address/phone): Huong Lam, Esq. / 9500 W. Flamingo Road, Suite 205; Las Vegas, Nevada 89147 / (702) 222-4033

Attorney (Name/Address/Phone):

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Negligence	Torts
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Easements <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> <b>Condemnation/Eminent Domain</b> <input type="checkbox"/> <b>Other Real Property</b> <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> <b>Negligence – Auto</b> <input type="checkbox"/> <b>Negligence – Medical/Dental</b> <input type="checkbox"/> <b>Negligence – Premises Liability</b> (Slip/Fall) <input type="checkbox"/> <b>Negligence – Other</b>	<input type="checkbox"/> <b>Product Liability</b> <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> <b>Intentional Misconduct</b> <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination) <input type="checkbox"/> <b>Other Torts</b> <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> <b>Summary Administration</b> <input type="checkbox"/> <b>General Administration</b> <input type="checkbox"/> <b>Special Administration</b> <input type="checkbox"/> <b>Set Aside Estates</b> <input type="checkbox"/> <b>Trust/Conservatorships</b> <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> <b>Other Probate</b>	<input type="checkbox"/> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> <b>Breach of Contract</b> <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> <b>Civil Petition for Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	
	<input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> <b>Civil Writ</b> <input type="checkbox"/> Other Special Proceeding <input checked="" type="checkbox"/> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input checked="" type="checkbox"/> Other Civil Matters	


**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88   | <input type="checkbox"/> Investments (NRS 104 Art. 8)        | <input type="checkbox"/> Enhanced Case Mgmt/Business  |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90)  | <input type="checkbox"/> Trademarks (NRS 600A)               |   |

Date

Signature of initiating party or representative

Nevada Bar No. 10916



CLERK OF THE COURT

1 **COMP**

2 Huong X. Lam, Esq.  
3 Nevada Bar No. 10916  
4 ALESSI & KOENIG, LLC  
5 9500 W. Flamingo, Suite 205  
6 Las Vegas, Nevada 89147  
7 Phone: (702) 222-4033  
8 Fax: (702) 222-4043  
9 huong@alesaikoenig.com  
10 Attorney for Plaintiff

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 ALESSI & KOENIG, LLC, a Nevada  
14 limited liability company,

15 Plaintiff,

16 vs.

17 STACY MOORE, an individual; MAGNOLIA  
18 GOTERA, an individual; KRISTIN JORDAL,  
19 AS TRUSTEE FOR THE JBWNO  
20 REVOCABLE LIVING TRUST, a trust; U.S.  
21 BANK, N.A., a national banking association;  
22 NATIONSTAR MORTGAGE, LLC, a foreign  
23 limited liability company; REPUBLIC SILVER  
24 STATE DISPOSAL, INC., DBA REPUBLIC  
25 SERVICES, a domestic governmental entity;  
26 DOE INDIVIDUALS I through X, inclusive;  
27 and ROE CORPORATIONS XI through XX  
28 inclusive,

Defendants.

Case No. A- 14- 705563- C  
Dept. No. XX

**COMPLAINT IN INTERPLEADER**

**Arbitration Exemption Claimed:**  
**1) Declaratory Relief**

29 **COMPLAINT IN INTERPLEADER**

30 COMES NOW, ALESSI & KOENIG, LLC, by and through their attorney of record,  
31 Huong X. Lam, Esq. of ALESSI & KOENIG, LLC, and alleges the following Causes of Action  
32 against defendants STACY MOORE, an individual; MAGNOLIA GOTERA, an individual;



1 KRISTIN JORDAL, AS TRUSTEE FOR THE JBWNO REVOCABLE LIVING TRUST, a  
2 trust; U.S. BANK, N.A., a national banking association; NATIONSTAR MORTGAGE, LLC, a  
3 foreign limited liability company; and REPUBLIC SILVER STATE DISPOSAL, INC., DBA  
4 REPUBLIC SERVICES, a domestic governmental entity, as follows:

5  
6 **THE PARTIES AND JURISDICTION**

- 7 1. At all times relevant herein, Plaintiff ALESSI & KOENIG, LLC (hereinafter "A&K")  
8 was a domestic limited liability company authorized to conduct business in the State  
9 of Nevada.
- 10 2. At all times relevant herein, Defendant STACY MOORE (hereinafter "MOORE") an  
11 individual, was a resident of the County of Clark, State of Nevada.
- 12 3. At all times relevant herein, Defendant MAGNOLIA GOTERA (hereinafter  
13 "GOTERA") an individual, was a resident of the County of Clark, State of Nevada.
- 14 4. At all times relevant herein, Defendant KRISTIN JORDAL, AS TRUSTEE FOR  
15 THE JBWNO REVOCABLE LIVING TRUST, operated as a trust in the County of  
16 Clark, State of Nevada.
- 17 5. At all times relevant herein, Defendant U.S. BANK, N.A. (hereinafter "U.S.  
18 BANK"), was a national banking association doing business in the State of Nevada.
- 19 6. At all times relevant herein, Defendant NATIONSTAR MORTGAGE, LLC  
20 (hereinafter "NATIONSTAR") was a foreign limited liability company doing  
21 business in the State of Nevada.
- 22 7. At all times relevant herein REPUBLIC SILVER STATE DISPOSAL, INC., DBA  
23 REPUBLIC SERVICES (hereinafter "REPUBLIC SERVICES") was a domestic  
24 governmental entity doing business in the State of Nevada.
- 25  
26  
27  
28

1 8. The names given to the Defendants sued herein as DOE INDIVIDUALS I through X  
2 and ROE CORPORATIONS XI through XX, inclusive, are fictitious names. Other  
3 parties unknown to Plaintiff may have caused Plaintiff to incur damages as pled  
4 herein or may have an interest in the Property. Plaintiff prays that if and when the  
5 true names of any said defendants, or any of them, and the nature of their alleged  
6 actions and/or interests are ascertained, that they may be inserted herein by proper  
7 amendment. Plaintiff has no knowledge of the addresses or places of residence of  
8 any fictitious defendants.  
9

10 9. Jurisdiction and venue are proper in this Court because this action concerns real  
11 property located in the County of Clark, State of Nevada, and the facts, acts, events  
12 and circumstances herein mentioned, alleged and described occurred in the County of  
13 Clark, State of Nevada.  
14

15 **THE UNDERLYING FORECLOSURE SALE**

16 10. Plaintiff hereby repeats, realleges, and incorporates by reference each and every  
17 preceding paragraph and allegation as if fully stated herein.  
18

19 11. On or about June 21, 2000, the Declaration of Covenants, Conditions, and  
20 Restrictions ("CC&Rs") for SHADOW MOUNTAIN RANCH COMMUNITY  
21 ASSOCIATION ("Shadow Mountain Ranch") was recorded in the public records  
22 with the Clark County Recorder.  
23

24 12. Article 18.3 of the CC&Rs provides, in pertinent part:

- 25 (a) The Association has a lien on a Unit for an assessment levied against the Unit  
26 or fines imposed against its Unit Owner from the time the assessment or fine  
27 becomes due. Fees, charges, late charges, fines and interest charged pursuant to  
28 the Act and the Documents are enforceable as assessments under this Section;  
provided, however, that unless otherwise permitted by law, the Association may  
not foreclose upon a lien for unpaid assessments which is comprised solely of

1 fines levied against an Owner for violation of the Documents unless the  
2 violation is of a type that threatens the health and welfare of the residents of  
3 the Project. If an assessment is payable in installments, the full amount of the  
4 assessment is a lien from the time the first installment becomes due.

- 5 (c) Recording of the Declaration constitutes record notice and perfection of the lien.  
6 Further recording of a claim of lien for assessment under this Section is not  
7 required.

8 See attached Exhibit "1."

- 9 13. On or about May 27, 2011, Defendant MOORE, an unmarried woman, became the  
10 title owner of certain real property commonly known as 5327 MARSH BUTTE  
11 STREET, LAS VEGAS, NEVADA 89148-4669, APN: 163-30-312-007, and legally  
12 described as:

13 Lot 7 in Block 1 of Final Map of Section 30 R2-60/70 No. 5, as shown by Map  
14 thereof on File in Book 102 of Plats, Page 28 in the Office of the County Recorder of  
15 Clark County, Nevada

16 (the "Property"). See attached Exhibit "2."

- 17 14. MOORE acquired title to the property through a series of Grant Deeds recorded  
18 simultaneously without consideration in which the original title owner Defendant  
19 GOTERA conveyed title ownership of the property to JBWNO REVOCABLE  
20 LIVING TRUST. See attached Exhibit "3."

- 21 15. Defendant KRISTIN JORDAL, AS TRUSTEE FOR THE JBWNO REVOCABLE  
22 LIVING TRUST, then conveyed title ownership of the property to MOORE, as  
23 referenced above.

- 24 16. Defendant GOTERA, a single woman, originally became the title owner of the  
25 subject property on or about November 21, 2005. See attached Exhibit "4."



- 1 17. Pursuant to NRS Chapter 116, Defendant MOORE is governed by the requirements  
2 and obligations set forth in the CC&Rs and related governing documents.
- 3 18. The CC&Rs require homeowners within the community to pay regular assessments  
4 and comply with the requirements and obligations set forth in the CC&Rs and related  
5 governing documents.
- 6 19. Defendant MOORE failed to pay the regular assessments and further failed to comply  
7 with other requirements set forth in the CC&Rs and other related governing  
8 documents.
- 9 20. Nevada Revised Statute ("NRS") 116.3116 *et. seq.* specifically authorizes a  
10 homeowner's association to conduct a foreclosure sale of any lot that has become  
11 delinquent on its assessment payments.
- 12 21. As a result of Defendant MOORE's failure to comply with NRS 116 and Shadow  
13 Mountain Ranch's governing documents, Plaintiff A&K was retained to begin the  
14 foreclosure process pursuant to NRS 116.3116 *et. seq.*
- 15 22. Pursuant to the aforementioned statutory and CC&Rs provisions, Plaintiff A&K, on  
16 behalf of Shadow Mountain Ranch, foreclosed on the Property via auction on January  
17 8, 2014. The final bid price was for \$59,000.00. See attached Exhibit "5."
- 18 23. The total amount due and owing to Shadow Mountain Ranch at the time of the  
19 foreclosure sale was \$8,499.11, including foreclosure fees and costs.
- 20 24. The total amount due and owing to A&K for its fees and costs to bring this  
21 interpleader action is \$6,000.00.
- 22 25. The excess proceeds are \$44,500.89.
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- 1 26. Shadow Mountain Ranch is due and owing an additional \$15,970.57 in HOA  
2 Violations to be paid out of the excess proceeds, leaving a remaining balance of  
3 \$28,530.32 for distribution to the potential claimants.
- 4 27. Upon information and belief, Defendant MOORE, an individual, has a claim to the  
5 excess proceeds.
- 6 28. Upon information and belief, Defendant GOTERA, an individual, has a claim to the  
7 excess proceeds.
- 8 29. Upon information and belief, Defendant KRISTIN JORDAL, AS TRUSTEE FOR  
9 THE JBWNO REVOCABLE LIVING TRUST, a trust, has a claim to the excess  
10 proceeds.
- 11 30. Upon information and belief, Defendant U.S. BANK, a national banking association,  
12 has a claim to the excess proceeds.
- 13 31. Upon information and belief, Defendant NATIONSTAR, a foreign limited liability  
14 company, has a claim to the excess proceeds.
- 15 32. Upon information and belief, Defendant REPUBLIC SERVICES, a governmental  
16 entity, has a claim to the excess proceeds.
- 17 33. N.R.S. 116.31164 (c) provides a distribution priority for the proceeds (not just the  
18 *excess proceeds*) from any HOA foreclosure sale. This statute states that the proceeds  
19 of an HOA foreclosure sale shall be distributed pursuant to the following order:
- 20 (1) The reasonable expenses of sale;
- 21 (2) The reasonable expenses of securing possession before sale, holding,  
22 maintaining, and preparing the unit for sale, including payment of taxes  
23 and other governmental charges, premiums on hazard and liability  
24  
25  
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insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;

(3) Satisfaction of the association's lien;

(4) Satisfaction in the order of priority of any subordinate claim of record; and

(5) Remittance of any excess to the unit's owner.

34. Plaintiff A&K will deposit excess proceeds with this court in the sum of \$28,530.32 representing the total proceeds at sale (\$59,000.00) minus the amount due Shadow Mountain Ranch (\$8,499.11), the fees and costs of this interpleader action (\$6,000.00), and the satisfaction of Shadow Mountain Ranch's HOA Violations Lien (\$15,970.57).

35. Given the Defendants' competing claims for the proceeds, Plaintiff cannot determine which of the Defendants in Interpleader are entitled to the proceeds.

36. As set forth above, Plaintiff has distributed funds from the HOA foreclosure sale under subsections (1), (2), and (3).

37. In order to distribute any funds pursuant to N.R.S. subsections (4) and (5), it must be determined which parties have a "subordinate claim of record" and what the respective priority of these subordinate claims is as to the subject property.

38. Plaintiff has been unable to make this determination and has thus brought the instant interpleader action.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendants in Interpleader and each of them as follows:

1. That Defendants in Interpleader and each of them be required to interplead and litigate among themselves their claims to the proceeds described;
2. That the Court determine and enter an order setting forth the proper recipients of the proceeds;
3. That Plaintiff be dismissed from this action with prejudice following payment of the excess proceeds into the registry of the Court; and
4. For such other and further relief as the Court deems just and equitable under the circumstances.

DATED this 12<sup>th</sup> day of August, 2014.

ALESSI & KOENIG, LLC

  
\_\_\_\_\_  
Huong X. Lam, Esq.  
Nevada Bar No. 10916  
9500 W. Flamingo, Suite #205  
Las Vegas, Nevada 89147  
Phone: (702) 222-4033  
Fax: (702) 222-4043  
*Attorney for Plaintiff*

# Exhibit 1

# Exhibit 1

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20000821  
.01735

10  
When Recorded Mail To:

Pardee Construction Company  
10880 Wilshire Boulevard  
Suite 1900  
Los Angeles, CA 90024  
Attn: Barbara Bail

APN: 163-30-310-001  
through 163-30-310-003 and  
163-30-310-014  
through 163-30-310-016

75

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
SHADOW MOUNTAIN RANCH



(i) If a holder of a first Security Interest in a Unit forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid assessments against that Unit which became due before the sale, other than the assessments which are prior to that Security Interest under Subsection (b) of this section of this Declaration. Any unpaid assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Owners, including the purchaser.

(j) A Request for Notice of Default and Sale recorded in accordance with NRS 107.090 shall apply to the foreclosure of an Association lien. The Request must identify the lien by stating the names of the Owner and the Project.

(k) In the case of foreclosure under NRS 116.31162 and NRS 116.31164, the Association shall give reasonable notice of its intent to foreclose to each lien holder of the affected Unit known to the Association.

(l) Any payments received by the Association in the discharge of an Owner's obligation may be applied to the oldest balance due; provided, however, that the Association may not apply any assessment, fee or other charge that is paid by an Owner toward a fine imposed against the Owner by the Association unless otherwise directed by the Owner or as permitted by law.

**Section 18.4 Budget Adoption and Ratification:** Each year the Board of Directors shall adopt a proposed budget of the Common Expenses of the Project, which shall include the budget for the daily operation of the Association and an adequate reserve for the repair, replacement and restoration of the major components of the Common Elements. Such budget must be adopted by the Board before the beginning of each Fiscal Year and distributed to the Members in accordance with the Bylaws and the Act. Within 30 days after adoption of a proposed budget for the Project, the Board of Directors shall provide the budget or a summary thereof to each Owner and shall set a date for a meeting of the Owners to consider ratification of the budget. The meeting shall be not less than 14 or more than 30 days after mailing of the summary. Unless at that meeting a Majority of Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Owners continues until the Owners ratify a subsequent budget proposed by the Board of Directors.

**Section 18.5 Capital Improvement Assessments:** If the Board of Directors votes to levy a Capital Improvement Assessment the Board of Directors shall submit the assessment to the Owners for ratification in the same manner as budget under Section 18.4. A Capital Improvement Assessment levied pursuant to this Section 18.5 shall include (i) an assessment not included in the current budget, other than one enumerated in Section 18.2 of this Declaration, in an amount greater than 15% of the current annual operating budget, or (ii) an assessment for the cost of construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements.

**Section 18.6 Certificate of Payment of Common Expense Assessments:** The Association, upon written request, shall furnish an Owner with a statement, in recordable form, setting out the

**Exhibit A**

**Legal description as recorded on document number  
20051121-0005566**

**Also known as:**

**APN: 163-30-312-007**

**5327 MARSH BUTTE ST  
LAS VEGAS, NV 89148**

**Lot 7 in Block 1 of Final Map of Section 30 R2-60/70 No. 5, as  
shown by map thereof on file in Book 102 of Plats, Page 28 in the  
Office of the County Recorder of Clark County, Nevada**

DATED:

State of Nevada

County of Clark

I hereby certify that Kristin Jordal whose name(s)  
are/is signed to the foregoing conveyance, and are known to me  
(or provided to me on the basis of Satisfactory evidence),  
acknowledged before me on this day, that, being informed of the  
contents of the conveyance, they executed the same voluntarily on  
the day the same bears date.

Kristin Jordal  
Kristin Jordal  
Grantor / Trustee

On MAY 27<sup>th</sup>, 2011 before me,

Kristin Jordal - Trustee  
(here insert name and title of the officer)

WITNESS my hand and official seal.

Signature

MAIL TAX STATEMENTS AS DIRECTED ABOVE



(Seal)

Exp 2-14-14  
Cert No 10-1531-1



**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

## 1. Assessor Parcel Number(s)

a. 163-30-312-007  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

## 2. Type of Property:

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

FOR RECORDER'S OPTIONAL USE ONLY  
Book: \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

3. a. Total Value/Sales Price of Property \$ 0  
b. Deed in Lieu of Foreclosure Only (value of property) \_\_\_\_\_  
c. Transfer Tax Value: \$ 0  
d. Real Property Transfer Tax Due \$ 0

## 4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section 7  
b. Explain Reason for Exemption: Transfer to or from a trust without consideration

5. Partial Interest: Percentage being transferred: 100 %

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

Signature Kristin Jordal Capacity Trustee

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

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

Print Name: JBWNO revocable living trust  
Address: 5327 Marsh Butte St  
City: Las Vegas  
State: NV Zip: 89148

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

Print Name: Stacy Moore  
Address: 5327 Marsh Butte St.  
City: Las Vegas  
State: NV Zip: 89148

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

Print Name: \_\_\_\_\_ Escrow #: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

CCOR\_DV\_Form.pdf ~ 01/12/09



# Exhibit 3

# Exhibit 3

When Recorded mail Document  
and tax statement to:  
JBWNO revocable living trust  
5327 Marsh Butte St.  
Las Vegas, NV 89148

COA-1

Inst #: 201105270004010  
Fees: \$16.00 N/C Fee: \$25.00  
RPTT: \$0.00 Ex: #007  
05/27/2011 04:12:48 PM  
Receipt #: 792751  
Requestor:  
STACY MOORE  
Recorded By: SOL Pgs: 4  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

APN: 163-30-312-007

uninsured Deed

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**GRANT DEED**

STATE OF NEVADA

)

)ss

COUNTY OF CLARK

)

KNOW ALL MEN BY THESE PRESENTS, That for and in consideration of the sum of Ten Dollars and zero Cents ( \$10.00 ) in hand paid to Gotera Magnolia (hereinafter called the Grantor), the receipt of whereof is hereby acknowledged, the Grantor, Gotera Magnolia hereby RELEASES, QUITCLAIMS, GRANTS, SELLS, AND CONVEYS to JBWNO revocable living trust, JBWNO revocable living trust, (hereinafter called Grantee), all of the Grantors' right, title, interest, and claim in or to the following described real estate, situated in Clark County, Nevada, to-wit:  
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

DATED:

State of Nevada

County of Clark

I hereby certify that Magnolia Gotera whose name(s)  
are/is signed to the foregoing conveyance, and are known to me  
(or provided to me on the basis of Satisfactory evidence),  
acknowledged before me on this day, that, being informed of the  
contents of the conveyance, they executed the same voluntarily on  
the day the same bears date.

Magnolia Gotera  
Grantor Magnolia Gotera

On May 27, 2011 before me,

Magnolia Gotera  
(here insert name and title of the officer)

WITNESS my hand and official seal. May 27, 2011

Signature Chelsea Goldman  
Chelsea Goldman, Notary Public

MAIL TAX STATEMENTS AS DIRECTED ABOVE



**Exhibit A**

**Legal description as recorded on document number  
20051121-0005566**

**Also known as:**

**APN: 163-30-312-007**

**5327 MARSH BUTTE ST  
LAS VEGAS, NV 89148**

**Lot 7 in Block 1 of Final Map of Section 30 R2-60/70 No. 5, as  
shown by map thereof on file in Book 102 of Plats, Page 28 in the  
Office of the County Recorder of Clark County, Nevada**

**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

## 1. Assessor Parcel Number(s)

a. 163-30-312-007  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

## 2. Type of Property:

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

FOR RECORDER'S OPTIONAL USE ONLY	
Book: _____	Page: _____
Date of Recording: _____	
Notes: _____	

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

\$ 0

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

( )

## c. Transfer Tax Value:

\$ 0

## d. Real Property Transfer Tax Due

\$ 0

## 4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section 7b. Explain Reason for Exemption: Transfer to or from a trust without consideration5. Partial Interest: Percentage being transferred: 100 %

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

Signature Kristen Jandal Capacity Trustee

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

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

Print Name: Magnolia Gotera  
Address: 5327 Marsh Butte St  
City: Las Vegas  
State: NV Zip: 89148

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

Print Name: JENNIFER reversible living  
Address: 5327 Marsh Butte St  
City: Las Vegas  
State: NV Zip: 89148

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

Print Name: \_\_\_\_\_ Escrow #: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

CCOR\_DV\_Form.pdf - 01/12/09

# Exhibit 4

# Exhibit 4



RECORDING REQUESTED BY:  
Fidelity National Title Agency of Nevada  
Escrow No. 05-181253-TH  
Title Order No. 00191253

When Recorded Mail Document  
and Tax Statement To:

Ms. Magnolia Gotera

1090 Twin Creeks Drive  
Salinas, CA. 93905

RPTT: 2,728.50  
APN: 163-30-312-007

20051121-0005566

Fee: \$15.00 RPTT: \$2,728.50  
N/C Fee: \$0.00

11/21/2005 14:38:39  
T20050211957

Requestor:  
FIDELITY NATIONAL TITLE

Frances Deane JSB  
Clark County Recorder Pgs: 2

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That Wei Hong Yang, An Unmarried Woman

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do(es) hereby Grant,  
Bargain, Sell and

Convey to Magnolia Gotera, A Single Woman

all that real property situated in the Clark County, State of Nevada, bounded and described as follows:

Lot 7 in Block 1 of Final Map of Section 30 R2-60/70 No. 5, as shown by map thereof on file in Book  
102 of Plats, Page 28 in the Office of the County Recorder of Clark County, Nevada.

SUBJECT TO: 1. Taxes for the fiscal year 2005-06  
2. Covenants, Conditions, Reservations, Rights, Rights of Way and Easements  
now of record.

Together with all and singular tenements, hereditaments and appurtenances thereunto belonging or  
in anywise appertaining.

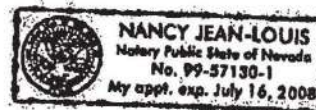
DATED: November 14, 2005

STATE OF NEVADA  
COUNTY OF Clark

This instrument was acknowledged before me  
on November 14, 2005  
by Wei Hong Yang

Signature Nancy Jean-Louis  
Notary Public  
My Commission Expires: 7/16/08

Wei Hong Yang



# STATE OF NEVADA DECLARATION OF VALUE

## 1. Assessor Parcel Number(s)

- a) 163-30-312-007  
b) \_\_\_\_\_  
c) \_\_\_\_\_  
d) \_\_\_\_\_

## 2. Type of Property:

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

## FOR RECORDER'S OPTIONAL USE ONLY

Document/Instrument #: \_\_\_\_\_  
Book: \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

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

Deed in Lieu of Foreclosure Only (Value of Property) \$ 535,000.00  
Transfer Tax Value: \$ 535,000.00  
Real Property Transfer Tax Due \$ 2,728.50

## 4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section 0  
b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: 100%

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

Signature Wei Hong Yang Capacity Grantor

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

SELLER (GRANTOR) INFORMATION  
(REQUIRED)Print Name: Wei Hong YangAddress: 7201 Mission Hill Dr  
City, State, Zip: Las Vegas NV 89103BUYER (GRANTEE) INFORMATION  
(REQUIRED)Print Name: Magnolia GoteraAddress: 1090 Twin Creeks Dr.  
City, State, Zip: SACRAMENTO, CA 95605

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

Print Name: Fidelity National Title Agency of NevadaEscrow #: 05-191253-THAddress: 5597 W. Spring Mountain RoadCity, State and Zip: Las Vegas, NV 89102

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

(declval.wpd)(04-05)



# Exhibit 5

# Exhibit 5

Inst #: 201401130001460

Fees: \$17.00 N/C Fee: \$0.00

RPTT: \$1619.80 Ex: #

01/13/2014 01:10:44 PM

Receipt #: 1899989

Requestor:

ALESSI & KOENIG, LLC

Recorded By: SUO Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to and  
Mail Tax Statements to:  
SFR Investments Pool 1, LLC  
5030 Paradise Road, B-214  
Las Vegas, NV 89119

A.P.N. No.163-30-312-007

TS No. 6601

### TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: SFR Investments Pool 1, LLC  
The Foreclosing Beneficiary herein was: Shadow Mountain Ranch Community Association  
The amount of unpaid debt together with costs: \$8,499.11  
The amount paid by the Grantee (Buyer) at the Trustee's Sale: \$59,000.00  
The Documentary Transfer Tax: \$1,519.80  
Property address: 5327 MARSH BUTTE ST, LAS VEGAS, NV 89148-4669  
Said property is in [ ] unincorporated area: City of LAS VEGAS  
Trustor (Former Owner that was foreclosed on): STACY MOORE

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded September 11, 2012 as instrument number 0002023, in Clark County, does hereby grant, without warranty expressed or implied to: SFR Investments Pool 1, LLC (Grantee), all its right, title and interest in the property legally described as: SECTION 30 R2-60 70 #5 LOT 7 BLOCK 1, as per map recorded in Book 102, Pages 28 as shown in the Office of the County Recorder of Clark County Nevada.

#### TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on January 8, 2014 at the place indicated on the Notice of Trustee's Sale.

Huong Lam, Esq.

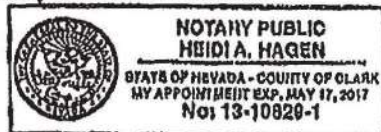
Signature of AUTHORIZED AGENT for Alessi & Koenig, LLC.

State of Nevada )  
County of Clark )

SUBSCRIBED and SWORN before me JAN 13 2014 by Huong Lam

WITNESS my hand and official seal.

(Seal)



(Signature)

1 **IAFD**

2 Huong X. Lam, Esq.  
3 Nevada Bar No. 10916  
4 ALESSI & KOENIG, LLC  
5 9500 W. Flamingo, Suite 205  
6 Las Vegas, Nevada 89147  
7 Phone: (702) 222-4033  
8 Fax: (702) 222-4043  
9 huong@alessikoenig.com  
10 Attorney for Plaintiff

11  
12  
13 **DISTRICT COURT**  
14  
15 **CLARK COUNTY, NEVADA**

16 ALESSI & KOENIG, LLC, a Nevada  
17 limited liability company,

18 Plaintiff,

19 vs.

20 STACY MOORE, an individual; MAGNOLIA  
21 GOTERA, an individual; KRISTIN JORDAL,  
22 AS TRUSTEE FOR THE JBWNO  
23 REVOCABLE LIVING TRUST, a trust; U.S.  
24 BANK, N.A., a national banking association;  
25 NATIONSTAR MORTGAGE, LLC, a foreign  
26 limited liability company; REPUBLIC  
27 SILVER STATE DISPOSAL, INC., DBA  
28 REPUBLIC SERVICES, a domestic  
governmental entity; DOE INDIVIDUALS I  
through X, inclusive; and ROE  
CORPORATIONS XI through XX inclusive,

Defendants.

Case No. A- 14- 705563- C

Dept. No. XX

**INITIAL APPEARANCE FEE DISCLOSURE**

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above entitled action as indicated below:

///

1 ALESSI & KOENIG, LLC, a Nevada  
2 limited liability company,

\$270.00

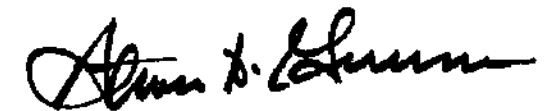
3  
4 **TOTAL REMITTED: (Required)**

\$270.00

5 DATED this 12<sup>th</sup> day of August, 2014.

6 ALESSI & KOENIG, LLC

7  
8  
9   
10 Huong X. Lam, Esq.  
11 Nevada Bar No. 10916  
12 9500 W. Flamingo, Suite #205  
13 Las Vegas, Nevada 89147  
14 Phone: (702) 222-4033  
15 Fax: (702) 222-4043  
16 *Attorney for Plaintiff*  
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CLERK OF THE COURT

AACC  
WRIGHT, FINLAY & ZAK, LLP  
Dana Jonathon Nitz, Esq.  
Nevada Bar No. 0050  
Paterno C. Jurani, Esq.  
Nevada Bar No. 8136  
7785 West Sahara Avenue, Suite 200  
Las Vegas, NV 89117  
(702) 475-7964; Fax: (702) 946-1345  
dnitz@wrightlegal.net  
pjurani@wrightlegal.net

*Attorneys for Defendant, Nationstar Mortgage, LLC and Defendant/Counterclaimant/Third-Party Defendant U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank, N.A.*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada  
limited liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBWNO  
REVOCABLE LIVING TRUST, a trust; U.S.  
BANK, N.A., a national banking association;  
NATIONSTAR MORTGAGE, LLC, a foreign  
limited liability company; REPUBLIC SILVER  
STATE DISPOSAL INC., DBA REPUBLIC  
SERVICES, a domestic governmental entity;  
DOE INDIVIDUALS I through X, inclusive;  
and ROE CORPORATIONS XI through XX  
inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

Case No.: A-14-705563-C  
Dept. No.: XX

**U.S. BANK, N.A.'S ANSWER,  
COUNTERCLAIM, AND THIRD-  
PARTY COMPLAINT**

**Exemption for Arbitration:  
-(Title to Real Property)**

1 vs.  
2 ALESSI & KOENIG, LLC, a Nevada limited  
3 liability company,  
4 Counter-Defendant.  
5  
6 U.S. BANK, N.A.,  
7 Third-Party Plaintiff,  
8 vs.  
9 SFR INVESTMENTS POOL 1, LLC, a Nevada  
10 limited liability company; INDIVIDUAL DOES  
11 I through X, inclusive; and ROE  
12 CORPORATIONS I through X, inclusive,  
Third-Party Defendant(s).

13 COMES NOW, Defendant/Counterclaimant/Third-Party Plaintiff, U.S. BANK,  
14 NATIONAL ASSOCIATION, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE  
15 LXS 2006-4N TRUST FUND, erroneously pled as U.S. BANK, N.A. (hereinafter "U.S. BANK  
16 TRUST" or "Defendant"), by and through its attorneys of record, Dana Jonathon Nitz, Esq. and  
17 Paterno C. Jurani, Esq., of the law firm of Wright, Finlay & Zak, LLP, and hereby submits its  
18 Answer to the Complaint as follows:  
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21 **THE PARTIES AND JURISDICTION**

22 1. Defendant does not possess enough information to admit or deny the allegations  
23 in paragraph 1 of the Complaint; therefore, the Defendant denies the allegations.

24 2. Defendant does not possess enough information to admit or deny the allegations  
25 in paragraph 2 of the Complaint; therefore, the Defendant denies the allegations.

26 3. Defendant does not possess enough information to admit or deny the allegations  
27 in paragraph 3 of the Complaint; therefore, the Defendant denies the allegations.  
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1           4. Defendant does not possess enough information to admit or deny the allegations  
2 in paragraph 4 of the Complaint; therefore, the Defendant denies the allegations.

3           5. Defendant admits the allegations in paragraph 5 of the Complaint.

4           6. Defendant admits the allegations in paragraph 6 of the Complaint.

5           7. Defendant does not possess enough information to admit or deny the allegations  
6 in paragraph 7 of the Complaint; therefore, the Defendant denies the allegations.

7           8. Defendant does not possess enough information to admit or deny the allegations  
8 in paragraph 8 of the Complaint; therefore, the Defendant denies the allegations.

9           9. Defendant admits the allegations in paragraph 9 of the Complaint.

10                           **THE UNDERLYING FORECLOSURE SALE**

11           10. Answering paragraph 10, Defendant repeats, re-alleges, and incorporates each of  
12 its admissions, denials, or other responses to the previous paragraphs as if fully set forth herein.

13           11. Answering Paragraph 11 of the Complaint, Defendant admits that Covenants,  
14 Conditions and Restrictions ("CC&Rs") were recorded in the Official Records of the Clark  
15 County Recorder as Book and Instrument Number 20000621.01735 on or about June 21, 2000.  
16 Defendant avers that the CC&Rs speak for themselves. To whatever extent a further response is  
17 required, Defendant denies the allegations in Paragraph 11.

18           12. Answering Paragraph 12 of the Complaint, Defendant admits that Covenants,  
19 Conditions and Restrictions ("CC&Rs") were recorded in the Official Records of the Clark  
20 County Recorder as Book and Instrument Number 20000621.01735 on or about June 21, 2000.  
21 Defendant avers that the CC&Rs speak for themselves. To whatever extent a further response is  
22 required, Defendant denies the allegations in Paragraph 12.

23           13. Answering Paragraph 13 of the Complaint, Defendant admits that a Grant Deed  
24 was recorded in the Official Records of the Clark County Recorder as Book and Instrument  
25 Number 201105270004011 on or about May 27, 2011. Defendant avers that the Grant Deed  
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1 speaks for itself. To whatever extent a further response is required, Defendant denies the  
2 allegations in Paragraph 13.

3       **14.**     Answering Paragraph 14 of the Complaint, Defendant admits that a Grant Deed  
4 was recorded in the Official Records of the Clark County Recorder as Book and Instrument  
5 Number 201105270004010 on or about May 27, 2011. Defendant avers that the Grant Deed  
6 speaks for itself. To whatever extent a further response is required, Defendant denies the  
7 allegations in Paragraph 14.

8       **15.**     Answering Paragraph 15 of the Complaint, Defendant admits that a Grant Deed  
9 was recorded in the Official Records of the Clark County Recorder as Book and Instrument  
10 Number 201105270004011 on or about May 27, 2011. Defendant avers that the Grant Deed  
11 speaks for itself. To whatever extent a further response is required, Defendant denies the  
12 allegations in Paragraph 15.

13       **16.**     Answering Paragraph 16 of the Complaint, Defendant admits that a Grant,  
14 Bargain, Sale Deed was recorded in the Official Records of the Clark County Recorder as Book  
15 and Instrument Number 20051121-0005566 on or about November 21, 2005. Defendant avers  
16 that the Grant, Bargain, Sale Deed speaks for itself. To whatever extent a further response is  
17 required, Defendant denies the allegations in Paragraph 16.

18       **17.**     Defendant avers that Paragraph 17 states legal conclusions for which no response  
19 is required; provided however, that to the extent Paragraph 17 does require a response,  
20 Defendant denies said allegations.

21       **18.**     Defendant does not possess enough information to admit or deny the allegations  
22 in paragraph 18 of the Complaint; therefore, the Defendant denies the allegations.

23       **19.**     Defendant does not possess enough information to admit or deny the allegations  
24 in paragraph 19 of the Complaint; therefore, the Defendant denies the allegations.

25       **20.**     Defendant avers that Paragraph 20 states legal conclusions for which no response  
26 is required; provided however, that to the extent Paragraph 20 does require a response,  
27 Defendant denies said allegations.

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1           21. Defendant does not possess enough information to admit or deny the allegations  
2 in paragraph 21 of the Complaint; therefore, the Defendant denies the allegations.

3           22. Answering Paragraph 22 of the Complaint, Defendant admits that a Trustee's  
4 Deed Upon Sale was recorded in the Official Records of the Clark County Recorder as Book and  
5 Instrument Number 201401130001460 on or about January 13, 2014. Defendant avers that the  
6 Trustee's Deed Upon Sale speaks for itself. To whatever extent a further response is required,  
7 Defendant denies the allegations in Paragraph 22.

8           23. Defendant does not possess enough information to admit or deny the allegations  
9 in paragraph 23 of the Complaint; therefore, the Defendant denies the allegations.

10          24. Defendant does not possess enough information to admit or deny the allegations  
11 in paragraph 24 of the Complaint; therefore, the Defendant denies the allegations.

12          25. Defendant does not possess enough information to admit or deny the allegations  
13 in paragraph 25 of the Complaint; therefore, the Defendant denies the allegations.

14          26. Defendant does not possess enough information to admit or deny the allegations  
15 in paragraph 26 of the Complaint; therefore, the Defendant denies the allegations.

16          27. Defendant does not possess enough information to admit or deny the allegations  
17 in paragraph 27 of the Complaint; therefore, the Defendant denies the allegations.

18          28. Defendant does not possess enough information to admit or deny the allegations  
19 in paragraph 28 of the Complaint; therefore, the Defendant denies the allegations.

20          29. Defendant does not possess enough information to admit or deny the allegations  
21 in paragraph 29 of the Complaint; therefore, the Defendant denies the allegations.

22          30. Defendant admits the allegations in paragraph 30 of the Complaint.

23          31. Defendant admits the allegations in paragraph 31 of the Complaint.

24          32. Defendant does not possess enough information to admit or deny the allegations  
25 in paragraph 32 of the Complaint; therefore, the Defendant denies the allegations.

26          33. Defendant avers that Paragraph 33 states legal conclusions for which no response  
27 is required; provided however, that to the extent Paragraph 33 does require a response,  
28 Defendant denies said allegations.

1           34. Defendant does not possess enough information to admit or deny the allegations  
2 in paragraph 34 of the Complaint; therefore, the Defendant denies the allegations.

3           35. Defendant does not possess enough information to admit or deny the allegations  
4 in paragraph 35 of the Complaint; therefore, the Defendant denies the allegations.

5           36. Defendant does not possess enough information to admit or deny the allegations  
6 in paragraph 36 of the Complaint; therefore, the Defendant denies the allegations.

7           37. Defendant admits the allegations in paragraph 37 of the Complaint.

8           38. Defendant does not possess enough information to admit or deny the allegations  
9 in paragraph 38 of the Complaint; therefore, the Defendant denies the allegations.

10           **DEFENDANT ASSERTS THE FOLLOWING AFFIRMATIVE DEFENSES:**

11                           **FIRST AFFIRMATIVE DEFENSE**

12           Upon information and belief, the Defendant's interest in the Property has priority over  
13 Plaintiff, Plaintiff's third party buyer and all other parties, without limitation, under N.R.S.  
14 116.3116 *et seq.*

15                           **SECOND AFFIRMATIVE DEFENSE**

16           In the alternative, if the Defendant's interest in the Property is found to have been  
17 extinguished by or subordinate to that of Plaintiff's buyer, the Defendant is entitled to the  
18 entirety of the excess proceeds pursuant to N.R.S. 116.3116 *et seq.*

19                           **THIRD AFFIRMATIVE DEFENSE**

20                                   **(Failure to State a Claim)**

21           Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be  
22 granted.

23                           **FOURTH AFFIRMATIVE DEFENSE**

24                                   **(Priority)**

25           The buyer under Shadow Mountain Ranch Community Association's Trustee's Deed  
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28

1 Upon Sale took title of the Property subject to Defendant's first priority Deed of Trust, thereby  
2 preventing any injunction/extinguishment of Defendant's interest in the Property.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 **(Assumption of Risk)**

5 Plaintiff, at all material times, calculated, knew and understood the risks inherent in the  
6 situations, actions, omissions, and transactions upon which it now bases its various claims for  
7 relief, and with such knowledge, Plaintiff undertook and thereby assumed such risks and is  
8 consequently barred from all recovery by such assumption of risk.  
9

10 **SIXTH AFFIRMATIVE DEFENSE**

11 **(Commercial Reasonableness and Violation of Good Faith - NRS 116.1113)**

12 The HOA lien foreclosure sale by which the buyer under Shadow Mountain Ranch  
13 Community Association's Trustee's Deed Upon Sale took its interest was commercially  
14 unreasonable if it eliminated Defendant's Deed of Trust. The sales price, when compared to the  
15 outstanding balance of Defendant's Note and Deed of Trust and the fair market value of the  
16 Property, demonstrates that the sale was not conducted in good faith as a matter of law. The  
17 circumstances of sale of the property violated the HOA's obligation of good faith under NRS  
18 116.1113 and duty to act in a commercially reasonable manner.  
19  
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21 **SEVENTH AFFIRMATIVE DEFENSE**

22 **(Equitable Doctrines)**

23 Defendant alleges that the Plaintiff's claims are barred by the equitable doctrines of  
24 laches, unclean hands, and failure to do equity.  
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1 security interests prior to a deprivation of their property rights and because the statutes do not  
2 require the foreclosing party to take reasonable steps to ensure that actual notice is provided to  
3 interested parties who are reasonably ascertainable unless the interested party first requests  
4 notice.

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 **(Supremacy Clause)**

7 The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust  
8 pursuant to the Supremacy Clause of the United States Constitution.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 **(Property Clause)**

11 The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust  
12 pursuant to the Property Clause of the United States Constitution.

13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 **(Satisfaction of Super-Priority Lien)**

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

17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 **(Contracts Clause)**

19 The HOA sale is void or otherwise does not operate to extinguish the first Deed of Trust  
20 pursuant to the Contracts Clause of both the United States Constitution and the Nevada  
21 Constitution.

22 **SEVENTEENTH AFFIRMATIVE DEFENSE**

23 **(Additional Affirmative Defenses)**

24 Defendant reserves the right to assert additional affirmative defenses in the event  
25 discovery and/or investigation indicates that additional affirmative defenses are applicable.

26 **PRAYER**

27 WHEREFORE, Defendant prays for judgment as follows:  
28



- 1           1. That the Court make a judicial determination that the Deed of Trust held by the
- 2           Defendant is superior to all other interests and encumbrances, including the HOA lien
- 3           subject of the foreclosure sale resulting in the “excess proceeds” and remained the
- 4           superior encumbrance after the sale;
- 5           2. That the Court make a judicial determination that the Defendant’s Deed of Trust was
- 6           not a “subordinate lien” under NRS 116.3116 *et. seq.*;
- 7           3. That, in the alternative, if the Court determines that the Defendant’s Deed of Trust
- 8           was in fact a “subordinate lien” under NRS 116.3116 *et. seq.*, that the Court make a
- 9           judicial determination that amounts charged or retained by Plaintiff and/or Shadow
- 10          Mountain Ranch Community Association were excessive and cannot include
- 11          attorney’s fees and collections costs in their HOA lien amounts;
- 12          4. That, in the alternative, if the Court determines that the Defendant’s Deed of Trust
- 13          was in fact a “subordinate lien” under NRS 116.3116 *et. seq.*, that the Court make a
- 14          judicial determination regarding the priority in payment of the excess proceeds that
- 15          the Defendant’s Deed of Trust has priority over all other interests and encumbrances
- 16          and is entitled to all the excess proceeds up to the unpaid balance of the Deed of Trust
- 17          and the Note it secures;
- 18          5. For reasonable attorney’s fees and costs; and
- 19          6. For any such other and further relief as the Court may deem just and proper in the
- 20          case.

21           **U.S. BANK TRUST’S COUNTERCLAIM AND THIRD-PARTY COMPLAINT**

22           COMES NOW, Defendant/Counterclaimant/Third-Party Plaintiff, U.S. BANK,  
23           NATIONAL ASSOCIATION, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE  
24           LXS 2006-4N TRUST FUND, erroneously pled as U.S. BANK, N.A. (hereinafter “U.S. BANK  
25           TRUST” or “Defendant”), by and through its attorneys of record, Dana Jonathon Nitz, Esq. and  
26           Paterno C. Jurani, Esq., of the law firm of Wright, Finlay & Zak, LLP, and hereby submits its  
27           Counterclaim against ALESSI & KOENIG, LLC (hereinafter “Counter-Defendant”) and Third-  
28           Party Complaint against SFR INVESTMENTS POOL 1, LLC and INDIVIDUAL DOES I

1 through X, and ROE CORPORATIONS XI through XX (collectively, "Third-Party  
2 Defendants").

### 3 INTRODUCTION

4 1. This action is within the jurisdictional limits of this Court and this Venue is  
5 appropriate because the Property involved is located within the jurisdiction of this Court.  
6 Plaintiff is also authorized to bring this action in the State of Nevada by NRS 40.430.

7 2. The real property which is the subject of this civil action consists of a residence  
8 commonly known as 5327 Marsh Butte Street, Las Vegas, Nevada 89148; APN 163-30-312-007  
9 (hereinafter the "Property").

### 10 PARTIES

11 3. U.S. BANK TRUST is a national banking association organized under the laws of  
12 the United States.

13 4. U.S. BANK TRUST is now and at all times relevant, for the purposes of seeking  
14 declaratory relief and quiet title, the assigned Beneficiary under a Promissory Note and Deed of  
15 Trust signed by Magnolia Gotera (hereinafter the "Gotera"), and recorded on November 21,  
16 2005, (hereinafter "Gotera Deed of Trust"), which is secured by the Property.

17 5. Upon information and belief, Counter-Defendant, ALESSI & KOENIG, LLC  
18 (hereinafter "A&K" or "HOA Trustee") is a Nevada limited liability company with its principal  
19 place of business in Nevada.

20 6. Upon information and belief, Third-Party Defendant, SFR INVESTMENTS  
21 POOL 1, LLC (hereinafter "Buyer"), is a Nevada limited liability company with its principal  
22 place of business in Nevada.

23 7. Defendant does not know the true names, capacities or bases of liability of Third-  
24 Party Defendants sued as Individual Does I-X and Roe Corporations I-X. Each fictitiously  
25 named Third-Party Defendant is in some way liable to Defendant or claims some rights, title, or  
26 interest in the Subject Property that is subsequent to or subject to the interests of Defendant, or  
27 both. Defendant will amend this counterclaim and third-party complaint to reflect the true names  
28 of said Third-Party Defendants when the same have been ascertained.

1           8.       Upon information and belief, ALESSI & KOENIG, LLC and one or more  
2 fictitious Defendants are the agents of Shadow Mountain Ranch Community Association  
3 (hereinafter "Shadow Mountain" or "HOA"), and the HOA is responsible for their acts and  
4 omissions under the doctrine of respondeat superior.

5                               **JURISDICTION AND VENUE**

6           9.       Venue and jurisdiction are proper in this judicial district because Counter-  
7 Defendant/Third-Party Defendants reside in this district; a substantial part of the events or  
8 omissions giving rise to Defendant's claims occurred in this district; and the property that is the  
9 subject of this action is situated in this district, in Las Vegas, Clark County, Nevada.

10          10.      The Court has personal jurisdiction over HOA Trustee because this lawsuit arises  
11 out of and is connected with HOA Trustee's foreclosure of real property situated in the County  
12 of Clark, State of Nevada and, upon information and belief, HOA Trustee is a Nevada limited  
13 liability company.

14          11.      The Court has personal jurisdiction over Buyer because this lawsuit arises out of  
15 and is connected with Buyer's purposeful purchase of an interest in real property situated in the  
16 County of Clark, State of Nevada and, upon information and belief, Buyer is a Nevada limited  
17 liability company.

18                               **FACTUAL BACKGROUND**

19                   ***Gotera Loan Documents.***

20          12.      On or about November 14, 2005, the Property was conveyed to Magnolia Gotera  
21 ("Gotera").<sup>1</sup>

22          13.      The Deed of Trust executed by Gotera identified Countrywide Home Loans, Inc.  
23 as the Lender, CTC Real Estate Services as the Trustee, and Mortgage Electronic Registration  
24 Systems, Inc. ("MERS") as beneficiary acting solely as a nominee for Lender and Lender's  
25 successors and assigns, securing a loan in the amount \$508,250.00 (hereinafter the "Gotera  
26

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27                   <sup>1</sup> A true and correct copy of the Grant, Bargain, Sale Deed recorded in the Clark County  
28 Recorder's Office as Book and Instrument Number 20051121-0005566 is attached hereto as  
**Exhibit 1.** All other recordings stated hereafter are recorded in the same manner.

1 Loan").<sup>2</sup>

2 14. On May 27, 2011, a Grant Deed was recorded wherein Gotera quitclaimed and  
3 conveyed all of her right, title, interest, and claim to the Property to JBWNO Revocable Living  
4 Trust for \$10.00.<sup>3</sup>

5 15. On May 27, 2011, a Grant Deed was recorded wherein JBWNO Revocable Living  
6 Trust quitclaimed and conveyed all of its right, title, interest, and claim to the Property to Stacy  
7 Moore for \$10.00.<sup>4</sup>

8 16. On November 2, 2011, an Assignment of Deed of Trust was recorded wherein  
9 MERS assigned all interest in the Deed of Trust to U.S. BANK, NATIONAL ASSOCIATION,  
10 AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE LXS 2006-4N TRUST FUND.<sup>5</sup>

11 17. On October 1, 2013, an Assignment of Deed of Trust was incorrectly recorded.<sup>6</sup>  
12 This assignment was ineffective as the assignor no longer had any interest under the Deed of  
13 Trust.

14 18. The Property is subject to a Declaration of Covenants, Conditions and  
15 Restrictions for Shadow Mountain Ranch (the "CC&Rs"). The CC&Rs were recorded in the  
16 Official Records of the Clark County Recorder on or about June 21, 2000 as Book and  
17 Instrument Number 20000621.01735.

18 ***HOA Lien Documents.***

19 19. On May 7, 2008, a Notice of Delinquent Assessment Lien was recorded against  
20 the Property on behalf of HOA.<sup>7</sup>

21 \_\_\_\_\_  
22 <sup>2</sup> A true and correct copy of the Deed of Trust recorded as Book and Instrument Number  
20051121-0005567 is attached hereto as **Exhibit 2**.

23 <sup>3</sup> A true and correct copy of the Grant Deed recorded as Book and Instrument Number  
201105270004010 is attached hereto as **Exhibit 3**.

24 <sup>4</sup> A true and correct copy of the Grant Deed recorded as Book and Instrument Number  
201105270004011 is attached hereto as **Exhibit 4**.

25 <sup>5</sup> A true and correct copy of the Assignment of Deed of Trust recorded as Book and Instrument  
26 Number 201111020000754 is attached hereto as **Exhibit 5**.

27 <sup>6</sup> A true and correct copy of the Assignment of Deed of Trust recorded as Book and Instrument  
Number 201310010002401 is attached hereto as **Exhibit 6**.

28 <sup>7</sup> A true and correct copy of the Notice of Delinquent Assessment Lien recorded as Book and  
Instrument Number 20080507-0001731 is attached hereto as **Exhibit 7**.

1           20.     On July 23, 2008, a Notice of Default and Election to Sell Under Homeowners  
2 Association Lien was recorded against the Property.<sup>8</sup>

3           21.     On April 30, 2009, a Notice of Default and Election to Sell Under Homeowners  
4 Association Lien was recorded against the Property.<sup>9</sup>

5           22.     On July 1, 2010, a Notice of Default and Election to Sell Under Homeowners  
6 Association Lien was recorded against the Property.<sup>10</sup>

7           23.     On January 26, 2011, a Notice of Sale was recorded against the Property.<sup>11</sup>

8           24.     On September 11, 2012, a second Notice of Delinquent Assessment Lien was  
9 recorded against the Property on behalf of HOA by its foreclosure trustee, A&K.<sup>12</sup>

10          25.     On June 13, 2013, a Notice of Default and Election to Sell Under Homeowners  
11 Association Lien was recorded against the Property.<sup>13</sup>

12          26.     On July 5, 2013, a Notice of Default and Election to Sell Under Homeowners  
13 Association Lien was recorded against the Property.<sup>14</sup>

14          27.     On December 10, 2013, a Notice of Sale was recorded against the Property.<sup>15</sup>

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16           <sup>8</sup> A true and correct copy of the Notice of Default and Election to Sell Under Homeowners  
17 Association Lien recorded as Book and Instrument Number 20080723-0001378 is attached  
18 hereto as **Exhibit 8**.

19           <sup>9</sup> A true and correct copy of the Notice of Default and Election to Sell Under Homeowners  
20 Association Lien recorded as Book and Instrument Number 20090430-0003136 is attached  
21 hereto as **Exhibit 9**.

22           <sup>10</sup> A true and correct copy of the Notice of Default and Election to Sell Under Homeowners  
23 Association Lien recorded as Book and Instrument Number 201007010000190 is attached hereto  
24 as **Exhibit 10**.

25           <sup>11</sup> A true and correct copy of the Notice of Sale recorded as Book and Instrument Number  
26 201101260002852 is attached hereto as **Exhibit 11**.

27           <sup>12</sup> A true and correct copy of the Notice of Delinquent Assessment Lien recorded as Book and  
28 Instrument Number 201209110002023 is attached hereto as **Exhibit 12**.

<sup>13</sup> A true and correct copy of the Notice of Default and Election to Sell Under Homeowners  
Association Lien recorded as Book and Instrument Number 201306130001804 is attached hereto  
as **Exhibit 13**.

<sup>14</sup> A true and correct copy of the Notice of Default and Election to Sell Under Homeowners  
Association Lien recorded as Book and Instrument Number 201307050000950 is attached hereto  
as **Exhibit 14**.

<sup>15</sup> A true and correct copy of the Notice of Sale recorded as Book and Instrument Number  
201312100001308 is attached hereto as **Exhibit 15**.



1           28.     Upon information and belief, pursuant to that Notice of Sale, a non-judicial  
2 foreclosure sale occurred on January 8, 2014 (hereinafter the "HOA Sale").

3           29.     On January 13, 2014, a Trustee's Deed Upon sale was recorded wherein Buyer  
4 acquired its interest in the Property, if any, for \$59,000.00.<sup>16</sup>

5           *U.S. BANK TRUST's Tender of the Super-Priority Amount, and the HOA's Rejection*  
6 *of Same.*

7           30.     On or about September 23, 2010, U.S. BANK TRUST or its predecessors, agents,  
8 servicers or trustees, and its counsel attempted to obtain a payoff demand from HOA Trustee  
9 accurately identifying the super-priority amount owed to the HOA so that it could be paid.<sup>17</sup>  
10 However, HOA Trustee refused to provide a payoff demand indicating the amount of the super-  
11 priority lien.<sup>18</sup>

12           31.     As a result of HOA Trustee's refusal to provide a super-priority amount,  
13 Defendant and its counsel calculated the super-priority amount owed to the HOA as the sum of  
14 nine months of common assessments, as identified in the HOA's ledger.<sup>19</sup> Based upon the  
15 HOA's ledger, Defendant and its counsel calculated the super-priority amount as \$207.00 and  
16 tendered that amount to the HOA on or about September 30, 2010.<sup>20</sup> Upon information and  
17 belief, the HOA rejected Defendant's tender of super-priority funds.

18           *HOA Lien Notices and HOA Foreclosure Sale.*

19           32.     The HOA Sale did not comply with NRS 116.3102 et seq. because none of the  
20 aforementioned notices identified above identified what portion of the claimed lien was for  
21 alleged late fees, interest, fines/violations, or collection fees/costs.

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23  
24 <sup>16</sup> A true and correct copy of the Trustee's Deed Upon Sale recorded as Book and Instrument  
Number 201401130001460 is attached hereto as **Exhibit 16**.

25 <sup>17</sup> See Correspondence from Miles, Bauer, Bergstrom & Winters, LLP, attached hereto as  
26 **Exhibit 17**. Please note this exhibit is a Word document that auto-populates the date.  
Consequently, the displayed date does not reflect the date the letter was sent.

27 <sup>18</sup> See Fax and attached Updated Ledger, dated September 13, 2010, attached hereto as **Exhibit**  
28 **18**.

<sup>19</sup> *Id.*

<sup>20</sup> See Letter and Check, dated September 30, 2010, attached hereto as **Exhibit 19**.

1           **33.**     The above-stated Notices of Default do not “describe the deficiency in payment”  
2 in violation of NRS 116 et seq.

3           **34.**     None of the aforementioned notices identified above specified what portion of the  
4 lien, if any, that the HOA claimed constituted a “super-priority” lien, specified whether the HOA  
5 was foreclosing on the “super-priority” portion of its lien, if any, or under the non-super-priority  
6 portion of the lien, or provided any notice of a right to cure by Plaintiff.

7           **35.**     Upon information and belief, the HOA and its foreclosure trustees, did not  
8 comply with all mailing and noticing requirements stated in NRS 116.31162 through NRS  
9 116.31168.

10          **36.**     Any attempt to tender an amount to the HOA and/or its agent prior to the HOA  
11 Sale would have been an exercise in futility due to the established policy and procedures of the  
12 HOA Trustee, A&K, at the time of the HOA Sale.

13          **37.**     NRS Chapter 116 is unconstitutional on its face as it lacks any express  
14 requirement for a homeowner’s association or its agents to provide notice of a foreclosure to the  
15 lender, beneficiary or holder of a first deed of trust or mortgage.

16          **38.**     NRS 116.31162 through NRS 116.31168 do not contain any provision requiring  
17 notice of a foreclosure to the lender, beneficiary or holder of a first mortgage or deed of trust,  
18 thus violating their constitutional right to due process.

19          **39.**     NRS Chapter 116 is unconstitutional on its face as it lacks any express right by  
20 the lender, beneficiary or holder, or their respective trustees, servicers, agents, or representatives,  
21 to obtain payoff information for the super-priority portion, if any, of the homeowner’s  
22 association lien or the express right to cure the default and protect the Deed of Trust, and it lacks  
23 an express obligation of a homeowner’s association or its agents to accept a tendered payoff and  
24 release the super-priority portion of the lien.

25          **40.**     NRS Chapter 116 is unconstitutional on its face due to vagueness and ambiguity.

26          **41.**     The HOA Sale was an invalid sale and could not have extinguished Plaintiff’s  
27 secured interest because of above-stated defects in the notices given to Defendant, or its  
28 predecessors, agents, servicers or trustees, if any.

1           ***HOA Sale Commercially Unreasonable.***

2           **42.**     A homeowner's association sale must be done in a commercially reasonable  
3 manner.

4           **43.**     At the time of the HOA Sale, the amount owed on the Gotera Loan exceeded  
5 \$525,000.00.

6           **44.**     Upon information and belief, at the time of the HOA Sale, the fair market value of  
7 the Property exceeded \$300,000.00.

8           **45.**     The HOA Sale is commercially unreasonable under NRS 116.1113 based on the  
9 above statements, the circumstances of the HOA Sale, and based on the sales price compared to  
10 the fair market value of the Property.

11                                   **FIRST CAUSE OF ACTION**

12           **(Quiet Title/Declaratory Relief Pursuant to NRS 30.010 et seq. and NRS 40.010 et seq.**  
13                                   **versus all Parties)**

14           **46.**     U.S. BANK TRUST incorporates and re-alleges all previous paragraphs, as if  
15 fully set forth herein.

16           **47.**     Pursuant to NRS 30.010 et seq. and NRS 40.010, this Court has the power and  
17 authority to declare U.S. BANK TRUST's rights and interests in the Property and to resolve  
18 Counter-Defendants' adverse claims in the Property.

19           **48.**     Further, pursuant to NRS 30.010 et seq., this Court has the power and authority to  
20 declare the rights and interest of the parties following the acts and omissions of the HOA and  
21 HOA Trustee in foreclosing the Property.

22           **49.**     U.S. BANK TRUST's Deed of Trust is a first secured interest on the Property as  
23 intended by NRS 116.3116(2)(b).

24           **50.**     As the current beneficiary under the Deed of Trust and Gotera Loan, U.S. BANK  
25 TRUST's interest still encumbers the Property and retains its first position status in the chain of  
26 title and is superior to the interest, if any, acquired by Buyer, or held or claimed by any other  
27 party.

28           **51.**     Upon information and belief, Buyer claims an interest in the Property by way of a

1 Trustee's Deed Upon Sale recorded in the Clark County Recorder's Office as Book and  
2 Instrument Number 201401130001460 that is adverse to the U.S. BANK TRUST's interest.

3       **52.** Upon information and belief, the HOA and HOA's agent, A&K, did not comply  
4 with all mailing and noticing requirements stated in NRS 116.31162 through NRS 116.31168  
5 and the CC&Rs.

6       **53.** Based on the adverse claims being asserted by the parties, Defendant is entitled to  
7 a judicial determination regarding the rights and interests of the respective parties to the case.

8       **54.** For all the reasons set forth above and in the Factual Background, Defendant is  
9 entitled to a determination from this Court, pursuant to NRS 30.010 et seq. and NRS 40.010, that  
10 the HOA Sale is unlawful and void under NRS 116.3102 et seq.

11       **55.** Defendant is entitled to a determination from this Court, pursuant to NRS 30.010  
12 et seq. and NRS 40.010, that U.S. BANK TRUST is the beneficiary of a first position Deed of  
13 Trust which still encumbers the Property and is superior to the interest held by Buyer and all  
14 other parties, if any.

15       **56.** In the alternative, if it is found under state law that Defendant's interest could  
16 have been extinguished by the HOA Sale, for all the reasons set forth above and in the Factual  
17 Background, Defendant is entitled to a determination from this Court, pursuant to NRS 40.010,  
18 that the HOA Sale was unlawful and void.

19       **57.** Defendant has furthermore been required to retain counsel and is entitled to  
20 recover reasonable attorney's fees for having brought the underlying action.

## 21                                   **SECOND CAUSE OF ACTION**

### 22                                   **(Permanent and Preliminary Injunction versus Buyer)**

23       **58.** Defendant incorporates by reference the allegations of all previous paragraphs, as  
24 if fully set forth herein.

25       **59.** As set forth above, Buyer may claim an ownership interest in the Property that is  
26 adverse to Defendant.

27       **60.** Any sale, transfer or encumbrance of the Property, prior to a judicial  
28 determination concerning the respective rights and interests of the parties to the case, would be

1 invalid because Defendant's Deed of Trust still encumbers the Property in first position and was  
2 not extinguished by the HOA Sale.

3       **61.** Defendant has a reasonable probability of success on the merits of the Complaint,  
4 for which compensatory damages will not compensate Defendant for the irreparable harm of the  
5 loss of title to a bona fide purchaser or loss of the first position priority status secured by the  
6 Property.

7       **62.** Defendant has no adequate remedy at law due to the uniqueness of the Property  
8 involved in the case.

9       **63.** Defendant is entitled to a preliminary and permanent injunction prohibiting Buyer  
10 from conducting any sale, transfer or encumbrance of the Property if it is claimed to be superior  
11 to Defendant's Deed of Trust or not subject to that Deed of Trust.

12       **64.** Defendant is entitled to a preliminary injunction requiring Buyer to pay all taxes,  
13 insurance or homeowner's association assessments during the pendency of this action.

14       **65.** Defendant is entitled to a preliminary injunction requiring Buyer to segregate and  
15 deposit all rents with the Court or a Court-approved trust account over which Buyer has no  
16 control during the pendency of this action.

17       **66.** Defendant has been required to retain counsel to prosecute this action and is  
18 entitled to recover reasonable attorney's fees to prosecute this action.

19                                   **THIRD CAUSE OF ACTION**

20                   **(Wrongful Foreclosure/Statutorily Defective Foreclosure versus the HOA Trustee**  
21                                   **and the fictitious Third-Party Defendants)**

22       **67.** Defendant incorporates by reference the allegations of all previous paragraphs, as  
23 if fully set forth herein.

24       **68.** As set forth above and in the Factual Background, upon information and belief,  
25 the HOA, HOA Trustee, and all fictitious Third-Party Defendants did not comply with all  
26 mailing and noticing requirements stated in NRS 116.31162 through NRS 116.31168 or required  
27 by the CC&Rs.

28       **69.** As set forth above and in the Factual Background, the HOA, HOA Trustee and



1 fictitious Third-Party Defendants did not give Defendant, or its agents, servicers or predecessors  
2 in interest, the proper, adequate notice and the opportunity to cure the deficiency or default in the  
3 payment of the HOA's assessments required by Nevada statutes, the CC&R's and due process.

4       **70.** As set forth above and in the Factual Background, the HOA Sale was not  
5 commercially reasonable and should be set aside.

6       **71.** As set forth above and in the Factual Background, Defendant has suffered general  
7 and special damages in an amount not presently known proximately caused by the HOA, HOA  
8 Trustee and fictitious Third-Party Defendants. Defendant will seek leave of court to assert said  
9 amounts when they are determined.

10       **72.** If it is determined that Defendant's Deed of Trust has been extinguished by the  
11 HOA Sale, as a proximate result of HOA, HOA Trustee and fictitious Third-Party Defendants'  
12 wrongful foreclosure of the Property by the HOA Sale, Defendant has suffered special damages  
13 in the amount equal to the fair market value of the Property or the unpaid balance of the Gotera  
14 Loan, plus interest, at the time of the HOA Sale, whichever is greater.

15       **73.** Defendant has been required to retain counsel to prosecute this action and is  
16 entitled to recover reasonable attorney's fees to prosecute this action.

#### 17                               **FOURTH CAUSE OF ACTION**

##### 18                   **(Negligence versus the HOA Trustee and the fictitious Third-Party Defendants)**

19       **74.** Defendant incorporates by reference the allegations of all previous paragraphs, as  
20 if fully set forth herein.

21       **75.** HOA, HOA Trustee, and fictitious Third-Party Defendants owed a duty to give  
22 Defendant, or its agents, servicers or predecessors in interest, the proper, adequate notice of the  
23 delinquent assessment, notice of default and election to sell and notice of sale, and the  
24 opportunity to cure the deficiency or default in the payment of the assessments required by  
25 Nevada statutes, the CC&R's and due process.

26       **76.** As set forth above and in the Factual Background, the HOA, HOA Trustee and  
27 fictitious Third-Party Defendants breached the duties owed to Defendant.

28       **77.** As a proximate result of HOA's and HOA Trustee's and the other Third-Party

Defendants' breaches of their duties, Defendant has incurred general and special damages in an amount in excess of \$10,000.00.

78. If Defendant is found to have lost its first secured interest in the Property, it was the proximate result of HOA's and HOA Trustee's and the other Third-Party Defendants' breach of their duties, and Defendant has thereby suffered general and special damages in an amount in excess of \$10,000.00.

79. Defendant has been required to retain counsel to prosecute this action and is entitled to recover reasonable attorney's fees to prosecute this action.

### FIFTH CAUSE OF ACTION

**(Negligence Per Se versus the HOA Trustee and the fictitious Third-Party Defendants)**

**80.** Defendant incorporates by reference the allegations of all previous paragraphs, as if fully set forth herein.

**81. NRS Chapter 116 imposes a duty on HOAs to conduct their foreclosure sales in a manner that is consistent with their provisions.**

**82.** The HOA and HOA Trustee, and the other Third-Party Defendants, violated the provisions of NRS Chapter 116.

83. Defendant is a member of the class of persons whom NRS Chapter 116 is intended to protect.

84. The injury that Defendant faces—extinguishment of its first-position deed of trust—is the type against which NRS Chapter 116 is intended to protect.

85. As set forth above and in the Factual Background, the HOA, HOA Trustee and fictitious Third-Party Defendants breached the duties owed to Defendant.

86. As a proximate result of HOA's and HOA Trustee's and the other Third-Party Defendants' breaches of their statutory duties, Defendant has incurred general and special damages in an amount in excess of \$10,000.00.

87. If Defendant is found to have lost its first secured interest in the Property, it was the proximate result of HOA's and HOA Trustee's and the other Third-Party Defendants' breach

1 of their statutory duties, and Defendant has thereby suffered general and special damages in an  
2 amount in excess of \$10,000.00.

3       **88.** Defendant has been required to retain counsel to prosecute this action and is  
4 entitled to recover reasonable attorney's fees to prosecute this action.

5                                   **SIXTH CAUSE OF ACTION**

6       **(Unjust Enrichment versus Buyer, HOA Trustee, and fictitious Third-Party Defendants)**

7       **89.** Defendant incorporates and re-alleges all previous paragraphs, as if fully set forth  
8 herein.

9       **90.** Defendant, or its predecessor, has been deprived of the benefit of its secured deed  
10 of trust by the actions of Buyer, HOA Trustee, and fictitious Third-Party Defendants.

11       **91.** Buyer, HOA Trustee, and fictitious Third-Party Defendants have benefitted from  
12 the unlawful HOA Sale and nature of the real property.

13       **92.** Buyer, HOA Trustee, and fictitious Third-Party Defendants have benefitted from  
14 Defendant's payment of taxes, insurance or homeowner's association assessments since the time  
15 of the HOA Sale.

16       **93.** Should Defendant's Counterclaim/Third-Party Complaint be successful in  
17 quieting title against Buyer and HOA Trustee and setting aside the HOA Sale, Buyer, HOA  
18 Trustee, and fictitious Third-Party Defendants will have been unjustly enriched by the HOA Sale  
19 and usage of the Property.

20       **94.** Defendant will have suffered damages if Buyer, HOA Trustee, and fictitious  
21 Third-Party Defendants are allowed to retain their interests in the Property and the funds  
22 received from the HOA Sale.

23       **95.** Defendant will have suffered damages if Buyer, HOA Trustee, and fictitious  
24 Third-Party Defendants are allowed to retain their interests in the Property and Defendant's  
25 payment of taxes, insurance or homeowner's association assessments since the time of the HOA  
26 Sale.

27       **96.** Defendant is entitled to general and special damages in excess of \$10,000.00.

28       **97.** Defendant has furthermore been required to retain counsel and is entitled to

1 recover reasonable attorney's fees for having brought the underlying action.

2 **SEVENTH CAUSE OF ACTION**

3 **(Breach of the Covenant of Good Faith and Fair Dealing versus HOA Trustee and**  
4 **the fictitious Third-Party Defendants)**

5 **98.** Defendant incorporates by reference the allegations of all previous paragraphs, as  
6 if fully set forth herein.

7 **99.** Implicit in every contract in the state of Nevada is an implied covenant of good  
8 faith and fair dealing.

9 **100.** Defendant was an intended beneficiary of the HOA's CC&Rs.

10 **101.** HOA, HOA Trustee, and fictitious Third-Party Defendants breached the duties,  
11 obligations, promises, covenants and conditions, express and implied, in the CC&Rs owed to  
12 Defendant by the circumstances under which they conducted the HOA Sale of the Property and  
13 failed to act in good faith.

14 **102.** HOA, HOA Trustee, and fictitious Third-Party Defendants' acts and omissions  
15 proximately caused Defendant general and special damages in an amount in excess of  
16 \$10,000.00.

17 **103.** Defendant has been required to retain counsel to prosecute this action and is  
18 entitled to recover reasonable attorney's fees to prosecute this action.

19 **PRAYER**

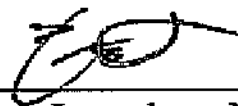
20 Wherefore, Defendant prays for judgment against the Counter-Defendants/Third-Party  
21 Defendants, jointly and severally, as follows:

- 22 1. For a declaration and determination that the HOA Sale was invalid to the extent it  
23 purports to convey the Property free and clear to Buyer;
- 24 2. For a declaration and determination that Defendant's interest still encumbers the  
25 Property, and that Defendant's first Deed of Trust was not extinguished by the  
26 HOA Sale;
- 27 3. For a declaration and determination that Defendant's interest is superior to the  
28 interest of Buyer and all other parties;

- 1           4.     In the alternative, for a declaration and determination that the HOA Sale was  
2                 invalid and conveyed no legitimate interest to Buyer;
- 3           5.     For a preliminary and permanent injunction that Buyer, its successors, assigns,  
4                 and agents are prohibited from conducting any sale, transfer or encumbrance of  
5                 the Property that is claimed to be superior to Defendant's Deed of Trust or not  
6                 subject to that Deed of Trust;
- 7           6.     For a preliminary injunction that Buyer, its successors, assigns, and agents be  
8                 required to pay all taxes, insurance and homeowner's association dues during the  
9                 pendency of this action.
- 10          7.     If it is determined that Defendant's Deed of Trust has been extinguished by the  
11                 HOA Sale, for special damages in the amount of the fair market value of the  
12                 Property or the unpaid balance of the Gotera Loan and Deed of Trust, at the time  
13                 of the HOA Sale, whichever is greater;
- 14          8.     For general and special damages in excess of \$10,000.00;
- 15          9.     For attorney's fees;
- 16          10.    For costs incurred herein, including post-judgment costs;

17   DATED this 18 day of August, 2015.

18                                 WRIGHT, FINLAY & ZAK, LLP

19                                 

20                                 Dana Jonathon Nitz, Esq.

21                                 Nevada Bar No. 0050

22                                 Paterno C. Jurani, Esq.

23                                 Nevada Bar No. 8136

24                                 7785 West Sahara Avenue, Suite 200

25                                 Las Vegas, Nevada 89117

26                                 Attorneys for Defendant, Nationstar Mortgage, LLC

27                                 and Defendant/Counterclaimant/Third-Party

28                                 Defendant U.S. Bank, National Association, as

                                  Trustee for the Certificateholders of the LXS 2006-  
                                  4N Trust Fund, erroneously pled as U.S. Bank, N.A.

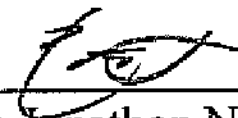
**AFFIRMATION**

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding **U.S. BANK, N.A.'S ANSWER, COUNTERCLAIM, AND THIRD-PARTY COMPLAINT** filed in Case No. A-14-705563-C does not contain the social security number of any person.

DATED this 18 day of August, 2015.

WRIGHT, FINLAY & ZAK, LLP



Dana Jonathon Nitz, Esq.

Nevada Bar No. 0050

Paterno C. Jurani, Esq.

Nevada Bar No. 8136

7785 West Sahara Avenue, Suite 200

Las Vegas, Nevada 89117

*Attorneys for Defendant, Nationstar Mortgage, LLC  
and Defendant/Counterclaimant/Third-Party*

*Defendant U.S. Bank, National Association, as*

*Trustee for the Certificateholders of the LXS 2006-  
4N Trust Fund, erroneously pled as U.S. Bank, N.A.*



**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 18<sup>th</sup> day of August, 2015, I did cause a true copy of U.S. BANK, N.A.'S **ANSWER, COUNTERCLAIM, AND THIRD-PARTY COMPLAINT** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9.

**Alessi & Koenig**

**Contact**

A&K eserve

**Email**


[eserve@alessikoenig.com](mailto:eserve@alessikoenig.com)

  
An Employee of WRIGHT, FINLAY & ZAK, LLP

## **Exhibit 1**

## **Exhibit 1**

## **Exhibit 1**


  
20051121-0005566

**RECORDING REQUESTED BY:**  
Fidelity National Title Agency of Nevada  
Escrow No. 05-191253-TH  
Title Order No. 00191253

**When Recorded Mail Document  
and Tax Statement To:**

Ms. Magnolia Gotera

*1990 Twin Creeks Drive  
Salinas, CA. 93905*

RPTT: 2,728.50  
APN: 163-30-312-007

Fee: \$15.00 RPTT: \$2,728.50  
N/C Fee: \$0.00

11/21/2005 14:38:39  
T20050211957

Requestor:

FIDELITY NATIONAL TITLE

Frances Deane JSB  
Clark County Recorder Pgs: 2

### GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That Wei Hong Yang, An Unmarried Woman

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do(es) hereby Grant,  
Bargain, Sell and

Convey to Magnolia Gotera, A Single Woman

all that real property situated in the Clark County, State of Nevada, bounded and described as follows:

Lot 7 in Block 1 of Final Map of Section 30 R2-60/70 No. 5, as shown by map thereof on file in Book  
102 of Plats, Page 28 in the Office of the County Recorder of Clark County, Nevada.

SUBJECT TO: 1. Taxes for the fiscal year 2005-06  
2. Covenants, Conditions, Reservations, Rights, Rights of Way and Easements  
now of record.

Together with all and singular tenements, hereditaments and appurtenances thereunto belonging or  
in anywise appertaining.

DATED: November 14, 2005

STATE OF NEVADA  
COUNTY OF Clark

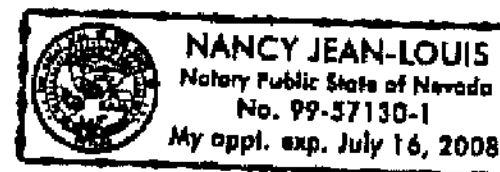
This instrument was acknowledged before me  
on November 14, 2005

by Wei Hong Yang

Signature Nancy Jean-Louis  
Notary Public

My Commission Expires: 7/16/08

Wei Hong Yang  
Wei Hong Yang



# STATE OF NEVADA DECLARATION OF VALUE

## 1. Assessor Parcel Number(s)

- a) 163-30-312-007  
 b) \_\_\_\_\_  
 c) \_\_\_\_\_  
 d) \_\_\_\_\_

## 2. Type of Property:

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

## FOR RECORDER'S OPTIONAL USE ONLY

Document/Instrument #: \_\_\_\_\_  
 Book: \_\_\_\_\_ Page: \_\_\_\_\_  
 Date of Recording: \_\_\_\_\_  
 Notes: \_\_\_\_\_

3. Total Value/Sales Price of the Property \$ 535,000.00  
 Deed in Lieu of Foreclosure Only (Value of Property) ( \_\_\_\_\_ )  
 Transfer Tax Value: \$ 535,000.00  
 Real Property Transfer Tax Due \$ 2,728.50

## 4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090. Section 0  
 b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: 100%

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

Signature Wei Hong Yang Capacity Grantor

Signature \_\_\_\_\_ Capacity \_\_\_\_\_  
**SELLER (GRANTOR) INFORMATION** **BUYER (GRANTEE) INFORMATION**  
 (REQUIRED) (REQUIRED)

Print Name: Wei Hong Yang Print Name: Magnolia Gotera  
 Address: 7201 Mission Hill Dr. Address: 1090 Twin Creeks Dr.  
 City, State, Zip: Las Vegas NV 89103 City, State, Zip: Salinas, CA 93905

**COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)**  
 Print Name: Fidelity National Title Agency of Nevada Escrow #: 05-191253-TH  
 Address: 5597 W. Spring Mountain Road  
 City, State and Zip: Las Vegas, NV 89102

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

(dedval.wpd)(04-05)

## **Exhibit 2**

## **Exhibit 2**

## **Exhibit 2**


  
20051121-0005567

Assessor's Parcel Number:  
16330312007  
After Recording Return To:  
COUNTRYWIDE HOME LOANS, INC.

Fee: \$39.00  
N/C Fee: \$0.00

11/21/2005 14:38:39  
T20050211957

Requestor:  
FIDELITY NATIONAL TITLE

Frances Deane JSB  
Clark County Recorder Pgs: 26

MS SV-79 DOCUMENT PROCESSING  
P.O.Box 10423  
Van Nuys, CA 91410-0423  
Prepared By:  
APRIL MESA  
Recording Requested By:  
J. KEPHART

COUNTRYWIDE HOME LOANS, INC.

650 WHITE DRIVE, STE 280  
LAS VEGAS  
NV 89119

[Space Above This Line For Recording Data]

0519191253 00012143406811005  
[Escrow/Closing #] [Doc ID #]

## DEED OF TRUST

MIN 1000157-0006127350-0

### DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated NOVEMBER 10, 2005 , together with all Riders to this document.

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

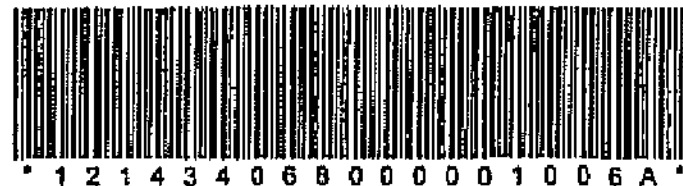
 -6A(NV) (0307) CHL (07/03)(d)

Page 1 of 16

VMP Mortgage Solutions - (800)521-7291

Initials: 

Form 3029 1/01





DOC ID #: 00012143406811005

(B) "Borrower" is  
MAGNOLIA GOTERA, A SINGLE WOMAN

Borrower is the trustor under this Security Instrument.

(C) "Lender" is  
COUNTRYWIDE HOME LOANS, INC.

Lender is a  
CORPORATION

organized and existing under the laws of NEW YORK  
P.O. Box 10219

Lender's address is

Van Nuys, CA 91410-0219

(D) "Trustee" is  
CTC REAL ESTATE SERVICES

400 COUNTRYWIDE WAY, MSN SV-88, SIMI VALLEY, CA 93065 , ,

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

(F) "Note" means the promissory note signed by Borrower and dated NOVEMBER 10, 2005 .  
The Note states that Borrower owes Lender

FIVE HUNDRED EIGHT THOUSAND TWO HUNDRED FIFTY and 00/100

Dollars (U.S. \$ 508,250.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than DECEMBER 01, 2035 .

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


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

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

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

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

Initials: CL  
Form 3029 1/01

 -6A(NV) (0307) CHL (07/03)

Page 2 of 16

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

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

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

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

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

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

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

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

#### TRANSFER OF RIGHTS IN THE PROPERTY

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

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irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property  
located in the COUNTY of

[Type of Recording Jurisdiction]

CLARK :

[Name of Recording Jurisdiction]

LOT 7 IN BLOCK 1 OF FINAL MAP OF SECTION 30 R2-60/70 NO. 5,  
AS SHOWN BY MAP THEREOF ON FILE IN BOOK 102 OF PLATS, PAGE 28  
IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.  
ASSESSOR'S PARCEL NO: 163-30-312-007

which currently has the address of

5327 MARSH BUTTE STREET, LAS VEGAS

[Street/City]

Nevada 89148-4669 ("Property Address"):

[Zip Code]

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

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is

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

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

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

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

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

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

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive

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from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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

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

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

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

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

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

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees,

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property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

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Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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

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

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


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

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

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

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

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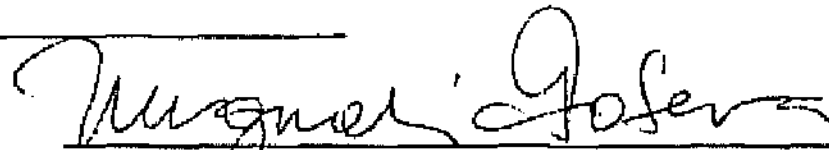
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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:



  
MAGNOLIA GOTERA

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower



-6A(NV) (0307)

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STATE OF NEVADA

COUNTY OF Clark

This instrument was acknowledged before me on November 15, 2005 by  
Magnolia Go tera



Nancy Jean-Louis

Mail Tax Statements To:  
TAX DEPARTMENT SV3-24

450 American Street  
Simi Valley CA, 93065

Initials: ML  
Form 3029 1/01

**ADJUSTABLE RATE RIDER**  
(PayOption MTA Twelve Month Average Index - Payment Caps)

0519191253                      00012143406811005  
[Escrow/Closing #]                      [Doc ID #]

THIS ADJUSTABLE RATE RIDER is made this Tenth day of  
NOVEMBER, 2005, 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 ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to  
COUNTRYWIDE HOME LOANS, INC.

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

5327 MARSH BUTTE STREET  
LAS VEGAS, NV 89148-4669  
[Property Address]

THE NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE  
MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY  
PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD  
BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE  
MAXIMUM LIMIT STATED IN THE NOTE.

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

**A. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

The Note provides for changes in the interest rate and the monthly payments, as follows:

▪ PayOption MTA ARM Rider  
1E310-XX (12/04)(d)

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\* 1 2 1 4 3 4 0 6 8 0 0 0 0 1 E 3 1 0 \*

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**2. INTEREST****(A) Interest Rate**

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 3.000 %. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of the Note.

**(B) Interest Rate Change Dates**

The interest rate I will pay may change on the first day of JANUARY, 2006, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

**(C) Index**

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

**(D) Calculation of Interest Rate Changes**

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding THREE & 75/1000 percentage point(s) ( 3.075 %) ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.950 %. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

**3. PAYMENTS****(A) Time and Place of Payments**

I will make a payment every month.

I will make my monthly payments on the FIRST day of each month beginning on January, 2006. I will make these payments every month until I have paid all the Principal and interest and any other charges described below that I may owe under the Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on DECEMBER 01, 2035, I still owe amounts under the Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

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1E310-XX (12/04)

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I will make my monthly payments at  
P.O. Box 10219, Van Nuys, CA 91410-0219

or at a different place if required by the Note Holder.

**(B) Amount of My Initial Monthly Payments**

Each of my initial monthly payments until the first Payment Change Date will be in the amount of  
U.S. \$ 2,142.80 , unless adjusted under Section 3 (F).

**(C) Payment Change Dates**

My monthly payment may change as required by Section 3(D) below beginning on the  
first day of JANUARY, 2007 , and on that day every 12th  
month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also  
will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment.  
The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment  
which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If  
the Minimum Payment is not sufficient to cover the amount of the interest due then negative  
amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment  
Change Date or as provided in Section 3(F) or 3(G) below.

**(D) Calculation of Monthly Payment Changes**

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of  
the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe  
at the Payment Change Date in full on the maturity date in substantially equal payments at the interest  
rate effective during the month preceding the Payment Change Date. The result of this calculation is  
called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment  
effective on a Payment Change Date, will not increase by more than 7.5% of my prior monthly  
payment. This 7.5% limitation is called the "Payment Cap." This Payment Cap applies only to the  
Principal and interest payment and does not apply to any escrow payments Lender may require under  
the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my  
Minimum Payment due the month preceding the Payment Change Date and multiplying it by the  
number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or  
3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the  
Limited Payment and the Full Payment. I also have the option to pay the Full Payment for my monthly  
payment.

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1E310-XX (12/04)

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**(E) Additions to My Unpaid Principal**

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3(D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3(A).

**(F) Limit on My Unpaid Principal; Increased Monthly Payment**

My unpaid Principal can never exceed the Maximum Limit equal to ONE HUNDRED FIFTEEN percent ( 115 %) of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the 7.5% Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

**(G) Required Full Payment**

On the fifth Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

**(H) Payment Options**

After the first Interest Rate Change Date, Lender may provide me with up to three (3) additional payment options that are greater than the Minimum Payment, which are called "Payment Options." I may be given the following Payment Options;

(i) **Interest Only Payment:** the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) **Fully Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) at the Maturity Date in substantially equal payments.

(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

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These Payment Options are only applicable if they are greater than the Minimum Payment.

**B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**

Section 18 of the Security Instrument entitled "Transfer of the Property or a Beneficial Interest In Borrower" is amended to read as follows:

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

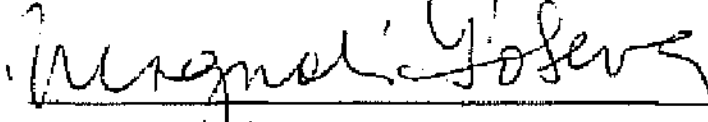
To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by

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this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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



MAGNOLIA GOTERA

-Borrower

-Borrower

-Borrower

-Borrower

• PayOption MTA ARM Rider  
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**PLANNED UNIT DEVELOPMENT RIDER**

After Recording Return To:  
COUNTRYWIDE HOME LOANS, INC.  
MS SV-79 DOCUMENT PROCESSING  
P.O.Box 10423  
Van Nuys, CA 91410-0423

PARCEL ID #:  
16330312007

Prepared By:  
APRIL MESA

0519191253  
[Escrow/Closing #]

00012143406811005  
[Doc ID #]

THIS PLANNED UNIT DEVELOPMENT RIDER is made this TENTH day of  
NOVEMBER, 2005, 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

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

VMP-7R (0411)

CHL (11/04)(d)

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Initials

VMP Mortgage Solutions, Inc. (800)521-7291

Form 3150 1/01



\* 2 3 9 9 1 \*



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undersigned (the "Borrower") to secure Borrower's Note to  
COUNTRYWIDE HOME LOANS, INC.

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

5327 MARSH BUTTE STREET  
LAS VEGAS, NV 89148-4669  
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with  
other such parcels and certain common areas and facilities, as described in  
THE COVENANTS, CONDITIONS, AND RESTRICTIONS FILED OF RECORD  
THAT AFFECT THE PROPERTY

(the "Declaration"). The Property is a part of a planned unit development known as  
SPRING VALLEY SECTION 30

[Name of Planned Unit Development]

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

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

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

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

Initials  -7R (0411)

CHL (11/04)

Page 2 of 4

Form 3150 1/01

DOC ID #: 00012143406811005

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

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

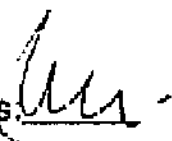
In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums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

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

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

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

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

Initials   
Form 3150 1/01

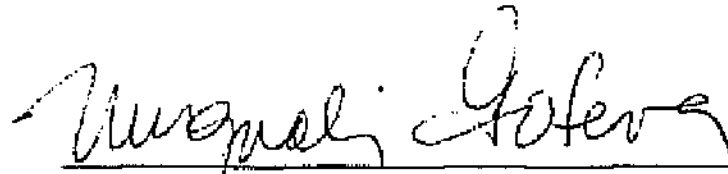
VMP -7R (0411)

CHL (11/04)

Page 3 of 4

DOC ID #: 00012143406811005

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



MAGNOLIA GOTERA

(Seal)  
- Borrower

(Seal)  
- Borrower

(Seal)  
- Borrower

(Seal)  
- Borrower

## **Exhibit 3**

## **Exhibit 3**

## **Exhibit 3**



When Recorded mail Document  
and tax statement to:  
JBWNO revocable living trust  
5327 Marsh Butte St.  
Las Vegas, NV 89148

COA-1

Inst #: 201105270004010  
Fees: \$16.00 N/C Fee: \$25.00  
RPTT: \$0.00 Ex: #007  
05/27/2011 04:12:48 PM  
Receipt #: 792751  
Requestor:  
STACY MOORE  
Recorded By: SOL Pgs: 4  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

APN: 163-30-312-007

---

## GRANT DEED

STATE OF NEVADA                    )  
  )ss  
COUNTY OF CLARK                 )

KNOW ALL MEN BY THESE PRESENTS, That for and in consideration of the sum of Ten Dollars and zero Cents ( \$10.00 ) in hand paid to Gotera Magnolia (hereinafter called the Grantor), the receipt of whereof is hereby acknowledged, the Grantor, Gotera Magnolia hereby RELEASES, QUITCLAIMS, GRANTS, SELLS, AND CONVEYS to JBWNO revocable living trust, JBWNO revocable living trust, (hereinafter called Grantee), all of the Grantors' right, title, interest, and claim in or to the following described real estate, situated in Clark County, Nevada, to-wit:  
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

DATED:

State of Nevada

County of Clark

I hereby certify that Magnolia Gotera whose name(s)  
are/is signed to the foregoing conveyance, and are known to me  
(or provided to me on the basis of Satisfactory evidence),  
acknowledged before me on this day, that, being informed of the  
contents of the conveyance, they executed the same voluntarily on  
the day the same bears date.

Magnolia Gotera  
Grantor

On May 27, 2011 before me,

Magnolia Gotera  
(here insert name and title of the officer)

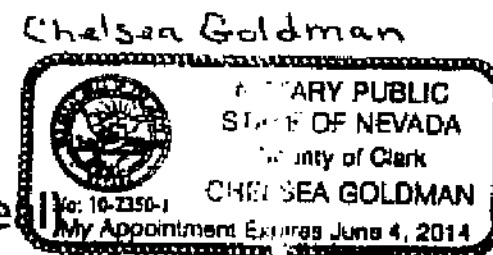
WITNESS my hand and official seal. May 27, 2011

Signature



Chelsea Goldman, Notary Public

MAIL TAX STATEMENTS AS DIRECTED ABOVE



**Exhibit A**

**Legal description as recorded on document number  
20051121-0005566**

**Also known as:**

**APN: 163-30-312-007**

**5327 MARSH BUTTE ST  
LAS VEGAS, NV 89148**

**Lot 7 in Block 1 of Final Map of Section 30 R2-60/70 No. 5, as  
shown by map thereof on file in Book 102 of Plats, Page 28 in the  
Office of the County Recorder of Clark County, Nevada**

**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

**1. Assessor Parcel Number(s)**

a. 163-30-312-007  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

**2. Type of Property:**

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

**FOR RECORDER'S OPTIONAL USE ONLY**  
Book: \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

3. a. Total Value/Sales Price of Property \$ 0  
b. Deed in Lieu of Foreclosure Only (value of property) ( )  
c. Transfer Tax Value: \$ 0  
d. Real Property Transfer Tax Due \$ 0

**4. If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section 7  
b. Explain Reason for Exemption: Transfer to or from a trust without consideration

5. Partial Interest: Percentage being transferred: 100 %

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

Signature Kristin Jordal Capacity Trustee

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

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

Print Name: Magnolia Gotera  
Address: 5327 Marsh Butte St  
City: Las Vegas  
State: NV Zip: 89148

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

Print Name: JBWND revocable living  
Address: 5327 Marsh Butte St  
City: Las Vegas  
State: NV Zip: 89148

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

Print Name: \_\_\_\_\_ Escrow #: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

CCOR\_DV\_Form.pdf ~ 01/12/09

## **Exhibit 4**

## **Exhibit 4**

## **Exhibit 4**

When Recorded mail Document  
and tax statement to:  
Stacy Moore  
5327 Marsh Butte St.  
Las Vegas, NV 89148

②-1

Inst #: 201105270004011

Fees: \$16.00 N/C Fee: \$0.00

RPTT: \$0.00 Ex: #007

05/27/2011 04:12:48 PM

Receipt #: 792751

Requestor:

STACY MOORE

Recorded By: SOL Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN: 163-30-312-007

---

## GRANT DEED

STATE OF NEVADA                    )  
  )ss  
COUNTY OF CLARK                 )

KNOW ALL MEN BY THESE PRESENTS, That for and in consideration of the sum of Ten Dollars and zero Cents ( \$10.00 ) in hand paid to JBWNO revocable living trust (hereinafter called the Grantor), the receipt of whereof is hereby acknowledged, the Grantor, JBWNO revocable living trust hereby RELEASES, QUITCLAIMS, GRANTS, SELLS, AND CONVEYS to Stacy Moore, Stacy Moore, (hereinafter called Grantee), all of the Grantors' right, title, interest, and claim in or to the following described real estate, situated in Clark County, Nevada, to-wit:  
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Exhibit A

Legal description as recorded on document number  
20051121-0005566

Also known as:

APN: 163-30-312-007

5327 MARSH BUTTE ST  
LAS VEGAS, NV 89148

Lot 7 in Block 1 of Final Map of Section 30 R2-60/70 No. 5, as  
shown by map thereof on file in Book 102 of Plats, Page 28 in the  
Office of the County Recorder of Clark County, Nevada



DATED:

State of Nevada

County of Clark

I hereby certify that Kristin Jordal whose name(s)  
are/is signed to the foregoing conveyance, and are known to me  
(or provided to me on the basis of Satisfactory evidence),  
acknowledged before me on this day, that, being informed of the  
contents of the conveyance, they executed the same voluntarily on  
the day the same bears date.

Kristin Jordal  
Kristin Jordal  
Grantor / Trustee

On MAY 27<sup>th</sup>, 2011 before me,

Kristin Jordal - Trustee  
(here insert name and title of the officer)

WITNESS my hand and official seal.

Signature

MAIL TAX STATEMENTS AS DIRECTED ABOVE



(Seal)

Exp 3-14-14  
Cert No 10-1531-1

**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

**1. Assessor Parcel Number(s)**

a. 163-30-312-007  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

**2. Type of Property:**

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

**FOR RECORDER'S OPTIONAL USE ONLY**  
Book: \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

3. a. Total Value/Sales Price of Property \$ 0  
b. Deed in Lieu of Foreclosure Only (value of property) ( )  
c. Transfer Tax Value: \$ 0  
d. Real Property Transfer Tax Due \$ 0

**4. If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section 7  
b. Explain Reason for Exemption: Transfer to or from a trust without consideration

5. Partial Interest: Percentage being transferred: 100 %

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

Signature Kristin Jordan Capacity Trustee

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

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

Print Name: JBWNO revocable living trust  
Address: 5327 Marsh Butte St  
City: Las Vegas  
State: NV Zip: 89148

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

Print Name: Stacy Moore  
Address: 5327 Marsh Butte St.  
City: Las Vegas  
State: NV Zip: 89148

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

Print Name: \_\_\_\_\_ Escrow #: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

CCOR\_DV\_Form.pdf ~ 01/12/09

## **Exhibit 5**

## **Exhibit 5**

## **Exhibit 5**

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



DocID# 14612143406815262

Tax ID: 163-30-312-007

Property Address:

5327 Marsh Butte St

Las Vegas, NV 89148-4669

NV0-ADT 14727720 10/26/2011

Inst #: 201111020000754

Fees: \$18.00

N/C Fee: \$25.00

11/02/2011 08:02:44 AM

Receipt #: 965446

Requestor:

CORELOGIC

Recorded By: MSH Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

This space for Recorder's use

MIN #: 1000157-0006127350-0

MERS Phone #: 888-679-6377

**ASSIGNMENT OF DEED OF TRUST**

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 3300 S.W. 34th Avenue, Suite 101 Ocala, FL 34474 does hereby grant, sell, assign, transfer and convey unto U.S. BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE LXS 2006-4N TRUST FUND whose address is 10350 PARK MEADOWS DR, LITTLETON, CO 80124 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: COUNTRYWIDE HOME LOANS, INC.

Made By: MAGNOLIA GOTERA, A SINGLE WOMAN

Trustee: CTC REAL ESTATE SERVICES

Date of Deed of Trust: 11/10/2005 Original Loan Amount: \$508,250.00

Recorded in Clark County,NV on: 11/21/2005, book N/A, page N/A and instrument number 20051121-0005567

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

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

10/27/11

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC.

By: Christopher Herrera Assistant Secretary

State of California  
County of Ventura

On 10-27-2011 before me, Norma Rojas, Notary Public, personally appeared Christopher Herrera, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

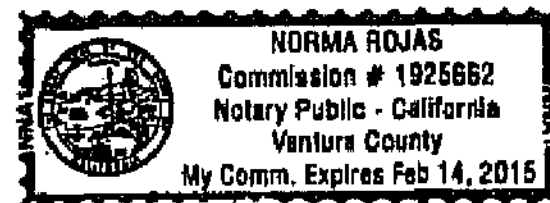
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
Notary Public: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

(Seal)



DocID# 14612143406815262

## **Exhibit 6**

## **Exhibit 6**

## **Exhibit 6**

Recording Requested By:  
Bank of America, N.A.  
Prepared By: Marcus Jones

When recorded mail to:  
CoreLogic  
Mail Stop: ASGN  
1 CoreLogic Drive  
Westlake, TX 76262-9823



DocID# 18712143406842077

Tax ID: 163-30-312-007

Property Address:  
5327 Marsh Butte St  
Las Vegas, NV 89148-4669

NVD-ADT 26012666 7/1/2013 NS0630A

Inst #: 201310010002401

Fees: \$18.00

N/C Fee: \$0.00

10/01/2013 01:29:41 PM

Receipt #: 1794477

Requestor:

CORELOGIC

Recorded By: MSH Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

This space for Recorder's use

### ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063 does hereby grant, sell, assign, transfer and convey unto NATIONSTAR MORTGAGE, LLC whose address is 350 HIGHLAND DRIVE, LEWISVILLE, TX 75067 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE  
FOR COUNTRYWIDE HOME LOANS, INC.

Made By: MAGNOLIA GOTERA, A SINGLE WOMAN

Trustee: CTC REAL ESTATE SERVICES

Date of Deed of Trust: 11/10/2005 Original Loan Amount: \$508,250.00

Recorded in Clark County, NV on: 11/21/2005, book N/A, page N/A and instrument number 20051121-0005567

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

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

7/1/13

Bank of America, N.A.

By:

Kathleen Loera

Assistant Vice President

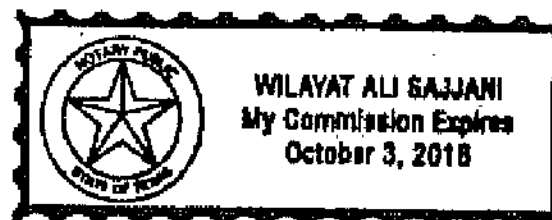


State of TX, County of **DALLAS**

On **JUL 01 2013**, before me, **Wilayat Ali Sajjani**, a Notary Public, personally appeared **Kathleen Leera**, **Assistant Vice President** of Bank of America, N.A. personally known to me to be the person(s) whose name(s) **is** are subscribed to the within document and acknowledged to me that he **she** they executed the same in his **her** their authorized capacity(ies), and that by his **her** their signature(s) on the document the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

  
Notary Public: **Wilayat Ali Sajjani**  
My Commission Expires: **10-03-2016**



---

DocID# 18712143406842077

## **Exhibit 7**

## **Exhibit 7**

## **Exhibit 7**


  
20080507-0001731

When recorded return to:

ALESSI TRUSTEE CORPORATION  
9500 W. Flamingo Rd., Suite 100  
Las Vegas, Nevada 89147  
Phone: (702) 222-4033

www.alessitrustee.com

UN

Fee: \$14.00

N/C Fee: \$0.00

05/07/2008 12:02:42

T20080081618

Requestor:

NORTH AMERICAN TITLE COMPANY

Debbie Conway JJF

Clark County Recorder Pgs: 1

A.P.N. 163-30-312-007

Trustee Sale # SMR-5327-N

## NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) recorded on **Pending**, as Instrument No: **pending**, of the official records of Clark County, Nevada, **Shadow Mountain Ranch HOA** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **5327 Marsh Butte St. , Las Vegas, NV 89148** and more particularly legally described as: **Lot 7 Block 1 Book 102 Page 28** in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are): **Magnolia Gotera**

The mailing address(es) is: **1090 Twin Creeks Dr., Salinas, CA 93905**

The total amount due through today's date is: **\$957.00**. Of this total amount **\$570.00** represent Collection and/or Attorney fees and **\$50.00** represent collection costs, late fees, service charges and interest. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: April 15, 2008

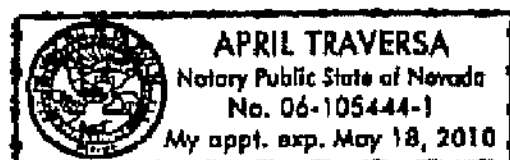
By:

  
Aileen Ruiz – Trustee Sale Officer

Alessi Trustee Corporation, on behalf of Shadow Mountain Ranch

SUBSCRIBED and SWORN before me April 15, 2008

(Seal)




(Signature)

  
NOTARY PUBLIC

## **Exhibit 8**

## **Exhibit 8**

## **Exhibit 8**


  
20080723-0001378

When recorded mail to:

THE ALESSI TRUSTEE CORPORATION  
9500 West Flamingo Rd., Ste 100  
Las Vegas, Nevada 89147  
Phone: 702-222-4033

WWW.ALESSITRUSTEE.COM

99

07872

A.P.N. 163-30-312-007

Trustee Sale No. SMR-5327-N

Fee: \$14.00

N/C Fee: \$0.00

07/23/2008 11:17:47

T20080152397

Requestor:

NORTH AMERICAN TITLE COMPANY

Debbie Conway JLB

Clark County Recorder Pgs: 1

## NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!** You may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default is recorded. The date of recordation appears on this notice. The amount due is **\$1,929.00** as of **6/21/2008** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact: **Shadow Mountain Ranch, c/o Alessi Trustee Corp., 9500 West Flamingo Road, Suite 100, Las Vegas, NV 89147.**

## Certificate

THIS NOTICE pursuant to that certain Assessment Lien, recorded on **May 7, 2008** as document number **20080507-01731**, of Official Records in the County of **Clark**, State of **Nevada**.

Owner(s): **Magnolia Gotera**

Of **Lot 7 Block 1**, as per map recorded in **Book 102, Pages 28**, as shown on the Condominium Plan, Recorded on as document number **pending** as shown on the Subdivision map recorded in Maps of the County of **Clark**, State of **Nevada**.

PROPERTY ADDRESS: **5327 Marsh Butte St., Las Vegas, NV 89148**

If you have any questions, you should contact an attorney or the Association that maintains the right of assessment upon your property. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

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

NOTICE IS HEREBY GIVEN THAT The Alessi Trustee Corporation is appointed trustee agent under the above referenced lien, dated **May 7, 2008**, executed by **Shadow Mountain Ranch** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions. A breach of, and default in, the obligation for which said Covenants, Conditions, and Restrictions as security has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, Association's fees and costs, trustee's fees and costs, and attorney's fees and costs.

Dated: **June 21, 2008**

  
April Traversa, Alessi Trustee Corporation on behalf of Shadow Mountain Ranch.

## **Exhibit 9**

## **Exhibit 9**

## **Exhibit 9**

  
20090430-0003136

Fee: \$14.00

N/C Fee: \$0.00

04/30/2009

12:43:36

T20090150302

Requestor:

JUNES LEGAL SERVICES

Debbie Conway

OSA

Clark County Recorder Pgs: 1

When recorded mail to:

THE ALESSI & KOENIG, LLC  
9500 West Flamingo Rd., Ste 100  
Las Vegas, Nevada 89147  
Phone: 702-222-4033

A.P.N. 163-30-312-007

Trustee Sale No. SMR-5327-N

## NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!** You may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default is recorded. The date of recordation appears on this notice. The amount due is **\$2,150.00** as of **April 14, 2009** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact: **Shadow Mountain Ranch, c/o Alessi & Koenig, LLC, 9500 West Flamingo Road, Suite 100, Las Vegas, NV 89147.**

THIS NOTICE pursuant to that certain Assessment Lien, recorded on **May 7, 2008** as document number **20080507-01731**, of Official Records in the County of **Clark**, State of Nevada.

Owner(s): **Magnolia Gotera**

Of **Lot 7 Block 1**, as per map recorded in **Book 102, Pages 28**, as shown on the Condominium Plan, Recorded on as document number **pending** as shown on the Subdivision map recorded in Maps of the County of **Clark**, State of Nevada.

PROPERTY ADDRESS: **5327 Marsh Butte St., Las Vegas, NV 89148**

If you have any questions, you should contact an attorney or the Association that maintains the right of assessment upon your property. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

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

NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated **May 7, 2008**, executed by **Shadow Mountain Ranch** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions. A breach of, and default in, the obligation for which said Covenants, Conditions, and Restrictions as security has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, Association's fees and costs, trustee's fees and costs, and attorney's fees and costs.

Dated: **April 14, 2009**

  
Tiffany Echols, Alessi & Koenig, LLC on behalf of Shadow Mountain Ranch.

## **Exhibit 10**

## **Exhibit 10**

## **Exhibit 10**



Inst #: 201007010000190

Fees: \$14.00

N/C Fee: \$0.00

07/01/2010 08:33:21 AM

Receipt #: 409704

Requestor:

JUNES LEGAL SERVICES

Recorded By: DXI Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC  
9500 West Flamingo Rd., Ste 100  
Las Vegas, Nevada 89147  
Phone: 702-222-4033

A.P.N. 163-30-312-007

Trustee Sale No. SMR-5327-N

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN**

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!** You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is **\$3,140.00** as of **June 28, 2010** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Shadow Mountain Ranch, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 100, Las Vegas, NV 89147.**

THIS NOTICE pursuant to that certain Assessment Lien, recorded on **May 7, 2008** as document number **20080507-01731**, of Official Records in the County of Clark, State of Nevada. Owner(s): **Magnolia Gotera, of Lot 7 Block 1**, as per map recorded in Book **102**, Pages **28**, as shown on the Condominium Plan, Recorded on as document number **pending** as shown on the Subdivision map recorded in Maps of the County of Clark, State of Nevada. **PROPERTY ADDRESS: 5327 Marsh Butte St., Las Vegas, NV 89148.** If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. **REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.** NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated **May 7, 2008**, executed by **Shadow Mountain Ranch** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: **June 28, 2010**

---

Miro Jetic, Alessi & Koenig, LLC on behalf of **Shadow Mountain Ranch**

## **Exhibit 11**

## **Exhibit 11**

## **Exhibit 11**

Inst #: 201101260002852

Fees: \$14.00

N/C Fee: \$0.00

01/26/2011 09:05:00 AM

Receipt #: 654197

Requestor:

ALESSI &amp; KOENIG LLC (JUNES

Recorded By: KCC Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:  
Alessi & Koenig, LLC  
9500 West Flamingo Rd., Suite 100  
Las Vegas, NV 89147  
Phone: 702-222-4033

APN: 163-30-312-007

TSN SMR-5327-N

### NOTICE OF TRUSTEE'S SALE

**WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL The Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.**

**NOTICE IS HEREBY GIVEN THAT:**

On March 9, 2011, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on May 7, 2008, as instrument number 20080507-01731, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 4:00 P.M. at 930 S. 4th Street, Las Vegas Nevada 89101.

The street address and other common designation, if any, of the real property described above is purported to be: 5327 Marsh Butte St., Las Vegas, NV 89148. The owner of the real property is purported to be: Magnolia Gotera

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$5,757.00. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: December 16, 2010 

---

By: Branko Jeffic on behalf of Shadow Mountain Ranch Community Association

## **Exhibit 12**

## **Exhibit 12**

## **Exhibit 12**

Inst #: 201209110002023

Fees: \$17.00

N/C Fee: \$0.00

09/11/2012 08:05:52 AM

Receipt #: 1302455

Requestor:

ALESSI &amp; KOENIG LLC

Recorded By: DXI Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC  
9500 W. Flamingo Rd., Suite 205  
Las Vegas, Nevada 89147  
Phone: (702) 222-4033

A.P.N. 163-30-312-007

Trustee Sale # SMR-5327-N

**NOTICE OF DELINQUENT ASSESSMENT (LIEN)**

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark County, Nevada, Shadow Mountain Ranch Community Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **5327 Marsh Butte St., Las Vegas, NV 89148** and more particularly legally described as: **SECTION 30 R2-60 70 #5 Lot 7 Block 1 Book 102 Page 28** in the County of **Clark**.

The owner(s) of record as reflected on the public record as of today's date is (are): **STACY MOORE**

The mailing address(es) is: **5327 MARSH BUTTE ST, LAS VEGAS, NV 89148**

The total amount due through today's date is: **\$6,448.00**. Of this total amount **\$5,823.00** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$625.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **August 13, 2012**By: 

Huong Lam, Esq. of Alessi & Koenig, LLC on behalf of **Shadow Mountain Ranch Community Association**

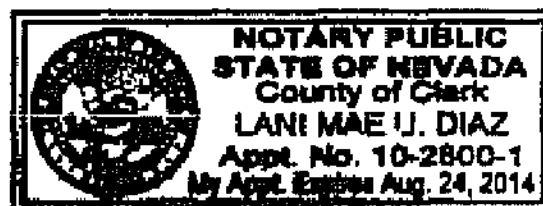
State of Nevada

County of Clark

23

SUBSCRIBED and SWORN before me August 13, 2012

(Seal)



(Signature)



NOTARY PUBLIC

**Exhibit 13**

**Exhibit 13**

**Exhibit 13**

Inst #: 201306130001804

Fees: \$17.00

N/C Fee: \$0.00

06/13/2013 08:48:38 AM

Receipt #: 1553904

Requestor:

ALESSI &amp; KOENIG LLC

Recorded By: RNS Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC  
9500 West Flamingo Rd., Ste 205  
Las Vegas, Nevada 89147  
Phone: 702-222-4033

A.P.N. 163-30-312-007

Trustee Sale No. 6601

## NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!** You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is \$6,631.41 as of the date of this notice and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: Shadow Mountain Ranch Community Association, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147, (702)222-4033.

3

THIS NOTICE pursuant to that certain Notice of Delinquent Assessment Lien, recorded on September 11, 2012 as document number 0002023, of Official Records in the County of Clark, State of Nevada. Owner(s): STACY MOORE, of SECTION 30 R2-60 70 #5 Lot 7 Block 1, as per map recorded in Book 102, Pages 28, as shown on the Plan and Subdivision map recorded in the Maps of the County of Clark, State of Nevada. PROPERTY ADDRESS: 5327 MARSH BUTTE ST, LAS VEGAS, NV 89148-4669. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT Alessi & Koenig, LLC is appointed trustee agent under the above referenced lien, dated September 11, 2012, on behalf of Shadow Mountain Ranch Community Association to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from February 1, 2008 and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated:

JUN 03 2013



Huong Lam, Esq. of Alessi & Koenig, LLC on behalf of Shadow Mountain Ranch Community Association

**Exhibit 14**

**Exhibit 14**

**Exhibit 14**



Inst #: 201307050000950

Fee: \$17.00

N/C Fee: \$0.00

07/05/2013 09:02:36 AM

Receipt #: 1681416

Requestor:

ALESSI &amp; KOENIG LLC

Recorded By: MAT Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC  
9500 West Flamingo Rd., Ste 205  
Las Vegas, Nevada 89147  
Phone: 702-222-4033

A.P.N. 163-30-312-007

Trustee Sale No. 6601

28

## NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!** You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is \$6,631.41 as of the date of this notice and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Shadow Mountain Ranch Community Association, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147, (702)222-4033.**

THIS NOTICE pursuant to that certain Notice of Delinquent Assessment Lien, recorded on September 11, 2012 as document number 0002023, of Official Records in the County of Clark, State of Nevada. Owner(s): STACY MOORE, of SECTION 30 R2-60 70 #5 LOT 7 BLOCK 1, as per map recorded in Book 102, Pages 28, as shown on the Plan and Subdivision map recorded in the Maps of the County of Clark, State of Nevada. PROPERTY ADDRESS: 5327 MARSH BUTTE ST, LAS VEGAS, NV 89148-4669. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT Alessi & Koenig, LLC is appointed trustee agent under the above referenced lien, dated September 11, 2012, on behalf of Shadow Mountain Ranch Community Association to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from February 1, 2008 and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated:

JUL 01 2013

Huong Lam, Esq. of Alessi & Koenig, LLC on behalf of Shadow Mountain Ranch Community Association

**Exhibit 15**

**Exhibit 15**

**Exhibit 15**

Inet #: 201312100001308

Fees: \$17.00

N/C Fee: \$0.00

12/10/2013 08:59:36 AM

Receipt #: 1867800

Requestor:

ALESSI &amp; KOENIG LLC

Recorded By: RNS Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:  
Alessi & Koenig, LLC  
9500 West Flamingo Rd., Suite 205  
Las Vegas, NV 89147  
Phone: 702-222-4033

APN: 163-30-312-007

TSN 6601

### NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ALESSI & KOENIG AT 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY. *6926*

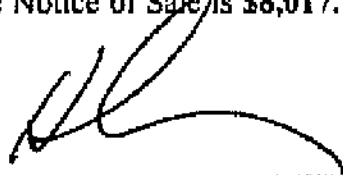
#### NOTICE IS HEREBY GIVEN THAT:

On January 8, 2014, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on September 11, 2012, as instrument number 0002023, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2<sup>nd</sup> Floor)

The street address and other common designation, if any, of the real property described above is purported to be: 5327 MARSH BUTTE ST, LAS VEGAS, NV 89148-4669. The owner of the real property is purported to be: STACY MOORE

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$8,017.11. Payment must be in made in the form of certified funds.

Date: NOV 14 2013



By: Huong Lam, Esq. of Alessi & Koenig LLC on behalf of Shadow Mountain Ranch Community Association

**Exhibit 16**

**Exhibit 16**

**Exhibit 16**

Inst #: 201401130001460

Fees: \$17.00 N/C Fee: \$0.00

RPTT: \$1519.80 Ex: #

01/13/2014 01:10:44 PM

Receipt #: 1899989

Requestor:

ALESSI &amp; KOENIG, LLC

Recorded By: SUO Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to and  
Mail Tax Statements to:  
SFR Investments Pool 1, LLC  
5030 Paradise Road, B-214  
Las Vegas, NV 89119

A.P.N. No.163-30-312-007

TS No. 6601

**TRUSTEE'S DEED UPON SALE**

The Grantee (Buyer) herein was: SFR Investments Pool 1, LLC  
The Foreclosing Beneficiary herein was: Shadow Mountain Ranch Community Association  
The amount of unpaid debt together with costs: \$8,499.11  
The amount paid by the Grantee (Buyer) at the Trustee's Sale: \$59,000.00  
The Documentary Transfer Tax: \$1,519.80  
Property address: 5327 MARSH BUTTE ST, LAS VEGAS, NV 89148-4669  
Said property is in [ ] unincorporated area: City of LAS VEGAS  
Trustor (Former Owner that was foreclosed on): STACY MOORE

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded September 11, 2012 as instrument number 0002023, in Clark County, does hereby grant, without warranty expressed or implied to: SFR Investments Pool 1, LLC (Grantee), all its right, title and interest in the property legally described as: SECTION 30 R2-60 70 #5 LOT 7 BLOCK 1, as per map recorded in Book 102, Pages 28 as shown in the Office of the County Recorder of Clark County Nevada.

**TRUSTEE STATES THAT:**

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on January 8, 2014 at the place indicated on the Notice of Trustee's Sale.

Huong Lam, Esq.

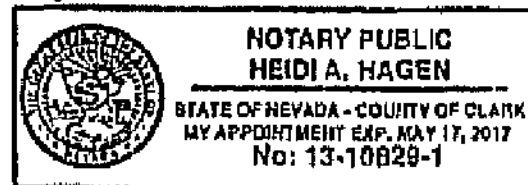
Signature of AUTHORIZED AGENT for Alessi &amp; Koenig, Llc.

State of Nevada )  
County of Clark )

SUBSCRIBED and SWORN before me JAN 13 2014 by Huong Lam

WITNESS my hand and official seal.

(Seal)



(Signature)

**STATE OF NEVADA  
DECLARATION OF VALUE**

**1. Assessor Parcel Number(s)**

a. 163-30-312-007  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

**2. Type of Property:**

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

**FOR RECORDERS OPTIONAL USE ONLY**

Book \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

3.a. Total Value/Sales Price of Property \$ 59,000.00  
b. Deed in Lieu of Foreclosure Only (value of property ( \_\_\_\_\_ ))  
c. Transfer Tax Value: \$ 297,577.00  
d. Real Property Transfer Tax Due \$ 1,519.80

**4. If Exemption Claimed:**

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

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

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

Signature \_\_\_\_\_ Capacity: Grantor

Signature \_\_\_\_\_ Capacity: \_\_\_\_\_

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

Print Name: Alessi & Koenig, LLC  
Address: 9500 W. Flamingo Rd., Ste. 205  
City: Las Vegas  
State: NV Zip: 89147

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

Print Name: SFR Investments Pool 1, LLC  
Address: 5030 Paradise Road, B-214  
City: Las Vegas  
State: NV Zip: 89119

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

Print Name: Alessi & Koenig, LLC  
Address: 9500 W. Flamingo Rd., Ste. 205  
City: Las Vegas

Escrow # N/A Foreclosure  
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

**Exhibit 17**

**Exhibit 17**

**Exhibit 17**

DOUGLAS E. MILES \*  
Also Admitted in Nevada and Illinois  
RICHARD J. BAUER, JR. \*  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
FRED TIMOTHY WINTERS\*  
KEENAN E. McCLENAHAN\*  
MARK T. DOMEYER\*  
Also Admitted in District of  
Columbia & Virginia  
TAMI S. CROSBY\*  
L. BRYANT JAQUEZ \*  
DANIEL L. CARTER \*  
GINA M. CORENA  
WAYNE A. RASH \*  
ROCK K. JUNG  
VY T. PHAM \*  
KRISTA J. NIELSON  
MARK S. BRAUN  
Also Admitted in Iowa & Missouri  
HADI R. SEYED-ALI \*  
ROSEMARY NGUYEN \*  
JORY C. GARABEDIAN  
THOMAS M. MORLAN  
Admitted in California  
KRISTIN S. WEBB \*  
BRIAN H. TRAN \*  
ANNA A. GHAJAR \*



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

\* CALIFORNIA OFFICE  
1231 E. DYER ROAD  
SUITE 100  
SANTA ANA, CA 92705  
PHONE (714) 481-9100  
FACSIMILE (714) 481-9141

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

August 18, 2015

Shadow Mountain Ranch  
c/o THE ALESSI & KOENIG, LLC  
9500 West Flamingo Rd., Ste 100  
Las Vegas, NV 89147

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 5327 Marsh Butte Street, Las Vegas, NV 89148*  
*MBBW File No. 10-H1641*

Dear Sirs:

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

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

The association has a lien on a unit for:

...

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

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

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

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



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

Based on Section 2(b), a portion of your HOA lien is arguably senior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated June 28, 2010. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BAC should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

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

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

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*

Rock K. Jung, Esq.

**Exhibit 18**

**Exhibit 18**

**Exhibit 18**

DAVID ALESSI\*

THOMAS BAYARD \*

ROBERT KOENIG\*\*

RYAN KERBOW\*\*\*

\* Admitted to the California Bar

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

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



*A Multi-Jurisdictional Law Firm*

9500 W. Flamingo Road, Suite 100  
Las Vegas, Nevada 89147  
Telephone: 702-222-4033  
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www.alessikoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA  
PHONE: 818- 735-9600

RENO NV  
PHONE: 775-626-2323

&  
DIAMOND BAR CA  
PHONE: 909-861-8300

**FACSIMILE COVER LETTER**

To:	Alex Bham	Re:	5327 Marsh Butte St./HO #6601
From:	Aileen Ruiz	Date:	Monday, September 13, 2010
Fax No.:		Pages:	1, including cover
		HO #:	6601

Dear Alex Bham:

This cover will serve as an amended demand on behalf of Shadow Mountain Ranch for the above referenced escrow; property located at 5327 Marsh Butte St., Las Vegas, NV. The total amount due through October, 15, 2010 is \$3,554.00. The breakdown of fees, interest and costs is as follows:

Notice of Intent To Lien -- Nevada	\$95.00
Notice of Delinquent Assessment Lien -- Nevada	\$345.00
Notice of Default	\$395.00
9/13/2010 Demand Fee	\$100.00
<b>Total</b>	<b>\$935.00</b>
1. Attorney and/or Trustees fees:	\$935.00
2. Costs (Notary, Recording, Copies, Mailings, Publication and Posting)	\$550.00
3. Assessments Through October 15, 2010	\$1,284.00
4. Late Fees Through September 13, 2010	\$10.00
5. Fines Through September 13, 2010	\$0.00
6. Interest Through September 13, 2010	\$0.00
7. RPIR-GI Report	\$85.00
8. Title Research (10-Day Mailings per NRS 116.31163)	\$240.00
9. Management Company Audit Fee	\$200.00
10. Management Document Processing & Transfer Fee	\$250.00
11. Progress Payments:	\$0.00
<b>Sub-Total:</b>	<b>\$3,554.00</b>
<b>Less Payments Received:</b>	<b>\$0.00</b>
<b>Total Amount Due:</b>	<b>\$3,554.00</b>

Please have a check in the amount of \$3,554.00 made payable to the Alessi & Koenig, LLC and mailed to the below listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

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

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

Magnolia Gotera  
1090 Twin Creeks Dr  
Salinas, CA 93905

Property Address: 5327 Marsh Butte St.  
Account #: 28100

Code	Date	Amount	Balance	Check#	Memo
FN	8/24/2009	100.00	100.00		
FN	8/31/2009	100.00	200.00		
FN	9/15/2009	100.00	300.00		
FN	9/29/2009	100.00	400.00		
FN	9/30/2009	100.00	500.00		
FN	10/14/2009	100.00	600.00		
FN	10/14/2009	100.00	700.00		
FN	10/26/2009	100.00	800.00		
FN	11/5/2009	100.00	900.00		
FN	11/5/2009	100.00	1,000.00		
FN	12/3/2009	100.00	1,100.00		
FN	12/3/2009	100.00	1,200.00		
FN	12/3/2009	100.00	1,300.00		
FN	12/3/2009	100.00	1,400.00		
FN	12/3/2009	100.00	1,500.00		
FN	12/3/2009	100.00	1,600.00		
FN	12/17/2009	100.00	1,700.00		
FN	12/17/2009	100.00	1,800.00		
FN	1/8/2010	100.00	1,900.00		
FN	1/8/2010	100.00	2,000.00		
FN	1/27/2010	100.00	2,100.00		
FN	1/27/2010	100.00	2,200.00		
FN	2/5/2010	100.00	2,300.00		
FN	2/5/2010	100.00	2,400.00		
FN	2/18/2010	100.00	2,500.00		
FN	2/18/2010	100.00	2,600.00		

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149

**Make check payable to: Shadow Mountain Ranch Homeowners Association**

9/13/2010

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

FN	3/11/2010	100.00	2,700.00
FN	3/11/2010	100.00	2,800.00
FN	3/11/2010	100.00	2,900.00
FN	3/11/2010	100.00	3,000.00
FN	3/11/2010	100.00	3,100.00
FN	3/18/2010	100.00	3,200.00
FN	3/24/2010	100.00	3,300.00
FN	4/6/2010	100.00	3,400.00
FN	4/6/2010	100.00	3,500.00
FN	4/26/2010	100.00	3,600.00
FN	4/26/2010	100.00	3,700.00
FN	4/26/2010	100.00	3,800.00
FN	4/26/2010	100.00	3,900.00
FN	5/6/2010	100.00	4,000.00
FN	5/6/2010	100.00	4,100.00
FN	5/19/2010	100.00	4,200.00
FN	5/19/2010	100.00	4,300.00
FN	5/19/2010	100.00	4,400.00
FN	5/19/2010	100.00	4,500.00
Fine	6/7/2010	100.00	4,600.00
Fine	6/7/2010	100.00	4,700.00
Fine	6/7/2010	100.00	4,800.00
Fine	6/7/2010	100.00	4,900.00
Fine	6/17/2010	100.00	5,000.00
Fine	6/17/2010	100.00	5,100.00
Fine	6/17/2010	100.00	5,200.00
Fine	6/17/2010	100.00	5,300.00
Fine	7/9/2010	100.00	5,400.00
Fine	7/9/2010	100.00	5,500.00
Fine	7/9/2010	100.00	5,600.00
Fine	7/9/2010	100.00	5,700.00
Fine	7/9/2010	100.00	5,800.00
Fine	7/9/2010	100.00	5,900.00
Fine	7/9/2010	100.00	6,000.00
Fine	7/9/2010	100.00	6,100.00
Fine	7/22/2010	100.00	6,200.00
Fine	7/22/2010	100.00	6,300.00

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149

**Make check payable to: Shadow Mountain Ranch Homeowners Association**

9/13/2010

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

Fine		7/22/2010	100.00	6,400.00	
Fine		7/22/2010	100.00	6,500.00	
Fine		8/4/2010	100.00	6,600.00	
Fine		8/4/2010	100.00	6,700.00	
Fine		8/18/2010	100.00	6,800.00	
Fine		8/18/2010	100.00	6,900.00	
Fine		8/18/2010	100.00	7,000.00	
Fine		8/18/2010	100.00	7,100.00	
Fine		8/18/2010	100.00	7,200.00	
Fine		8/18/2010	100.00	7,300.00	
Fine		8/20/2010	100.00	7,400.00	06/02/10: Maintenance & Repair
Fine		9/9/2010	100.00	7,500.00	
Fine		9/9/2010	100.00	7,600.00	
Fine		9/9/2010	100.00	7,700.00	
Fine		9/9/2010	100.00	7,800.00	
Fine		9/9/2010	100.00	7,900.00	
Fine		9/9/2010	100.00	8,000.00	
Fine		9/9/2010	100.00	8,100.00	06/02/10: Maintenance & Repair
Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance:	8,100.00
1,400.00	600.00	1,200.00	4,900.00		

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149

Make check payable to: Shadow Mountain Ranch Homeowners Association

9/13/2010

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

Magnolia Gotera  
1090 Twin Creeks Dr  
Salinas, CA 93905

Property Address: 5327 Marsh Butte St.  
Account #: 21103

Code	Date	Amount	Balance	Check#	Memo
Beg Bal	12/31/2008	588.00	588.00		Begin Balance
MA	1/1/2009	23.00	611.00		Monthly Assessment
LF	1/15/2009	10.00	621.00		
MA	2/1/2009	23.00	644.00		Monthly Assessment
LF	2/15/2009	10.00	654.00		
MA	3/1/2009	23.00	677.00		Monthly Assessment
MA	4/1/2009	23.00	700.00		Monthly Assessment
LF	4/16/2009	10.00	710.00		Late Fee Processed
MA	5/1/2009	23.00	733.00		Monthly Assessment
LF	5/16/2009	10.00	743.00		Late Fee Processed
MA	6/1/2009	23.00	766.00		Monthly Assessment
LF	6/16/2009	10.00	776.00		Late Fee Processed
MA	7/1/2009	23.00	799.00		Monthly Assessment
LF	7/16/2009	10.00	809.00		Late Fee Processed
MA	8/1/2009	23.00	832.00		Monthly Assessment
LF	8/16/2009	10.00	842.00		Late Fee Processed
MA	9/1/2009	23.00	865.00		Monthly Assessment
LF	9/16/2009	10.00	875.00		Late Fee Processed
MA	10/1/2009	23.00	898.00		Monthly Assessment
LF	10/16/2009	10.00	908.00		Late Fee Processed
MA	11/1/2009	23.00	931.00		Monthly Assessment
LF	11/16/2009	10.00	941.00		Late Fee Processed
MA	12/1/2009	23.00	964.00		Monthly Assessment
LF	12/16/2009	10.00	974.00		Late Fee Processed
MA	1/1/2010	23.00	997.00		Monthly Assessment
LF	1/16/2010	10.00	1,007.00		Late Fee Processed

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149

**Make check payable to: Shadow Mountain Ranch Homeowners Association**

9/13/2010

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

MA	2/1/2010	23.00	1,030.00	Monthly Assessment
LF	2/16/2010	10.00	1,040.00	Late Fee Processed
MA	3/1/2010	23.00	1,063.00	Monthly Assessment
LF	3/16/2010	10.00	1,073.00	Late Fee Processed
MA	4/1/2010	23.00	1,096.00	Monthly Assessment
LF	4/16/2010	10.00	1,106.00	Late Fee Processed
MA	5/1/2010	23.00	1,129.00	Monthly Assessment
LF	5/16/2010	10.00	1,139.00	Late Fee Processed
MA	6/1/2010	23.00	1,162.00	Monthly Assessment
Late Fee	6/16/2010	10.00	1,172.00	Late Fee Processed
Monthly Assessment	7/1/2010	23.00	1,195.00	Monthly Assessment
Late Fee	7/16/2010	10.00	1,205.00	Late Fee Processed
Monthly Assessment	8/1/2010	23.00	1,228.00	Monthly Assessment
Late Fee	8/16/2010	10.00	1,238.00	Late Fee Processed
Monthly Assessment	9/1/2010	23.00	1,261.00	Monthly Assessment

Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance:	1,261.00
33.00	33.00	33.00	1,162.00		

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149

**Make check payable to: Shadow Mountain Ranch Homeowners Association**

9/13/2010



## **Exhibit 19**

## **Exhibit 19**

## **Exhibit 19**

DOUGLASE, MILES \*

Also Admitted in Nevada and Illinois

RICHARD J. BAUER, JR. \*

JEREMY T. BERGSTROM

Also Admitted in Arizona

FRED TIMOTHY WINTERS\*

KEENAN E. McCLENAHAN\*

MARK T. DOMEYER\*

Also Admitted in District of

Columbia & Virginia

TAMI S. CROSBY\*

L. BRYANT JAQUEZ \*

DANIEL L. CARTER \*

GINA M. CORENA

WAYNE A. RASH \*

ROCK K. JUNG

VY T. PHAM \*

KRISTA J. NIELSON

MARK S. BRAUN

Also Admitted in Iowa & Missouri

HADI R. SEYED-ALI \*

ROSEMARY NGUYEN \*

JORY C. GARABEDIAN

THOMAS M. MORLAN

Admitted in California

KRISTIN S. WEBB \*

BRIAN H. TRAN \*

ANNA A. GHAJAR \*



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

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

\* CALIFORNIA OFFICE  
1231 E. DYER ROAD  
SUITE 100  
SANTA ANA, CA 92705  
PHONE (714) 481-9100  
FACSIMILE (714) 481-9141

September 30, 2010

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

Re: *Property Address:* 5327 Marsh Butte Street  
HO #: 6601  
LOAN #: [REDACTED]  
*MBBW File No.* 10-H1641

Dear Sir/Madame:

As you may recall, this firm represents the interests of BAC Home Loans Servicing, LP fka Countrywide Home Loans, Inc. (hereinafter "BAC") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by in regards to the above-referenced address shows a full payoff amount of \$3,554.00. BAC is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

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

The association has a lien on a unit for:

...

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

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

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

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

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

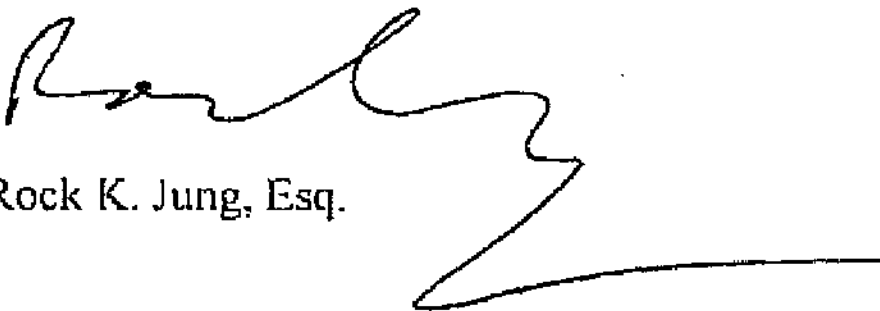
Based on Section 2(b), a portion of your HOA lien is arguably prior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that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

Our client has authorized us to make payment to you in the amount of \$207.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$207.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BAC's financial obligations towards the HOA in regards to the real property located at 5327 Marsh Butte Street have now been "paid in full".

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

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*

  
Rock K. Jung, Esq.

Initials: TLC

Date: 9/28/2010    Amount: 207.00

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
9/28/2010		To Cure HOA Deficiency	207.00			

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

Bank of America  
1100 N. Green Valley Parkway  
Henderson, NV 89074  
16-66/1220  
1020  
10-H1641  
Loan # [REDACTED]

5169

**Date:** 9/28/2010

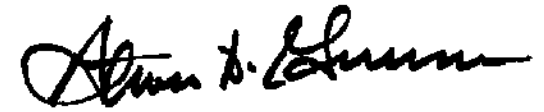
Amount \$\*\*\* 207.00

**Check Void After 90 Days**

Pay \$\*\*\*\*\*Two Hundred Seven & No/100 Dollars  
to the order of

**Alessi & Koenig, LLC**

Security Notices, Privately Owned



CLERK OF THE COURT

**MDSM**

DIANA CLINE EBRON, ESQ.  
Nevada Bar No. 10580  
E-mail: diana@KGElegal.com  
JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
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KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
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KIM GILBERT EBRON  
fka HOWARD KIM & ASSOCIATES  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
Attorneys for SFR Investments Pool 1, LLC

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBWNO  
REVOCABLE LIVING TRUST, a trust; U.S.  
BANK, N.A., a national banking association;  
NATIONSTAR MORTGAGE, LLC, a foreign  
limited liability company; REPUBLIC  
SILVER STATE DISPOSAL, INC., DBA  
REPUBLIC SERVICES, a domestic  
governmental entity; DOE INDIVIDUALS I  
through X, inclusive; and ROE  
CORPORATIONS XI through XX inclusive,

Defendants.

Case No. A-15-705563-C

Dept. No. XX

**SFR INVESTMENTS POOL 1, LLC'S  
MOTION TO DISMISS PLAINTIFF'S  
THIRD-PARTY COMPLAINT PURSUANT  
TO NRCP 12(b)(6)**

1 U.S. BANK, N.A.,  
2 Counterclaimant,  
3 vs.  
4 ALESSI & KOENIG, LLC, a Nevada limited  
5 liability company,  
6 Counter-Defendant.

7 U.S. BANK, N.A.,  
8 Third-Party Plaintiff,  
9 vs.  
10 SFR INVESTMENTS POOL 1, LLC, a  
11 Nevada limited liability company;  
12 INDIVIDUAL DOES I through X, inclusive;  
13 and ROE CORPORATIONS I through X,  
14 inclusive,  
15 Third-Party Defendants.

16 SFR INVESTMENTS POOL 1, LLC ("SFR") hereby respectfully requests this Court  
17 dismiss Third-Party Plaintiff, U.S. BANK, N.A., ("Third-Party Plaintiff" or "U.S. Bank" or "the  
18 Bank") Complaint against SFR due to Third Party Plaintiff's failure to join indispensable parties.

19 This Motion is based on the papers and pleadings on file herein, the following points and  
20 authorities, and such evidence/and oral argument as may be presented at the time of the hearing  
21 on this matter.

22 **NOTICE OF HEARING**

23 PLEASE TAKE NOTICE that on 03 day of February, 2016, in  
24 Department XX of the above-entitled Court, at the hour of 8 : 30 a.m./~~p.m.~~, or as soon

25 ///

26 ///

27 ///

28 ///

thereafter as counsel may be heard, the undersigned will bring SFR's Motion to Dismiss Third-Party Plaintiff's Complaint.

DATED December 23rd, 2015.

**KIM GILBERT EBRON**

/s/ Diana Cline Ebron  
Diana Cline Ebron, Esq.  
Nevada Bar No. 10580  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Attorneys for SFR Investments Pool 1, LLC

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

The Bank's Third-Party Complaint appears to be an attempt to side step statutory requirements and the Nevada Rules of Civil procedure. After failing to fully protect its security interest when its borrower failed to pay Association assessments, the Bank now seeks to have the Association foreclosure sale declared void based on alleged deficiencies in the conduct of the Association without naming the Association—a necessary party for the relief it seeks. Moreover, the Bank has not complied with NRS 30.130. Accordingly, the Bank's Third-Party Complaint should be dismissed pursuant to NRCP 12(b)(6).

**II. ALLEGATIONS IN THE THIRD-PARTY COMPLAINT**

This case arises from the Shadow Mountain Ranch Community Association ("Association") foreclosure of the real property located at 5327 Marsh Butte, Las Vegas, NV 89148; Parcel No. 163-30-312-007 (the "Property"), based on the former homeowner Magnolia Gotera's failure to pay the Association assessments. See Compl., at ¶ 24. Notices of Default and Election to Sell Property to satisfy Notice of Delinquent Assessment Lien were recorded against the Property on June 13, 2013, and July 5, 2013. Id. at ¶¶ 25 and 26. On December 10, 2013, a Notice of Foreclosure Sale was recorded against the Property on behalf of the Association. Id. at ¶ 27. On January 8, 2014, SFR purchased the Property at the publically held foreclosure auction, by placing the highest bid. Id. at ¶ 28. SFR paid the winning bid amount. Id.

1 The foreclosure sale was conducted by Alessi & Koenig, LLC, (“Alessi”) as authorized  
2 agent for the Association. *Id.* at ¶¶ 24, 26, 27, and 29. After the public auction, on January 13,  
3 2014, Alessi, on behalf of the Association, recorded a Trustee Deed upon Sale transferring title  
4 of the Property to SFR. *Id.* at ¶ 29.

5 On August 18, 2015, U.S. Bank filed a Third-Party Complaint against SFR for quiet title,  
6 declaratory relief, preliminary and permanent injunction, and unjust enrichment. U.S. Bank’s  
7 Third-Party Complaint did not name the Association, the entity responsible for the foreclosure  
8 sale, as a party. U.S. Bank alleges a claim for quiet title against SFR claiming that the  
9 Association foreclosure was invalid because the amounts stated in the notices were incorrect and  
10 the Association and its agent failed to provide it with adequate notice. *Id.* at ¶¶ 32, 33, 34, and 35.  
11 U.S. Bank also claims that the sale was not commercially reasonable and not performed in good  
12 faith. *Id.* at ¶ 45. In other words, U.S. Bank, by way of its Third-Party Complaint, seeks to have  
13 the Association foreclosure sale declared void (see Compl., Prayer for Relief), yet does not name  
14 the parties who are responsible for the sale itself, namely, the Association. The relief U.S. Bank  
15 seeks cannot be afforded without the inclusion of such parties.

### 16 III. LEGAL ARGUMENT

#### 17 A. Failure to Join a Party Under Rule 19.

18 NRCP 12(b)(6) states that a party may file a motion to dismiss for failure to join a party  
19 under Rule 19. Pursuant to NRCP 19(a), a party shall be joined where:

- 20 (1) In the person’s absence complete relief cannot be accorded among those already  
21 parties, or
- 22 (2) the person claims an interest relating to the subject of the action and is so situated  
23 that the disposition of the action in the person’s absence may (i) as a practical  
24 matter impair or impede the person’s ability to protect that interest or (ii) leave  
any of the persons already parties subject to a substantial risk of incurring double,  
multiple, or otherwise obligations by reason of the claimed interest.

25 NRCP 19(a).

26  
27 Applying the factors under NRCP 19(a), the Court should find that the Association is not  
28 only a necessary party, but is an indispensable party without whom this action cannot proceed.



1 Because the Association is not joined to this action, the claims brought by U.S. Bank cannot be  
2 adjudicated among the existing parties, and SFR suffers the substantial risk of incurring multiple  
3 and/or inconsistent results due to U.S. Bank's failure to join the Association as a party to this  
4 action.

5 Rule 19(b) lists the following four factors to assist a court in determining whether the  
6 case should proceed or be dismissed:

7  
8 (1) the extent to which a judgment rendered in the person's absence might be  
9 prejudicial to the absent person or to existing parties; (2) the extent to which, by  
10 protective provisions in judgment, by shaping the relief, or other measures, the  
11 prejudice can be lessened or avoided; (3) whether a judgment rendered in the  
12 person's absence is adequate; and (4) whether the plaintiff will have an adequate  
13 remedy if the action is dismissed for nonjoinder.

14 NRCP 19(b).

15 These factors "are not to be applied in any mechanical way" but rather in a "practical and  
16 pragmatic but equitable manner." Francis Oil & Gas, Inc. v. Exxon, Corp., 661 F.2d 873, 878  
17 (10th Cir. 1981). Here, this Court cannot render judgment in favor of U.S. Bank, because U.S.  
18 Bank has not named the necessary party(s) in order to effectuate that relief that it seeks, namely,  
19 having the Association foreclosure sale declared void. The relief it seeks is based on the actions  
20 of the Association, not SFR. Everything that led up to the foreclosure sale was performed by  
21 parties other than SFR.

22 U.S. Bank acts as if SFR was responsible for the Association foreclosure sale. It was not.  
23 Nothing in NRS 116.3116 places this burden on a purchaser at a public auction. In fact, just the  
24 opposite is true. Even if the Bank could prove some irregularity with the sale (which it cannot),  
25 the Legislature created a statutory scheme that entitles SFR to rely on the conclusive proof of the  
26 recitals of the Association foreclosure deed that the sale was conducted in a proper and lawful  
27 manner. For U.S. Bank to prevail, it must litigate its claims of improper foreclosure against the  
28 correct parties. Because it has refused to take the necessary steps to do so, U.S. Bank's Third-  
Party Complaint should be dismissed.

///

**B. U.S. Bank Failed to Name the Party Who Is Affected by the Declaratory Relief it Seeks in Derogation of NRS 30.130; Dismissal is Appropriate**

U.S. Bank's Third-Party Complaint should be dismissed because it violated NRS 30.130 when it failed to name the Association, whose interest in real property would certainly be affected by a declaration that its actions surrounding the sale were improper. Moreover, any voiding of the sale would affect the Association's lien interest in the Property.

According to NRS 30.130:

**Parties.** When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General shall also be served with a copy of the proceeding and be entitled to be heard.

NRS 30.130.

Here, U.S. Bank doesn't name the Association, the party responsible for the Association foreclosure process and sale even though it is seeking to have the Association foreclosure sale set aside as void. The declaratory relief it seeks is based on the actions of the Association and its agent. U.S. Bank needed to name these entities as parties in order to get the relief it is seeking. Further, since U.S. Bank is seeking declaratory relief (setting aside the sale as being void), such relief directly affects SFR, and the Association. Yet, U.S. Bank only names SFR, a party which had nothing to do with the Association foreclosure process or in the conducting of the sale.

**C. U.S. Bank Claims that NRS 116.3116 is Unconstitutional, But Didn't Notify the Attorney General in Violation of NRS 30.130; Dismissal is Appropriate**

U.S. Bank claims that NRS 116.3116 is unconstitutional, but failed to notify the Attorney General as required by statute.

According to NRS 30.130, "... if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General shall also be **served** with a copy of the proceeding and be entitled to be heard." (Emphasis added).

Here, U.S. Bank has not provided any evidence that it notified and served a copy of the Third-Party Complaint on the Attorney General as required by NRS 30.130. As such, dismissal with prejudice is warranted.

**IV. CONCLUSION**

Based upon the foregoing, SFR respectfully requests this Court dismiss U.S. Bank's Third-Party Complaint pursuant to NRCP 12(b)(6) and NRS 30.130.


DATED this 23rd day of December, 2015.

**KIM GILBERT EBRON**

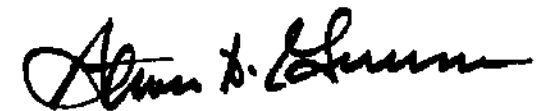
/s/ Diana Cline Ebron  
Diana Cline Ebron, Esq.  
Nevada Bar No. 10580  
Jacqueline A. Gilbert, Esq.  
Nevada Bar No. 10593  
Karen L. Hanks, Esq.  
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7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Phone: (702) 485-3300  
Fax: (702) 485-3301  
Attorneys for SFR Investments Pool 1, LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23rd day of December, 2015, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **SFR INVESTMENTS POOL 1, LLC'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO NRCP 12(b)(6)**, to the following parties:

<b>Alessi &amp; Koenig</b>			
<b>Name</b>	<b>Email</b>		<b>Select</b>
A&K eserve	<a href="mailto:eserve@alessikoenig.com">eserve@alessikoenig.com</a>		
<b>Wright Finlay &amp; Zak</b>			
<b>Name</b>	<b>Email</b>		<b>Select</b>
Dana J. Nitz	<a href="mailto:dnitz@wrightlegal.net">dnitz@wrightlegal.net</a>		
<b>Wright, Finlay &amp; Zak, LLP</b>			
<b>Name</b>	<b>Email</b>		<b>Select</b>
Christopher S. Connell, Esq.	<a href="mailto:cconnell@wrightlegal.net">cconnell@wrightlegal.net</a>		
Marissa Resnick	<a href="mailto:mresnick@wrightlegal.net">mresnick@wrightlegal.net</a>		

/s/ Alan G. Harvey  
An employee of Kim Gilbert Ebron



CLERK OF THE COURT

1 **ORD**

2 **WRIGHT, FINLAY & ZAK, LLP**

3 **Edgar C. Smith, Esq.**

4 **Nevada Bar No. 5506**

5 **Christopher S. Connell, Esq.**

6 **Nevada Bar No. 12720**

7 **7785 W. Sahara Ave., Suite 200**

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9 **(702) 475-7964; Fax: (702) 946-1345**

10 **esmith@wrightlegal.net**

11 **cconnell@wrightlegal.net**

12 *Attorneys for Defendant, Nationstar Mortgage, LLC and Defendant/Counterclaimant/Third-*  
13 *Party Defendant U.S. Bank, National Association, as Trustee for the Certificateholders of the*  
14 *LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank, N.A.*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 **ALESSI & KOENIG, LLC, a Nevada**  
18 **limited liability company,**

19 **Plaintiff,**

20 **vs.**

21 **STACY MOORE, an individual; MAGNOLIA**  
22 **GOTERA, an individual; KRISTIN JORDAL,**  
23 **AS TRUSTEE FOR THE JBWNO**  
24 **REVOCABLE LIVING TRUST, a trust; U.S.**  
25 **BANK, N.A., a national banking association;**  
26 **NATIONSTAR MORTGAGE, LLC, a foreign**  
27 **limited liability company; REPUBLIC SILVER**  
28 **STATE DISPOSAL INC., DBA REPUBLIC**  
**SERVICES, a domestic governmental entity;**  
**DOE INDIVIDUALS I through X, inclusive;**  
**and ROE CORPORATIONS XI through XX**  
**inclusive,**

**Defendants.**

**U.S. BANK, N.A.,**

**Counterclaimant,**

Case No.: A-14-705563-C

Dept. No.: XX

**ORDER DENYING SFR'S MOTION TO  
DISMISS PLAINTIFF'S THIRD-PARTY  
COMPLAINT PURSUANT TO NRCP  
12(B)(6)**

Hearing Date: February 3, 2016

Hearing Time: 8:30 a.m.

1 vs.  
2 ALESSI & KOENIG, LLC, a Nevada limited  
3 liability company,  
4 Counter-Defendant.  
5  
6 U.S. BANK, N.A.,  
7 Third-Party Plaintiff,  
8 vs.  
9 SFR INVESTMENTS POOL 1, LLC, a Nevada  
10 limited liability company; INDIVIDUAL DOES  
11 I through X, inclusive; and ROE  
12 CORPORATIONS I through X, inclusive,  
Third-Party Defendant(s).

13 Defendant/Counterclaimant/Third-party Claimant U.S. BANK, NATIONAL  
14 ASSOCIATION, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE LXS 2006-4N  
15 TRUST FUND (hereinafter "U.S. BANK"), having come before this Court on February 3,  
16 2016, the Honorable Eric Johnson presiding. The Court, having reviewed the merits of  
17 Defendant SFR INVESTMENTS POOL 1, LLC's (hereinafter, "SFR") Motion to Dismiss  
18 Plaintiff's Third-party Complaint Pursuant to NRCP 12(b)(6)(the "Motion"); and good cause  
19 appearing therefore:

20 **IT IS HEREBY ORDERED** that Defendant SFR INVESTMENTS POOL 1, LLC's  
21 Motion is **DENIED**;

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1           **IT IS HEREBY FURTHER ORDERED** that pursuant to NRCP 12(a)(4)(A),  
2 Defendant's Answer is **DUE** within 10 days following the service of the Notice of Entry of this  
3 Order upon the Defendant.

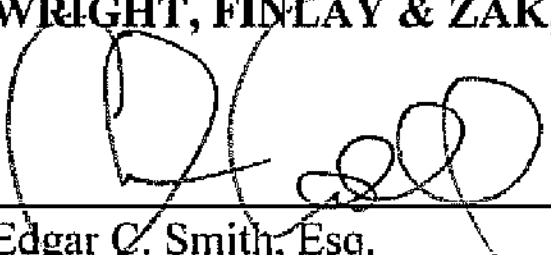
4           DATED this 23 day of February, 2016.

5  
6  
7             
8           \_\_\_\_\_  
9           **DISTRICT COURT JUDGE** *km*

10           **ERIC JOHNSON**

11           Respectfully Submitted by:

12           **WRIGHT, FINLAY & ZAK, LLP**

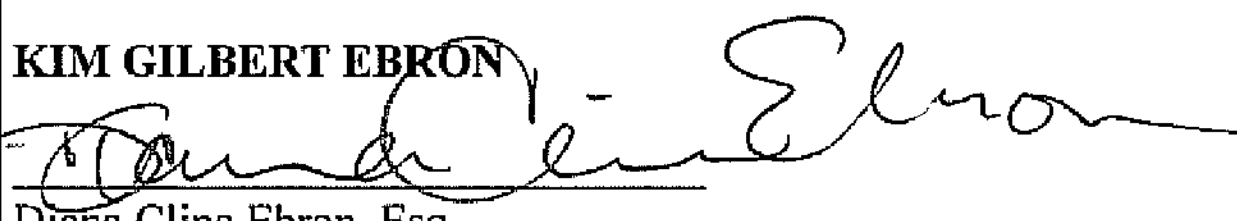
13             
14           \_\_\_\_\_  
15           Edgar C. Smith, Esq.  
16           Nevada Bar No. 5506  
17           Christopher S. Connell, Esq.  
18           Nevada Bar No. 12720

19           7785 W. Sahara Ave, Suite 200  
20           Las Vegas, NV 89117

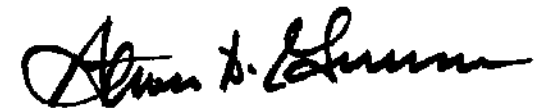
21           *Attorneys for Defendant, Nationstar Mortgage, LLC and Defendant/Counterclaimant/Third-*  
22           *Party Defendant U.S. Bank, National Association, as Trustee for the Certificateholders of the*  
23           *LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank, N.A.*

24           Reviewed as to form and content by:

25           **KIM GILBERT EBRON**

26             
27           \_\_\_\_\_  
28           Diana Cline Ebron, Esq.  
            Nevada Bar No. 10580  
            Sam R. Heidari, Esq.  
            Nevada Bar No. 13347  
            7625 Dean Martin Dr., Suite 110  
            Las Vegas, NV 89139

*Attorney for SFR Investments Pool 1, LLC*



CLERK OF THE COURT

1 **NEOJ**

2 **WRIGHT, FINLAY & ZAK, LLP**

3 Edgar C. Smith, Esq.

4 Nevada Bar No. 5506

5 Christopher S. Connell, Esq.

6 Nevada Bar No. 12720

7 7785 W. Sahara Ave, Suite 200

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9 (702) 475-7967; Fax: (702) 946-1345

10 [cconnell@wrightlegal.net](mailto:cconnell@wrightlegal.net)

11 *Attorneys for Plaintiff/Counter-Defendant, Nationstar Mortgage, LLC and*

12 *Defendant/Counterclaimant/Third- Party Defendant U.S. Bank National Association, as Trustee*  
13 *for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously plead as U.S. Bank, N.A.*

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 **ALESSI & KOENIG, LLC, a Nevada**  
12 **limited liability company,**

13 **Plaintiff,**

14 **vs.**

15 **STACY MOORE, an individual; MAGNOLIA**  
16 **GOTERA, an individual; KRISTIN JORDAL,**  
17 **AS TRUSTEE FOR THE JBWNO**  
18 **REVOCABLE LIVING TRUST, a trust; U.S.**  
19 **BANK, N.A., a national banking association;**  
20 **NATIONSTAR MORTGAGE, LLC, a foreign**  
21 **limited liability company; REPUBLIC SILVER**  
22 **STATE DISPOSAL INC., DBA REPUBLIC**  
23 **SERVICES, a domestic governmental entity;**  
24 **DOE INDIVIDUALS 1 through X, inclusive;**  
25 **and ROE CORPORATIONS XI through XX**  
26 **inclusive,**

27 **Defendants.**

28 **U.S. BANK, NATIONAL**  
**ASSOCIATION, AS TRUSTEE FOR THE**  
**CERTIFICATEHOLDERS OF THE LXS 2006-**  
**4N TRUST FUND,**

**Counterclaimant,**

**vs.**

Case No.: A-14-705563-C

Dept. No.: XX

**NOTICE OF ENTRY OF ORDER**

1 ALESSI & KOENIG, LLC, a Nevada limited  
2 liability company,

3 Counter-Defendant.

4 U.S. BANK, NATIONAL  
5 ASSOCIATION, AS TRUSTEE FOR THE  
6 CERTIFICATEHOLDERS OF THE LXS 2006-  
7 4N TRUST FUND,

8 Third-Party Plaintiff,

9 vs.


10 SFR INVESTMENTS POOL 1, LLC, a Nevada  
11 limited liability company; INDIVIDUAL DOES  
12 I through X, inclusive; and ROE  
13 CORPORATIONS I through X, inclusive,

14 Third-Party Defendant(s).

15 PLEASE TAKE NOTICE that an ORDER DENYING SFR'S MOTION TO DISMISS  
16 PLAINTIFF'S THIRD-PARTY COMPLAINT PURUSANT TO NRCP 12(B)(6) was entered in  
17 the above-entitled Court on the 25<sup>th</sup> day of February, 2016. A copy of which is attached hereto.

18 DATED this 29<sup>th</sup> day of February, 2016.

19 WRIGHT, FINLAY & ZAK, LLP

20   
Edgar C. Smith, Esq.

21 Nevada Bar No. 5506

22 Christopher S. Connell, Esq.

23 Nevada Bar No. 12720

24 7785 W. Sahara Ave, Suite 200

25 Las Vegas, NV 89117

26 (702) 475-7967; Fax: (702) 946-1345

27 [cconnell@wrightlegal.net](mailto:cconnell@wrightlegal.net)

28 *Attorneys for Plaintiff/Counter-Defendant,*

*Nationstar Mortgage, LLC and*

*Defendant/Counterclaimant/Third- Party Defendant*

*U.S. Bank National Association, as Trustee for the*

*Certificateholders o the LXS 2006-4N Trust Fund,*

*erroneously plead as U.S. Bank, N.A.*

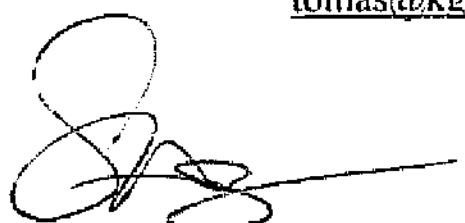


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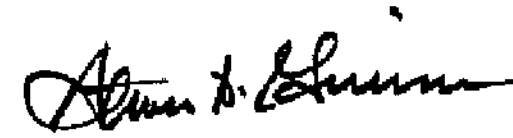
**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 29<sup>th</sup> day of February, 2016, I did cause a true copy of **NOTICE OF ENTRY OF ORDER** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9 and/or by depositing a true copy of same in the United States Mail, at Las Vegas, Nevada, addressed as follows:

<b>Alessi &amp; Koenig</b>	
<b>Name</b>	<b>Email</b>
A&K eserve	<u><a href="mailto:eserve@alessikoenig.com">eserve@alessikoenig.com</a></u>
<b>Kim Gilbert Ebron</b>	
<b>Name</b>	<b>Email</b>
Diana Cline Ebron	<u><a href="mailto:diana@kgelegal.com">diana@kgelegal.com</a></u>
E-Service for Kim Gilbert Ebron	<u><a href="mailto:eservice@hkimlaw.com">eservice@hkimlaw.com</a></u>
Tomas Valerio	<u><a href="mailto:tomas@kgelegal.com">tomas@kgelegal.com</a></u>



\_\_\_\_\_  
An Employee of WRIGHT, FINLAY & ZAK, LLP



CLERK OF THE COURT

1 **ORD**

2 **WRIGHT, FINLAY & ZAK, LLP**

3 **Edgar C. Smith, Esq.**

4 **Nevada Bar No. 5506**

5 **Christopher S. Connell, Esq.**

6 **Nevada Bar No. 12720**

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9 **(702) 475-7964; Fax: (702) 946-1345**

10 **esmith@wrightlegal.net**

11 **cconnell@wrightlegal.net**

12 *Attorneys for Defendant, Nationstar Mortgage, LLC and Defendant/Counterclaimant/Third-*  
13 *Party Defendant U.S. Bank, National Association, as Trustee for the Certificateholders of the*  
14 *LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank, N.A.*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 **ALESSI & KOENIG, LLC, a Nevada**  
18 **limited liability company,**

19 **Plaintiff,**

20 **vs.**

21 **STACY MOORE, an individual; MAGNOLIA**  
22 **GOTERA, an individual; KRISTIN JORDAL,**  
23 **AS TRUSTEE FOR THE JBWNO**  
24 **REVOCABLE LIVING TRUST, a trust; U.S.**  
25 **BANK, N.A., a national banking association;**  
26 **NATIONSTAR MORTGAGE, LLC, a foreign**  
27 **limited liability company; REPUBLIC SILVER**  
28 **STATE DISPOSAL INC., DBA REPUBLIC**  
**SERVICES, a domestic governmental entity;**  
**DOE INDIVIDUALS I through X, inclusive;**  
**and ROE CORPORATIONS XI through XX**  
**inclusive,**

**Defendants.**

**U.S. BANK, N.A.,**

**Counterclaimant,**

**Case No.: A-14-705563-C**

**Dept. No.: XX**

**ORDER DENYING SFR'S MOTION TO**  
**DISMISS PLAINTIFF'S THIRD-PARTY**  
**COMPLAINT PURSUANT TO NRCP**  
**12(B)(6)**

**Hearing Date: February 3, 2016**

**Hearing Time: 8:30 a.m.**

1 vs.  
2 ALESSI & KOENIG, LLC, a Nevada limited  
3 liability company,  
4 Counter-Defendant.  
5  
6 U.S. BANK, N.A.,  
7 Third-Party Plaintiff,  
8 vs.  
9 SFR INVESTMENTS POOL 1, LLC, a Nevada  
10 limited liability company; INDIVIDUAL DOES  
11 I through X, inclusive; and ROE  
12 CORPORATIONS I through X, inclusive,  
Third-Party Defendant(s).

13 Defendant/Counterclaimant/Third-party Claimant U.S. BANK, NATIONAL  
14 ASSOCIATION, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE LXS 2006-4N  
15 TRUST FUND (hereinafter "U.S. BANK"), having come before this Court on February 3,  
16 2016, the Honorable Eric Johnson presiding. The Court, having reviewed the merits of  
17 Defendant SFR INVESTMENTS POOL 1, LLC's (hereinafter, "SFR") Motion to Dismiss  
18 Plaintiff's Third-party Complaint Pursuant to NRCP 12(b)(6)(the "Motion"); and good cause  
19 appearing therefore:

20 **IT IS HEREBY ORDERED** that Defendant SFR INVESTMENTS POOL 1, LLC's  
21 Motion is **DENIED**;

22 ///

23 ///

24 ///

25 ///

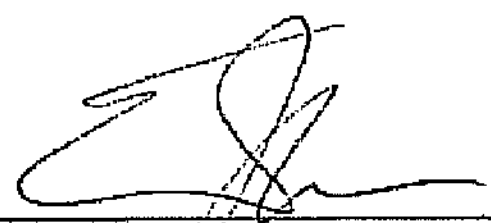
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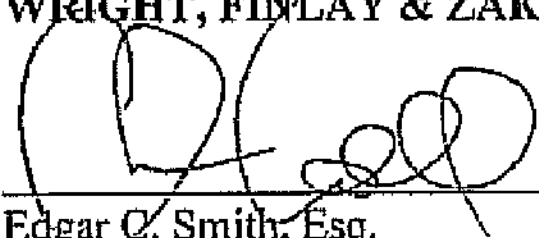
1           **IT IS HEREBY FURTHER ORDERED** that pursuant to NRCP 12(a)(4)(A),  
2 Defendant's Answer is **DUE** within 10 days following the service of the Notice of Entry of this  
3 Order upon the Defendant.

4           DATED this 23 day of February, 2016.

5  
6   
7 **DISTRICT COURT JUDGE** *km*  
8 **ERIC JOHNSON**

9 Respectfully Submitted by:

10 **WRIGHT, FINLAY & ZAK, LLP**

11   
12 \_\_\_\_\_

Edgar C. Smith, Esq.

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Christopher S. Connell, Esq.

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16 *Attorneys for Defendant, Nationstar Mortgage, LLC and Defendant/Counterclaimant/Third-*  
17 *Party Defendant U.S. Bank, National Association, as Trustee for the Certificateholders of the*  
*LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank, N.A.*

19 Reviewed as to form and content by:

20 **KIM GILBERT EBRON**

21   
22 \_\_\_\_\_

Diana Cline Ebron, Esq.

Nevada Bar No. 10580

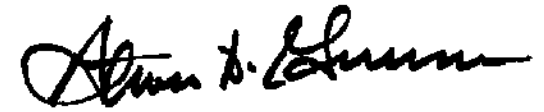
Sam R. Heidari, Esq.

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25 *Attorney for SFR Investments Pool 1, LLC*



CLERK OF THE COURT

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Nevada Bar No. 9578  
E-mail: karen@KGElegal.com  
KIM GILBERT EBRON  
fka HOWARD KIM & ASSOCIATES  
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Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
Attorneys for SFR Investments Pool 1, LLC

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBWNO  
REVOCABLE LIVING TRUST, a trust; U.S.  
BANK, N.A., a national banking association;  
NATIONSTAR MORTGAGE, LLC, a foreign  
limited liability company; REPUBLIC  
SILVER STATE DISPOSAL, INC., DBA  
REPUBLIC SERVICES, a domestic  
governmental entity; DOE INDIVIDUALS I  
through X, inclusive; and ROE  
CORPORATIONS XI through XX inclusive,

Defendants.

Case No. A-14-705563-C  
Dept. No. XX

**SFR INVESTMENTS POOL 1, LLC'S  
ANSWER TO THIRD-PARTY  
COMPLAINT, COUNTERCLAIM AND  
CROSS-CLAIM**

1 U.S. BANK, N.A.,  
2 Counterclaimant,  
3 vs.  
4 ALESSI & KOENIG, LLC, a Nevada limited  
5 liability company,  
6 Counter-Defendant.

---

7 U.S. BANK, N.A.,  
8 Third-Party Plaintiff,  
9 vs.  
10 SFR INVESTMENTS POOL 1, LLC, a  
11 Nevada limited liability company;  
12 INDIVIDUAL DOES I through X, inclusive;  
13 and ROE CORPORATIONS I through X,  
14 inclusive,  
15 Third-Party Defendants.

---

16 SFR INVESTMENTS POOL 1, LLC, a  
17 Nevada limited liability company,  
18 Third Party Counterclaimant/Cross-claimant,  
19 vs.  
20 U.S. BANK, N.A.; NATIONSTAR  
21 MORTGAGE, LLC, a foreign limited liability  
22 company; KRISTIN JORDAL, AS TRUSTEE  
23 FOR THE JBWNO REVOCABLE LIVING  
24 TRUST, a trust; STACY MOORE, an  
25 individual; and MAGNOLIA GOTERA, an  
26 individual,  
27 Counter-Defendant/Cross-Defendants.

---

28 SFR Investments Pool 1, LLC (“SFR”) hereby answers U.S. BANK, NATIONAL  
ASSOCIATION, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE LXS 2006-4N  
TRUST FUND, erroneously pled as U.S. BANK, N.A., (“U. S. Bank” or “Bank”) Third-Party  
Complaint as follows:

**INTRODUCTION**

1. The allegations in paragraph 1 of the Third-Party Complaint call for a legal conclusion to which no response is required. To the extent a response is required, SFR denies the allegations of paragraph 1.

2. Answering paragraph 2, SFR, upon information and belief, admits the subject property is a residence located at **5327 Marsh Butte Street, Las Vegas, NV 89148; Parcel No. 163-30-312-007** (the "Property").

**PARTIES**

3. Answering paragraph 3, SFR admits, upon information and belief, U.S. Bank Trust is a national banking association organized under the laws of the United States.

4. To the extent paragraph 4 alleges that Magnolia Gotera ("Gotera") was the title owner of record of the Subject Property at times prior to the Association foreclosure sale on January 8, 2014, SFR, upon information and belief, admits the allegations in paragraph 4. The recorded deed of trust referenced in paragraph 4 of the Third-Party Complaint speaks for itself, and SFR denies any allegations inconsistent with said document. SFR specifically denies any allegation said deed of trust is currently a valid instrument which encumbers the Property.

5. Answering paragraph 5 of the Third-Party Complaint, on information and belief, SFR admits that Alessi & Koenig, LLC ("Alessi") is a Nevada limited liability company.

6. Answering paragraph 6, SFR admits that it is a limited liability company organized under the laws of the State of Nevada and doing business in Nevada. SFR admits that it is the current title owner of the Property, and SFR admits it owns the Property free and clear of the Bank's purported deed of trust which was extinguished as a matter of law on January 8, 2014 as a result of the HOA foreclosure sale.

7. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 7 of the Third-Party Complaint, and therefore denies said allegations.

8. The allegations in paragraph 8 of the Third-Party Complaint call for a legal conclusion to which no response is required. To the extent a response is required, upon information and

1 belief, SFR admits that the Property is located within a planned common-interest community  
2 known as Shadow Mountain Ranch Community Association (“Association” or “HOA”), and that  
3 Alessi was acting as the duly appointed Trustee for the Property on behalf of the Association.

4 **JURISDICTION AND VENUE**

5 9. The allegations in paragraphs 9, 10, and 11 of the Third-Party Complaint call for a legal  
6 conclusion to which no response is required. To the extent a response is required, upon  
7 information and belief, SFR admits the Property is located in Clark County, Nevada.

8 **FACTUAL BACKGROUND**

9 10. The recorded Grant, Bargain, Sale deed referenced in paragraph 12 of the Third-Party  
10 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document.

11 11. The recorded Deed of Trust referenced in paragraph 13 of the Third-Party Complaint  
12 speaks for itself, and SFR denies any allegations inconsistent with said document. To the extent  
13 paragraph 13 alleges that Gotera was the title owner of record of the Property at times prior to the  
14 Association foreclosure sale, SFR, upon information and belief, admits the allegations in  
15 paragraph 13.

16 12. The recorded Grant Deed referenced in paragraph 14 of the Third-Party Complaint  
17 speaks for itself, and SFR denies any allegations inconsistent with said document.

18 13. The recorded Grant Deed referenced in paragraph 15 of the Third-Party Complaint  
19 speaks for itself, and SFR denies any allegations inconsistent with said document. To the extent  
20 paragraph 15 alleges that Stacy Moore was the title owner of record of the Property at times prior  
21 to the Association foreclosure sale, SFR, upon information and belief, admits the allegations in  
22 paragraph 15.

23 14. The recorded Assignment of Deed of Trust referenced in paragraph 16 of the Third-  
24 Party Complaint speaks for itself, and SFR denies any allegations inconsistent with said  
25 document.

26 15. The allegations in paragraph 17 of the Third-Party Complaint call for a legal conclusion  
27 to which no response is required. The recorded Assignment of Deed of Trust referenced in  
28 paragraph 16 of the Third-Party Complaint speaks for itself, and SFR denies any allegations



1 inconsistent with said document.

2 16. The recorded CC&Rs referenced in paragraph 18 of the Third-Party Complaint speak for  
3 themselves, and SFR denies any allegations inconsistent with said document.

4 17. The recorded Notice of Delinquent Assessment Lien referenced in paragraph 19 of the  
5 Third-Party Complaint speaks for itself, and SFR denies any allegations inconsistent with said  
6 document.

7 18. The recorded Notice of Default and Election to Sell referenced in paragraph 20 of the  
8 Third-Party Complaint speaks for itself, and SFR denies any allegations inconsistent with said  
9 document.

10 19. The recorded Notice of Default and Election to Sell referenced in paragraph 21 of the  
11 Third-Party Complaint speaks for itself, and SFR denies any allegations inconsistent with said  
12 document.

13 20. The recorded Notice of Default and Election to Sell referenced in paragraph 22 of the  
14 Third-Party Complaint speaks for itself, and SFR denies any allegations inconsistent with said  
15 document.

16 21. The recorded Notice of Sale referenced in paragraph 23 of the Third-Party Complaint  
17 speaks for itself, and SFR denies any allegations inconsistent with said document.

18 22. The recorded Notice of Delinquent Assessment Lien referenced in paragraph 24 of the  
19 Third-Party Complaint speaks for itself, and SFR denies any allegations inconsistent with said  
20 document.

21 23. The recorded Notice of Default and Election to Sell referenced in paragraph 25 of the  
22 Third-Party Complaint speaks for itself, and SFR denies any allegations inconsistent with said  
23 document.

24 24. The recorded Notice of Default and Election to Sell referenced in paragraph 26 of the  
25 Third-Party Complaint speaks for itself, and SFR denies any allegations inconsistent with said  
26 document.

27 25. The recorded Notice of Sale referenced in paragraph 27 of the Third-Party Complaint  
28 speaks for itself, and SFR denies any allegations inconsistent with said document.

1       26. In answering paragraph 28, SFR admits a non-judicial publicly-held HOA foreclosure  
2 auction sale occurred on January 8, 2014, at which time SFR was the highest bidder and  
3 purchased the Property for \$59,000.00.

4       27. The recorded Trustee's Deed Upon Sale referenced in paragraph 29 of the Third-Party  
5 Complaint speaks for itself, and SFR denies any allegations inconsistent with said document.

6       **U.S. Bank Trust's Tender of the Super-Priority Amount, and the HOA's Rejection of**  
7       **Same**

8       28. Answering paragraphs 30 and 31, SFR is without sufficient knowledge or information  
9 regarding interactions between U.S. Bank, Miles, Bauer, Bergstrom & Winters, LLP ("Miles  
10 Bauer"), and Alessi to form a belief as to the truth of the factual allegations contained in  
11 paragraph 30 and 31, and therefore denies said allegations.

12       **HOA Lien Notices and HOA Foreclosure Sale**

13       29. The allegations in paragraphs 32, 33, 34, 35, 36, 37, 38, 39, and 40 of the Third-Party  
14 Complaint call for a legal conclusion to which no response is required. The statutes referenced in  
15 paragraphs 32, 33, 35, 37, 38, 39, and 40 of the Third-Party Complaint speak for themselves, and  
16 SFR denies any allegations inconsistent with said statutes.

17       30. The allegations in paragraphs 41 and 42 call for a legal conclusion to which no response  
18 is required.

19       31. SFR is without sufficient knowledge or information to form a belief as to the truth of the  
20 factual allegations contained in paragraph 43 of the Third-Party Complaint regarding the Bank's  
21 interactions with Gotera and the amount owed on her loan, and therefore denies said allegations.

22       32. The allegation in paragraph 44 of the Third-Party Complaint calls for a legal conclusion  
23 to which no response is required. To the extent a response is required, SFR specifically denies  
24 the fair market value of the Property at the time of the HOA sale on January 8, 2014 exceeded  
25 \$300,000.00.

26       33. The allegations in paragraph 45 of the Third-Party Complaint call for a legal conclusion  
27 to which no response is required. To the extent a response is required, SFR denies the allegations  
28 contained in paragraph 45.

**FIRST CAUSE OF ACTION**

**(Quiet Title/Declaratory Relief Pursuant to NRS 30.10 et seq. and NRS 40.010 et seq.,  
versus all Parties)**

34. SFR repeats and realleges its answers to paragraphs 1 through 45 of the Third-Party Complaint as though fully set forth herein.

35. The allegations in paragraphs 47 and 48 call for a legal conclusion therefore, no answer is required. To the extent a response is required, the statutes referenced in paragraphs 47 and 48 of the Third-Party Complaint speak for themselves, and SFR denies any allegations inconsistent with said statutes.

36. The allegations in paragraph 49 of the Third-Party Complaint call for a legal conclusion to which no response is required. To the extent a response is required, the statute referenced in paragraph 49 speaks for itself, and SFR denies any allegations inconsistent with said statute. SFR specifically denies the deed of trust was not extinguished as a matter of law as a result of the HOA foreclosure sale on January 8, 2014, and remains a first secured interest on the Property.

37. The allegations in paragraph 50 call for a legal conclusion therefore, no answer is required. SFR specifically denies the deed of trust was not extinguished as a matter of law as a result of the HOA foreclosure sale on January 8, 2014, and retains a first place position in the chain of title for the Property and is thereby superior to the interest acquired by SFR.

38. In answering paragraph 51, SFR admits that it is the current title owner of the Property, and SFR admits it owns the Property free and clear of the Bank's purported deed of trust which was extinguished as a matter of law as a result of the HOA foreclosure sale on January 8, 2014. SFR specifically denies any allegation that said deed of trust is currently a first secured interest in the property, or a valid instrument which currently encumbers the Property.

39. The allegations in paragraphs 52, 53, 54, 55, and 56 call for a legal conclusion therefore, no answer is required. SFR specifically denies the deed of trust was not extinguished as a matter of law as a result of the HOA foreclosure sale on January 8, 2014. SFR specifically denies Bank remains the beneficiary of said extinguished deed of trust. SFR specifically denies the deed of trust still encumbers the Property, and is thereby superior to the interest acquired by SFR.

40. SFR denies the allegations contained in paragraph 57 of the Third-Party Complaint.

**SECOND CAUSE OF ACTION**  
**(Permanent and Preliminary Injunction versus Buyer)**

41. SFR repeats and realleges its answers to paragraphs 1-57 of the Third-Party Complaint as though fully set forth herein.

42. In answering paragraph 58, SFR admits that it is the current title owner of the Property, and SFR admits it owns the Property free and clear of the Bank's purported deed of trust which was extinguished as a matter of law on January 8, 2014 as a result of the HOA foreclosure sale. SFR specifically denies any allegation that said deed of trust is currently a first secured interest in the property, or a valid instrument which currently encumbers the Property.

43. The allegations in paragraphs 59, 60, 61, 62, 63, 64, and 65 call for a legal conclusion therefore, no answer is required. To the extent a response is required, SFR specifically denies deed of trust still encumbers the Property. SFR specifically denies deed of trust was not extinguished as a matter of law on January 8, 2014 as a result of the HOA foreclosure sale.

44. SFR denies the allegations contained in paragraph 66 of the Third-Party Complaint.

**THIRD CAUSE OF ACTION**  
**(Wrongful/Foreclosure/Statutorily Defective Foreclosure versus HOA Trustee and the fictitious Third-Party Defendants)**

45. SFR repeats and realleges its answers to paragraphs 1 through 66 of the Third-Party Complaint as though fully set forth herein.

46. As the allegations in paragraphs 68, 69, 70, 71, and 72 of the Third-Party Complaint, relating to the Third Cause of Action, are not directed to SFR, but rather are directed to the HOA Trustee only, no answer is required by SFR. In addition, the allegations in paragraphs 68, 69, 70, 71, and 72 call for a legal conclusion to which no response is required. To the extent a response is required from SFR, upon information and belief, SFR denies the allegations in paragraphs 68, 69, 70, 71, and 72 of the Third-Party Complaint.

47. SFR denies the allegations contained in paragraphs 73 of the Third-Party Complaint.

**FOURTH CAUSE OF ACTION**  
**(Negligence versus the HOA)**

48. SFR repeats and realleges its answers to paragraphs 1 through 73 of the Third-Party Complaint as though fully set forth herein.

1 49. As the allegations in paragraphs 75, 76, 77, and 78 of the Third-Party Complaint,  
2 relating to the Sixth Cause of Action, are not directed to SFR, but rather are directed to the  
3 Association only, no answer is required by SFR. In addition, the allegations in paragraphs 75, 76,  
4 77, and 78 call for a legal conclusion to which no response is required. To the extent a response  
5 is required from SFR, upon information and belief, SFR denies the allegations in paragraphs 75,  
6 76, 77, and 78 of the Third-Party Complaint.

7 50. SFR denies the allegations contained in paragraph 79 of the Third-Party Complaint.

8 **FIFTH CAUSE OF ACTION**

9 **(Negligence Per Se versus the HOA Trustee and the fictitious Third-Party Defendants)**

10 51. SFR repeats and realleges its answers to paragraphs 1 through 79 of the Third-Party  
11 Complaint as though fully set forth herein.

12 52. As the allegations in paragraphs 81, 82, 83, 84, 84, 85, 86, and 87 of the Third-Party  
13 Complaint, relating to the Fifth Cause of Action, are not directed to SFR, but rather are directed  
14 to the HOA Trustee only, no answer is required by SFR. In addition, the allegations in  
15 paragraphs 81, 82, 83, 84, 84, 85, 86, and 87 call for a legal conclusion to which no response is  
16 required. To the extent a response is required from SFR, upon information and belief, SFR  
17 denies the allegations in paragraphs 81, 82, 83, 84, 84, 85, 86, and 87 of the Third-Party  
18 Complaint.

19 53. SFR denies the allegations contained in paragraph 88 of the Third-Party Complaint.

20 **SIXTH CAUSE OF ACTION**

21 **(Unjust Enrichment versus Buyer and all Fictitious Defendants)**

22 54. SFR repeats and realleges its answers to paragraphs 1 through 88 of the Third-Party  
23 Complaint as though fully set forth herein.

24 55. The allegations in paragraphs 90, 91, 92, 93, 94, 95, and 96 of the Third-Party Complaint  
25 call for a legal conclusion to which no response is required. To the extent a response is required,  
26 SFR denies the allegations contained in paragraphs 90, 91, 92, 93, 94, 95, and 96.

27 56. SFR denies the allegations contained in paragraph 97 of the Third-Party Complaint.

28 ///

**SEVENTH CAUSE OF ACTION**

**(Breach of the Covenant of Good Faith and Fair Dealing versus the HOA Trustee and the fictitious Third-Party Defendants)**

57. SFR repeats and realleges its answers to paragraphs 1 through 97 of the Third-Party Complaint as though fully set forth herein.

58. As the allegations in paragraphs 99, 100, 101, and 102 of the Third-Party Complaint, relating to the Seventh Cause of Action, are not directed to SFR, but rather are directed to the HOA Trustee only, no answer is required by SFR. In addition, the allegations in paragraphs 99, 100, 101, and 102 call for a legal conclusion to which no response is required. To the extent a response is required from SFR, upon information and belief, SFR denies the allegations in paragraphs 99, 100, 101, and 102 of the Third-Party Complaint.

59. SFR denies the allegations contained in paragraph 103 of the Third-Party Complaint.

**AFFIRMATIVE DEFENSES**

1. The Bank fails to state a claim upon which relief may be granted.

2. The Bank is not entitled to relief from or against SFR, as the Bank has not sustained any loss, injury, or damage that resulted from any act, omission, or breach by SFR.

3. The occurrence referred to in the Third-Party Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of the Bank.

4. The occurrence referred to in the Third-Party Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third party or parties over whom SFR had no control.

5. SFR did not breach any statutory or common law duties allegedly owed to the Bank.

6. The Bank's claims are barred because SFR complied with applicable statutes and with the requirements and regulations of the State of Nevada.

7. The Bank's claims are barred because the Association and its agents complied with applicable statutes and regulations.

8. The Bank's causes of action are barred in whole or in part by the applicable statutes of limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, ratification and unclean hands.

1       9. The Bank is not entitled to equitable relief because it has an adequate remedy at law.

2       10. The Bank has no standing to enforce the first deed of trust and/or the underlying  
3 promissory note.

4       11. The Bank has no standing to enforce the statutes and regulations identified in the Third-  
5 Party Complaint.

6       12. Any purported assignment of the first deed of trust after the Association foreclosure sale  
7 is invalid and unenforceable.

8       13. The first deed of trust and other subordinate interests in the Property were extinguished  
9 by the Association foreclosure sale held in accordance with NRS Chapter 116.

10       14. The Bank has no remedy against SFR because, pursuant to NRS 116.31166, SFR is  
11 entitled to rely on the recitals contained in the Association foreclosure deed that the sale was  
12 properly noticed and conducted.

13       15. The Bank has no remedy against SFR because SFR is a bona fide purchaser for value.

14       16. The Bank's Third-Party Complaint and all claims for relief therein are barred for the  
15 Bank's failure to serve proper notice to the Attorney General of the State of Nevada pursuant to  
16 NRS 30.130.

17       17. The Bank's Counterclaim and all claims for relief therein should be dismissed on the  
18 ground that the Bank has failed to join necessary or indispensable parties pursuant to NRCP 19,  
19 namely the HOA's Agents who recorded a Notice of Delinquent Assessment Lien against the  
20 property and ultimately initiated foreclosure of said property.

21       18. Pursuant to Nevada Rules of Civil Procedure 11, as amended, all possible affirmative  
22 defenses may not have been alleged herein insofar as sufficient facts were not available after  
23 reasonable inquiry at the time of filing this Answer. Therefore, SFR reserves the right to amend  
24 this Answer to assert any affirmative defenses if subsequent investigation warrants.

25                   **COUNTERCLAIM AND CROSS-CLAIM**  
26                   **FOR QUIET TITLE AND INJUNCTIVE RELIEF**

27       SFR INVESTMENTS POOL 1, LLC ("SFR"), hereby demands quiet title, requests  
28 injunctive relief and alleges slander of title against Counter-Defendant U.S. BANK,

1 NATIONAL ASSOCIATION, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE  
2 LXS 2006-4N TRUST FUND, erroneously pled as U.S. BANK, N.A.; and Cross-Defendants  
3 NATIONSTAR MORTGAGE, LLC, a foreign limited liability company; KRISTIN JORDAL,  
4 AS TRUSTEE FOR THE JBWNO REVOCABLE LIVING TRUST, a trust; STACY MOORE,  
5 an individual; and MAGNOLIA GOTERA, and individual as follows:

6 **I.**  
7 **PARTIES**

8 1. SFR is a Nevada limited liability company with its principal place of business in Clark  
9 County, Nevada, and the current title owner of the Property commonly known as, **5327 Marsh**  
10 **Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-007** (the "Property").

11 60. Upon information and belief, Counter-defendant U.S. BANK, NATIONAL  
12 ASSOCIATION, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE LXS 2006-4N  
13 TRUST FUND, erroneously pled as U.S. BANK, N.A. ("U.S. Bank" or "Bank"), is a national  
14 banking association organized under the laws of the United States, that claims an interest in the  
15 Property via a deed of trust originated by Countrywide Home Loans, Inc. ("Countrywide"), and  
16 recorded against the Property in 2005.

17 2. Upon information and belief, Cross-Defendant NATIONSTAR MORTGAGE, LLC, a  
18 foreign limited liability company ("Nationstar") may claim an interest in the Property via the  
19 Deed of Trust originated by Countrywide in 2005, and purportedly assigned to Nationstar in  
20 2013.

21 3. Upon information and belief, Cross-Defendant, MAGNOLIA GOTERA ("Gotera"), is a  
22 Nevada resident who may claim an interest in the Property as a former title owner. SFR does not  
23 seek any money damages against Gotera.

24 4. Upon information and belief, Cross-Defendant, STACY MOORE ("Moore"), is a  
25 Nevada resident who may claim an interest in the Property as a former title owner. SFR does not  
26 seek any money damages against Moore.

27 5. Upon information and belief, Cross-Defendant, KRISTIN JORDAL, AS TRUSTEE  
28 FOR THE JBWNO REVOCABLE LIVING TRUST, a trust ("JBWNO"), is a trust that may



1 claim an interest in the Property as a former title owner. SFR does not seek any money damages  
2 against JBWNO.

3 **II.**  
4 **GENERAL ALLEGATIONS**

5 **SFR Acquired Title to the Property through the Foreclosure of an Association Lien with  
6 Super Priority Amounts**

6 6. SFR acquired the Property on January 8, 2014 by successfully bidding on the Property at  
7 a publicly-held foreclosure auction in accordance with NRS 116.3116, et. seq. ("Association  
8 foreclosure sale").

9 7. On or about January 13, 2014, the resulting Trustee's Deed Upon Sale was recorded in  
10 the Official Records of the Clark County Recorder as Instrument Number 201401130001460  
11 ("Foreclosure Deed").

12 8. Since obtaining an interest in the Property, SFR has expended additional funds and  
13 resources in relation to the Property.

14 9. Shadow Mountain Ranch Community Association ("the Association") had a lien pursuant  
15 to NRS 116.3116(1) ("Association Lien") that was perfected at the time the Association recorded  
16 its declaration of CC&Rs.

17 10. The foreclosure sale was conducted by Alessi & Koenig, LLC ("Alessi"), agent for the  
18 Association pursuant to the powers conferred by the Nevada Revised Statutes 116.3116,  
19 116.31162-116.31168, the Association's governing documents (CC&R's) and a Notice of  
20 Delinquent Assessments, recorded on September 11, 2012 in the Official Records of the Clark  
21 County Recorder as Instrument Number 201209110002023.

22 11. As recited in the Association Foreclosure Deed, the Association foreclosure sale  
23 complied with all requirements of law, including but not limited to, the elapsing of 90 days,  
24 recording and mailing of copies of Notice of Delinquent Assessments and Notice of Default, and  
25 the recording, posting and publication of the Notice of Sale.

26 12. Pursuant to NRS 116.3116(2), the entire Association Lien is prior to all other liens and  
27 encumbrances of unit except:  
28

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

2 (b) A first security interest on the unit recorded before the date on which the  
assessment sought to be enforced became delinquent or, in a cooperative, the first  
3 security interest encumbering only the unit's owner's interest and perfected before  
the date on which the assessment sought to be enforced became delinquent; and

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

5  
6 13. NRS 116.3116(2) further provides that a portion of the Association Lien has priority over  
even a first security interest in the Property:

7  
8 [the Association Lien] is also prior to all security interests described in paragraph  
(b) to the extent of any charges incurred by the association on a unit pursuant to  
NRS 116.310312 and to the extent of the assessments for common expenses  
9 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  
10 9 months immediately preceding institution of an action to enforce the lien[.]

11 14. Pursuant to NRS 116.1104, the provisions of NRS 116.3116(2) granting priority cannot  
12 be waived by agreement or contract, including any subordination clause in the CC&Rs.

13 15. According to NRS 116.1108, real Property law principles supplement the provisions of  
14 NRS 116.

15 16. Upon information and belief, the Association took the necessary action to trigger the  
16 super-priority portion of the Association Lien.

17 17. Upon information and belief, no party still claiming an interest in the Property recorded a  
18 lien or encumbrance prior to the declaration creating the Association.

19 18. Upon information and belief, the Bank and Cross-Defendants had actual and/or  
20 constructive notice of the requirement to pay assessments to the Association and of the  
21 Association Lien.

22 19. Upon information and belief, the Bank and Cross-Defendants had actual and/or  
23 constructive notice of the Association's foreclosure proceedings.

24 20. Upon information and belief, prior to the Association foreclosure sale, no individual or  
25 entity paid the full amount of delinquent assessments described in the Notice of Default.

26 21. Upon information and belief, the Bank and Cross-Defendants had actual and/or  
27 constructive notice of the super-priority portion of the Association Lien.

28 22. Upon information and belief, at all relevant times, the Bank had internal policies and

1 procedures relating to super-priority liens.

2 23. Upon information and belief, the Bank knew or should have known that its interest in the  
3 Property could be extinguished through foreclosure if it failed to cure the super-priority portion of  
4 the Association Lien representing 9 months of assessments for common expenses based on the  
5 periodic budget adopted by the association which would have become due in the absence of  
6 acceleration for the relevant time period.

7 24. Upon information and belief, prior to the Association foreclosure sale, no individual or  
8 entity paid the super-priority portion of the Association Lien representing 9 months of  
9 assessments for common expenses based on the periodic budget adopted by the association which  
10 would have become due in the absence of acceleration for the relevant time period.

11 25. Pursuant to NRS 116.31166, the foreclosure sale vested title in SFR “without equity or  
12 right of redemption,” and the Association Foreclosure Deed is conclusive against the Property’s  
13 “former owner, his or her heirs and assigns, and all other persons.”

14 **Interests, Liens and Encumbrances Extinguished by the Super-Priority Association Lien**

15 26. Upon information and belief, Gotera obtained title to the Property in November of 2005  
16 through a grant, bargain sale deed from the prior owner, Wei Hong Yang, dated November 14,  
17 2005, which was recorded in Official Records of the Clark County Recorder as Instrument No.  
18 200511210005566.

19 27. On or about November 21, 2005, Countrywide recorded a deed of trust against the  
20 Property in the Official Records of the Clark County Recorder as Instrument No.  
21 200511210005567 (“First Deed of Trust”).

22 28. The First Deed of Trust contains a Planned Unit Development Rider recognizing the  
23 applicability of Association’s declaration of CC&Rs that were recorded.

24 29. Upon information and belief, Countrywide had actual and/or constructive notice of the  
25 Association Lien, NRS 116.3116 and the amount of periodic assessments owed to the Association  
26 before it originated the First Deed of Trust.

27 30. Upon information and belief, on or about January 22, 2008, Rebecca Witt, Assistant  
28 Secretary for Mortgage Electronic Registration Systems, Inc., (“MERS”), executed a Substitution

1 of Trustee, substituting Recontrust Company, N. A. ("Recontrust"), as Trustee for the First Deed  
2 of Trust, recorded against the Property in Official Records of the Clark County Recorder as  
3 Instrument No. 200801240002192.

4 31. Upon information and belief, on or about January 22, 2008, Recontrust, as trustee for the  
5 First Deed of Trust, on behalf of MERS, recorded a Notice of Default and Election to Sell under  
6 deed of trust for amounts that became due on September 1, 2007, in Official Records of the Clark  
7 County Recorder as Instrument No. 200801220002564.

8 32. On March 20, 2008, Recontrust, as trustee for the First Deed of Trust, recorded a  
9 Rescission of Election to Declare Default in Official Records of the Clark County Recorder as  
10 Instrument No. 200803200001352.

11 33. On May 27, 2011, Gotera filed a Grant Deed which released, quitclaimed, granted, sold,  
12 and conveyed all of her right, title and interest in the Property to JBWNO, recorded in the Official  
13 Records of the Clark County Recorder as Instrument No. 201105270004010.

14 34.

15 35. On May 27, 2011, JBWNO filed a Grant Deed which released, quitclaimed, granted,  
16 sold, and conveyed all of its right, title and interest in the Property to Moore, recorded in the  
17 Official Records of the Clark County Recorder as Instrument No. 201105270004011.

18 36. On or about October 27, 2011, Christopher Herrera, Assistant Secretary for Mortgage  
19 MERS, executed an assignment that transferred the beneficial interest in the First Deed of Trust,  
20 together with the underlying promissory note, to U.S. Bank. The assignment was subsequently  
21 recorded on November 2, 2011, against the Property in Official Records of the Clark County  
22 Recorder as Instrument No. 201111020000754.

23 37. Upon information and belief, U.S. Bank had actual and/or constructive notice of the  
24 Association Lien, NRS 116.3116 and the amount of periodic assessments owed to the Association  
25 before it obtained an interest in the First Deed of Trust.

26 38. Upon information and belief, U.S. Bank had actual notice of the Planned Unit  
27 Development Rider recognizing the applicability of Association's declaration of CC&Rs that  
28 were recorded.

1       39. On or about July 1, 2013, Kathleen Loera, Assistant Vice President for Bank of America,  
2 N.A., executed an assignment that purportedly transferred the beneficial interest in the First Deed  
3 of Trust, together with the underlying promissory note, to Nationstar. The assignment was  
4 subsequently recorded on October 1, 2013, against the Property in Official Records of the Clark  
5 County Recorder as Instrument No. 201310010002401.

6       40. Upon information and belief, Nationstar had actual and/or constructive notice of the  
7 Association Lien, NRS 116.3116 and the amount of periodic assessments owed to the Association  
8 before it obtained an interest in the First Deed of Trust.

9       41. Upon information and belief, Nationstar had actual notice of the Planned Unit  
10 Development Rider recognizing the applicability of Association's declaration of CC&Rs that  
11 were recorded.

12       42. On September 18, 2014, the Nevada Supreme Court issued its opinion in SFR  
13 Investments Pool I, LLC v. U.S. Bank, N.A., 334 P.3d 408, 419 (2014), *reh'g denied* (Oct. 16,  
14 2014), ruling that a non-judicial foreclosure of an associations' super-priority lien extinguishes a  
15 first deed of trust.

16       43. Upon information and belief, despite knowledge of the Foreclosure Sale, the Foreclosure  
17 Deed, and the SFR ruling, on or about November 6, 2014, Nationstar filed a Request for Notice  
18 under NRS Chapter 107 and 116, against the Property in Official Records of the Clark County  
19 Recorder as Instrument No. 201411060001861.

20       44. On or about August 18, 2015, U.S. Bank filed a Complaint for quiet title, declaratory  
21 relief, and unjust enrichment against SFR.

22       45. Upon information and belief, despite knowledge of the Foreclosure Sale, the Foreclosure  
23 Deed, and the SFR ruling, on or about August 31, 2015, U.S. Bank filed a Notice of Lis Pendens,  
24 against the Property in Official Records of the Clark County Recorder as Instrument No.  
25 201508310001732.

26       46. Gotera's ownership interest in the Property, if any, was extinguished by the foreclosure  
27 of the Association Lien.

28       47. Moore's ownership interest in the Property, if any, was extinguished by the foreclosure of

1 the Association Lien.

2 48. JBWNO's ownership interest in the Property, if any, was extinguished by the foreclosure  
3 of the Association Lien.

4 49. U.S. Bank's security interest in the Property, if any, was extinguished as a matter of law  
5 by the foreclosure of the Association Lien, which contained super-priority amounts.

6 50. Nationstar's security interest in the Property, if any, was extinguished as a matter of law  
7 by the foreclosure of the Association Lien, which contained super-priority amounts.

8 **III.**

9 **FIRST CLAIM FOR RELIEF**

10 **(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, et. seq., NRS 40.010 & NRS  
11 116.3116)**

12 51. SFR repeats and realleges the allegations of paragraphs 1-50 as though fully set forth  
13 herein and incorporates the same by reference.

14 52. Pursuant to NRS 30.010, et. seq. and NRS 40.010, this Court has the power and authority  
15 to declare the SFR's rights and interests in the Property and to resolve the Bank's adverse claims  
16 in the Property.

17 53. Upon information and belief, the Bank claims and cross-defendants may claim an interest  
18 in the Property, even after the Association foreclosure sale.

19 54. A foreclosure sale conducted pursuant to NRS 116.31162-116.31168, like all foreclosure  
20 sales, extinguishes the title owner's interest in the Property and all junior liens and encumbrances,  
21 including deeds of trust.

22 55. Pursuant to NRS 116.3116(2), the super-priority portion of the Association Lien has  
23 priority over the First Deed of Trust.

24 56. Bank and cross-defendants were duly notified of the Association foreclosure sale and  
25 failed to act to protect their interests in the Property, if any legitimately existed.

26 57. SFR is entitled to a declaratory judgment from this Court finding that: (1) SFR is the title  
27 owner of the Property; (2) the Association foreclosure deed is valid and enforceable and (3)  
28 SFR's rights and interest in the Property are superior to any adverse interest claimed by the Bank  
and cross-defendants.

1 58. SFR seeks an order from the Court quieting title to the Property in favor of SFR.

2 **IV.**  
3 **SECOND CLAIM FOR RELIEF**  
4 **(Preliminary and Permanent Injunction)**

5 59. SFR repeats and realleges the allegations of paragraphs 1-58 as though fully set forth  
6 herein and incorporate the same by reference.

7 60. As set forth above, U.S. Bank, now claims a security interest in the Property.  
8 Additionally, Gotera, and Moore, and JBWNO may also claim an interest in the Property.  
9 Nationstar may also claim an interest in the property based on purported assignment of the First  
10 Deed of Trust.

11 61. A foreclosure sale based on the First Deed of Trust would be invalid as the Bank lost its  
12 interests in the Property, if any, at the Association foreclosure sale.

13 62. Any attempt to take or maintain possession of the Property by the Bank or cross-  
14 defendants, would be invalid because their interests in the Property, if any, were extinguished by  
15 the Association foreclosure sale.

16 63. Any attempt to sell, transfer, encumber or otherwise convey the Property would be  
17 invalid because the Bank and cross-defendants', interests in the Property, if any, were  
18 extinguished by the Association foreclosure sale.

19 64. On the basis of the facts described herein, SFR has a reasonable probability of success on  
20 the merits of its claims and has no other adequate remedies at law.

21 65. SFR is entitled to a preliminary injunction and permanent injunction prohibiting the Bank  
22 and/or cross-defendants from any sale or transfer that would affect the title to the Property.

23 **V.**  
24 **THIRD CLAIM FOR RELIEF**  
25 **(Slander of Title against Nationstar)**

26 66. SFR repeats and realleges the allegations of paragraphs 1-65 as though fully set forth  
27 herein and incorporate the same by reference.

28 67. As discussed above, on November 6, 2014, Nationstar filed a Request for Notice under  
NRS Chapter 107 and 116, against the Property in Official Records of the Clark County Recorder

1 as Instrument No. 201411060001861, claiming that the First Deed of Trust still encumbered the  
2 Property.

3 68. Since the SFR ruling of September 2014 had previously ruled that that the Association's  
4 non-judicial foreclosure of the Association's super-priority lien extinguishes a first deed of trust  
5 as a matter of law, the statements by Nationstar on the recorded Request for Notice that the  
6 Property was encumbered by the First Deed of Trust, were false communications casting doubt on  
7 SFR's ownership of the Property.

8 69. Since SFR had been the Property owner of record since January 8, 2014, and since the  
9 First Deed of Trust had previously been extinguished as a matter of law (according to the SFR  
10 decision), Nationstar knew, or should have known, the statements were false.

11 70. Nationstar's act of improperly and unjustifiable recording of the statements in reckless  
12 disregard of the statements' truth or falsity, was malicious and designed to cloud SFR's title to the  
13 Property.

14 71. Nationstar's intentional, reckless, and spurious actions have caused special damages to  
15 SFR.

16 72. As a direct and proximate cause of Nationstar's conduct, SFR has incurred special  
17 damages by way of attorney's fees and costs in order to protect its rights in the Property and to  
18 pursue this action.

19 **PRAYER FOR RELIEF**

20 SFR requests judgment against the Bank and Cross-Defendants as follows:

21 1. For a declaration and determination that the Association foreclosure sale and  
22 resulting foreclosure deed are valid, that SFR Investments Pool 1, LLC is the rightful owner of  
23 title to the Property, and that the Bank and Cross-defendants have no right, title or interest in the  
24 Property;

25 2. For a preliminary and permanent injunction that the Bank, cross-defendants and  
26 their successors, assigns and agents are prohibited from initiating or continuing foreclosure  
27 proceedings, and from selling or transferring the Property;

28 3. For general and special damages in excess of \$10,000 against Nationstar.



1           4.       For an award of attorney's fees and costs of suit; and

2           5.       For any further relief that the Court may deem just and proper.

3       DATED this 14th day of March, 2016.

**KIM GILBERT EBRON**

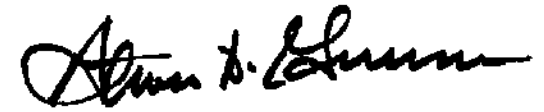
4  
5       /s/ Diana Cline Ebron  
6       Diana Cline Ebron, Esq.  
7       Nevada Bar No. 10580  
8       Jacqueline A. Gilbert, Esq.  
9       Nevada Bar No. 10593  
10      Karen L. Hanks, Esq.  
11      Nevada Bar No. 9578  
12      7625 Dean Martin Drive, Suite 110  
13      Las Vegas, Nevada 89139  
14      Phone: (702) 485-3300  
15      Fax:   (702) 485-3301  
16      Attorneys for SFR Investments Pool 1, LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 14th day of March, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **SFR INVESTMENTS POOL 1, LLC'S ANSWER TO THIRD-PARTY COMPLAINT, COUNTERCLAIM AND CROSS-CLAIM**, to the following parties:

<b>Alessi &amp; Koenig</b>			
<b>Name</b>	<b>Email</b>		
A&K eserve	eserve@alessikoenig.com		
<b>Wright Finlay &amp; Zak</b>			
<b>Name</b>	<b>Email</b>		
Dana J. Nitz	dnitz@wrightlegal.net		
<b>Wright, Finlay &amp; Zak, LLP</b>			
<b>Name</b>	<b>Email</b>		
Christopher S. Connell, Esq.	cconnell@wrightlegal.net		
Marissa Resnick	mresnick@wrightlegal.net		
Lisa Cox	lcox@wrightlegal.net		
Sara Aslinger	saslinger@wrightlegal.net		

/s/ Diana Cline Ebron  
An employee of Kim Gilbert Ebron



CLERK OF THE COURT

DIANA CLINE EBRON, ESQ.  
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JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
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KAREN L. HANKS, ESQ.  
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KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*Attorneys for SFR Investments Pool 1, LLC*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Plaintiff,

vs.

STACY MOORE, an individual;  
MAGNOLIA GOTERA, an individual;  
KRISTIN JORDAL, AS TRUSTEE FOR  
THE JBWNO REVOCABLE LIVING  
TRUST, a trust; U.S. BANK, N.A., a national  
banking association; NATIONSTAR  
MORTGAGE, LLC, a foreign limited liability  
company; REPUBLIC SILVER STATE  
DISPOSAL, INC., DBA REPUBLIC  
SERVICES, a domestic governmental entity;  
DOE INDIVIDUALS I through X, inclusive;  
and ROE CORPORATIONS XI through XX  
inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Case No. A-14-705563-C

Dept. No. XX

**NOTICE OF VOLUNTARY DISMISSAL OF  
KRISTIN JORDAL, AS TRUSTEE FOR  
THE JBWNO REVOCABLE LIVING  
TRUST, A TRUST WITHOUT PREJUDICE**

**KIM GILBERT EBRON**  
7625 DEAN MARTIN DRIVE, SUITE 110  
LAS VEGAS, NEVADA 89139  
(702) 485-3300 FAX (702) 485-3301

Counter-Defendant.

U.S. BANK, N.A.,

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company;  
INDIVIDUAL DOES I through X, inclusive;  
and ROE CORPORATIONS I through X,  
inclusive,

Third-Party Defendants.

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company,

Third Party Counterclaimant/Cross-claimant,

vs.

U.S. BANK, N.A.; NATIONSTAR  
MORTGAGE, LLC, a foreign limited liability  
company; KRISTIN JORDAL, AS TRUSTEE  
FOR THE JBWNO REVOCABLE LIVING  
TRUST, a trust; STACY MOORE, an  
individual; and MAGNOLIA GOTERA, an  
individual,

Please take notice that SFR Investments Pool 1, LLC ("SFR") hereby voluntarily dismisses KRISTIN JORDAL, AS TRUSTEE FOR THE JBWNO REVOCABLE LIVING TRUST, a trust ("JBWNO Trust"), without prejudice pursuant to NRCP 41(a)(1)(i) which provides:

Subject to the provisions of Rule 23(e), of Rule 66, and of any statute, **an action may be dismissed by the plaintiff upon repayment of defendants' filing fees, without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.**

(emphasis added).

Upon information and belief, JBWNO Trust has not served an answer or motion for summary judgment. JBWNO Trust's filing fees, if any, will be paid concurrently with service of this notice.

DATED this 20th day of June, 2016.

**KIM GILBERT EBRON**

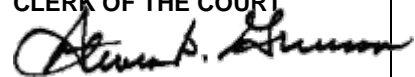
/s/ Diana Cline Ebron  
Diana Cline Ebron, Esq.  
Nevada Bar No. 10580  
Jacqueline A. Gilbert, Esq.  
Nevada Bar No. 10593  
Karen L. Hanks, Esq.  
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7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
Phone: (702) 485-3300  
Fax: (702) 485-3301  
*Attorneys for SFR Investments Pool 1, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 14th day of March, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF VOLUNTARY DISMISSAL OF KRISTIN JORDAL, AS TRUSTEE FOR THE JBWNO REVOCABLE LIVING TRUST, A TRUST WITHOUT PREJUDICE**, to the following parties:

<b>Alessi &amp; Koenig</b>			
<b>Name</b>	<b>Email</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
A&K eserve	<a href="mailto:eserve@alessikoenig.com">eserve@alessikoenig.com</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Wright Finlay &amp; Zak</b>			
<b>Name</b>	<b>Email</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dana J. Nitz	<a href="mailto:dnitz@wrightlegal.net">dnitz@wrightlegal.net</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Wright, Finlay &amp; Zak, LLP</b>			
<b>Name</b>	<b>Email</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Christopher S. Connell, Esq.	<a href="mailto:cconnell@wrightlegal.net">cconnell@wrightlegal.net</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Marissa Resnick	<a href="mailto:mresnick@wrightlegal.net">mresnick@wrightlegal.net</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Lisa Cox	<a href="mailto:lcx@wrightlegal.net">lcx@wrightlegal.net</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Sara Aslinger	<a href="mailto:saslinger@wrightlegal.net">saslinger@wrightlegal.net</a>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

/s/ Andrew M. David  
An employee of Kim Gilbert Ebron



**MSJD**

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Nevada Bar No. 11015

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*Attorneys for Defendant Nationstar Mortgage, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC,

Plaintiff,

v.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBWNO  
REVOCABLE LIVING TRUST, a trust; U.S.  
BANK, N.A., a national banking association;  
NATIONSTAR MORTGAGE, LLC, a foreign  
limited liability company; REPUBLIC SILVER  
STATE DISPOSAL, INC., DBA REPUBLIC  
SERVICES, a domestic government entity; DOE  
INDIVIDUALS I through X, inclusive; and ROE  
CORPORATIONS XI through XX inclusive.

Defendants.

Case No.: A-14-705563-C

Dept.: XVII

**CROSS-DEFENDANT NATIONSTAR  
MORTGAGE, LLC'S MOTION FOR  
SUMMARY JUDGMENT**

1 U.S. BANK, N.A.,  
2 Counterclaimant,  
3 vs.

4 ALESSI & KOENIG, LLC, a Nevada limited  
liability company,  
5 Counter-Defendant.

6 U.S. BANK, N.A.,  
7 Third Party Plaintiff,  
8 v.  
9 SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company; INDIVIDUAL DOES  
10 I through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive.  
11 Third Party Defendants.

12 SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company,  
13 Third Party Counterclaimant/Cross-claimant,  
vs.  
14 U.S. BANK, N.A.; NATIONSTAR  
MORTGAGE, LLC, a foreign limited liability  
15 company; KRISTIN JORDAL, AS TRUSTEE  
FOR THE JBWNO REVOCABLE LIVING  
16 TRUST, a trust; STACY MOORE, an  
individual; and MAGNOLIA GOTERA, an  
17 individual,  
18 Counter-Defendant/Cross-Defendants.

19 **CROSS-DEFENDANT NATIONSTAR MORTGAGE, LLC'S**  
20 **MOTION FOR SUMMARY JUDGMENT**

21 COMES NOW, Defendant / Cross-Defendant, NATIONSTAR MORTGAGE, LLC  
22 ("Nationstar" or "Defendant"), by and through its attorneys, GERRARD COX LARSEN and  
23 AKERMAN, LLP, and hereby files this Motion for Summary Judgment in its favor pursuant to Rule  
24 56 of the Federal Rules of Civil Procedure. This Motion is made and based upon the pleadings and  
25 ///  
26 ///  
27 ///  
28

papers on file, the exhibits, Points and Authorities attached hereto, the Declarations submitted herewith, and any oral argument the Court may entertain at the time of the hearing.

Dated this 29<sup>th</sup> day of June, 2018.

**GERRARD COX LARSEN**

/s/ Fredrick J. Biedermann, Esq.

Douglas D. Gerrard, Esq.

Nevada Bar No. 4613

Fredrick J. Biedermann, Esq.

Nevada Bar No. 11918

2450 Saint Rose Pkwy., Suite 200

Henderson, Nevada 89074

**AKERMAN LLP**

/s/ Donna Wittig, Esq.

Darren T. Brenner, Esq.

Nevada Bar No. 8386

Donna Wittig, Esq.

Nevada Bar No. 11015

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

*Attorneys for Defendant Nationstar Mortgage, LLC*

**NOTICE OF MOTION**

TO: ALL PARTIES IN INTEREST

PLEASE TAKE NOTICE that Defendant / Cross-Defendant NATIONSTAR MORTGAGE, LLC will be bring the foregoing **MOTION FOR SUMMARY JUDGMENT** on for hearing before the Eighth Judicial District Court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155 on the 08 day of AUGUST, 2018, at the hour of 8:30 o'clock A.m. of said date, in Department XVII, or as soon thereafter as counsel may be heard.

DATED this 29<sup>th</sup> day of June, 2018.

**GERRARD COX LARSEN**

/s/ Fredrick J. Biedermann, Esq.

Douglas D. Gerrard, Esq.

Nevada Bar No. 4613

Fredrick J. Biedermann, Esq.

Nevada Bar No. 11918

2450 Saint Rose Pkwy., Suite 200

Henderson, NV 89074

*Attorneys for Defendant /Counterclaimant Nationstar Mortgage, LLC*



**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

This lawsuit arises out of a dispute between the parties over the legal effect of a non-judicial foreclosure of real property located at 5327 Marsh Butte, Las Vegas, Nevada 89148 (the “Property”) that was conducted by Shadow Mountain Ranch Community Association (“Shadow Mountain” or the “HOA”) through its agent, Alessi & Koenig, LLC (“Alessi” or “HOA Trustee”) allegedly pursuant to Nevada Revised Statutes Chapter 116 (“NRS 116” or the “HOA Lien Statute”). Nationstar is entitled to summary judgment for all of the following reasons, any one of which is sufficient to support summary judgment in favor of Nationstar on its claims and on all of SFR’s claims for relief.

**First**, Nationstar is entitled to summary judgment because BAC, Nationstar’s predecessor-in-interest to the deed of trust (“Deed of Trust”), tendered a check to the HOA in an amount sufficient to fully satisfy the super-priority portion of the HOA’s lien prior to the HOA’s foreclosure sale, rendering the HOA’s sale either void or subject to the Deed of Trust. The Nevada Supreme Court made it clear in *SFR Investments* that a senior mortgagee can tender the super-priority amount of an association’s lien prior to the association’s foreclosure sale to maintain the priority of its deed of trust. *See SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 418 (Nev. 2014). Because BAC tendered an amount equal to the statutory super-priority amount of the HOA’s lien before the HOA’s foreclosure sale, the HOA lacked authority to proceed on any foreclosure of the super-priority lien and could only foreclose its sub-priority lien and convey an interest in the Property subordinate to the senior Deed of Trust at that sale. Because Plaintiff’s property interest is junior to the senior Deed of Trust, Plaintiff’s claims for quiet title and declaratory relief necessarily fail.

**Second**, the sale of the Property for 19.2% of its fair market value, coupled with the blatant unfairness of proceeding with the foreclosure sale after BAC had tendered a check to fully satisfy the super-priority portion of the HOA’s lien, rendered the HOA’s foreclosure sale commercially unreasonable and requires that the sale be set aside. As confirmed by the Nevada Supreme Court in

1 *Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty, Bancorp, Inc.*, 132 Nev. Adv. Rep. 5,  
2 366 P.3d 1105 (2016), a sale for less than 19.2% of a property's fair market value is grossly  
3 inadequate, and according to *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow*  
4 *Canyon*, 133 Nev. Adv. Op. 91, 405 P.3d 641, 642 (2017) this grossly inadequate price is a highly  
5 relevant factor in determining whether to set the sale aside. In *Saticoy Bay* the Supreme Court  
6 explained that this grossly inadequate price coupled with "very slight additional evidence of  
7 unfairness" is all that is needed for the Court to set the sale aside. Here we have a material defect in  
8 the sale itself as the HOA proceeded to foreclose after the super-priority lien tender had discharged  
9 the super-priority portion of the lien, which is both unfair, oppressive and fraudulent as the HOA no  
10 longer held a lien to foreclose (except for its sub-priority lien).

11 **Third**, while the *Shadow Wood* court explained that a court must take the potential harm to a  
12 bona fide purchaser into account in determining whether to set aside a foreclosure sale, Plaintiff is  
13 not entitled to this additional protection because (i) a bona fide purchaser status is no defense to a  
14 void sale, and (ii) Plaintiff is not a bona fide purchaser. The tender to the HOA rendered the  
15 subsequent HOA sale **void** as Plaintiff lacked authority to proceed with the sale. *Bank of America,*  
16 *N.A. v. Ferrell Street Trust*, Case No. 70299 (April 27, 2018, Nev.)(unpublished order); *see also* 1  
17 Grant S. Nelson, Dale A. Whitman, Ann M. Burkhardt & R. Wilson Freyermuth, *Real Estate Finance*  
18 *Law* § 7:21 (6<sup>th</sup> ed. 2014). If a sale is void, no title passes to the purchaser and the bona fide  
19 purchaser defense is inapplicable. *Id.*; *7912 Limbwood Court Trust v. Wells Fargo Bank, N.A.*,  
20 2:13-CV-00506-APG-GWF (D. Nev. 2015). Plaintiff also had record notice of the pre-existing  
21 Deed of Trust, prior to the HOA Sale, and of the lender's right to pay HOA assessments, including  
22 those assessments comprising the HOA's super-priority lien, pursuant to the terms of the Deed of  
23 Trust. That put SFR on inquiry notice of BAC's super-priority tender, and SFR failed to rebut the  
24 presumption of knowledge arising from this inquiry notice because it failed to investigate whether  
25 the lender or any other person tendered the super-priority amount before the HOA's foreclosure  
26 sale. Because it is presumed to have knowledge of BAC's super-priority-plus tender, it is not  
27 entitled to the equitable protection of the bona fide purchaser doctrine.  
28

For each of these reasons, SFR's quiet title and declaratory judgment claims fail as a matter of law and summary judgment should be entered in favor of Nationstar and denied as to SFR Investments Pool 1, LLC.

## **II.**

### **STATEMENT OF UNDISPUTED FACTS**

1. On or about November 21, 2005, Magnolia Gotera ("Gotera" or the "Borrower") purchased the subject property located at 5327 Marsh Butte, Las Vegas, Nevada 89148 (the "Property") as evidenced by a Grant, Bargain, Sale Deed recorded in the Official Records of Clark County, Nevada as Instrument No. 20051121-0005566. A true and correct copy of the Grant Bargain Sale Deed is attached hereto as **Exhibit "A"**.

2. A Deed of Trust (the "Deed of Trust") listing Gotera as the Borrower, Countrywide Home Loans, Inc. as the Lender ("Lender") and CTC Real Estate Services as the Trustee was executed on November 15, 2005 and recorded on November 21, 2005. The Deed of Trust granted Lender a security interest in the Property to secure the repayment of a loan in the original amount of \$508,250.00 (the "Loan"). *Id.* A true and correct copy of the Deed of Trust which was recorded in the Official Records of Clark County, Nevada as Instrument No. 20051121-0005567 is attached hereto as **Exhibit "B"**.

3. The Borrower fell behind on her obligations to the HOA, as evidenced by that certain Notice of Delinquent Assessment Lien that was recorded against the Property on May 7, 2008 in the Official Records of Clark County, Nevada as Inst. No. 20080507-0001378 ("1<sup>st</sup> HOA Lien"), by the HOA through its agent, Alessi. A true and correct copy of the HOA Lien is attached hereto as **Exhibit "C"**.

4. After two other earlier recorded default notices, on July 1, 2010, the HOA through its agent, Alessi, recorded a third Notice of Default and Election to Sell in the Official Records of Clark County, Nevada as Inst. No. 20100701-0000190 ("HOA NOD"). The HOA NOD stated the amount due Shadow Mountain HOA was \$3,140.00 which included assessments, late fees, interest, and collection costs. A true and correct copy of the HOA NOD is attached hereto as **Exhibit "D"**.

1           5.       On September 2, 2010, MERS as nominee for BAC Home Loans Servicing, LP, fka  
2 Countrywide Home Loans, Inc. ("BAC"), through its counsel, Rock K. Jung, Esq. of the law firm of  
3 Miles, Bauer, Bergstrom & Winters, LLP ("Miles Bauer"), sent a letter to the HOA and HOA  
4 Trustee in response to the HOA NOD requesting the status of the foreclosure sale including the  
5 amount due in arrears. Furthermore, Mr. Jung stated in his letter as follows: "It is unclear, based  
6 upon the information known to date, what amount the nine months' of common assessments pre-  
7 dating the NOD actually are. That amount, whatever it is, is the amount BAC should be required to  
8 rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby  
9 offered to pay that sum upon presentation of adequate proof of the same by the HOA." *See* Miles  
10 Bauer Affidavit attached hereto as **Exhibit "E"** and the Miles Bauer Letter dated September 2, 2010  
11 attached hereto as **Exhibit "E-1"**. (Emphasis added).

12           6.       On September 8, 2010, in response to Miles Bauer's request, Alessi sent a letter to  
13 Miles Bauer stating that any partial payments of the HOA's lien would be rejected, although it  
14 acknowledged that NRS 116.3116 provided that the HOA's super-priority lien is limited to nine  
15 months of assessments. *See* copy of Alessi's Letter dated September 8, 2010 attached hereto as  
16 **Exhibit "E-4"**.

17           7.       On September 13, 2010, in response to Miles Bauer's request, Alessi provided Miles  
18 Bauer with a payoff statement breaking down, *inter alia*, the amounts of delinquent assessments,  
19 late fees, attorney fees and interest totaling \$3,554.00. However Alessi did not provide Miles with a  
20 super-priority payoff quote. *See* Miles Bauer Affidavit attached hereto as **Exhibit "E"** and the  
21 Facsimile Cover Letter from Alessi attached hereto as **Exhibit "E-2"**

22           8.       On or about September 28, 2010, Miles Bauer delivered a check for \$207.00 to  
23 Alessi, which represented nine months of common assessments at \$23.00 per month ( $\$23.00 \times 9 =$   
24  $\$207.00$ ). *See* Shadow Mountain's Ledger attached hereto as **Exhibit "E-2"** and the tendered check  
25 as **Exhibit "E-3"**. However, because the HOA Trustee disagreed with the amount Miles Bauer  
26 offered to satisfy the super-priority portion of the HOA's lien, it rejected the tendered check. *See*  
27 Miles Bauer Affidavit attached hereto as **Exhibit "E" and "E-5"**.

1           9.       On November 30, 2010, the HOA and its agent, Alessi, released the HOA Lien as  
2 evidenced by that certain Release of Delinquent Assessment Lien recorded in the Official Records  
3 of Clark County, Nevada as Instrument No. 20101130-0003315. A true and correct copy of the  
4 Release of Delinquent Assessment Lien is attached hereto as **Exhibit "F"**. As of the date of the  
5 Release, the balance of the HOA Lien, which included delinquent assessments, late fees, and  
6 nuisance abatement was approximately \$2,545.00 as indicated in Shadow Mountain HOA's account  
7 ledger. *See* Shadow Mountain HOA Ledger attached hereto as **Exhibit "G"**.

8           10.      On or about January 26, 2011, Shadow Mountain HOA and its agent, Alessi,  
9 recorded a Notice of Trustee's Sale against the Property, as Inst. No. 20110126-0002852, in the  
10 Official Records of Clark County, Nevada ("HOA NOS"). The HOA NOS stated the amount due to  
11 Shadow Mountain HOA was \$5,757.00<sup>1</sup> which included assessments, late fees, interest, and  
12 collection costs. A true and correct copy of the HOA NOS is attached hereto as **Exhibit "H"**.

13           11.      On May 27, 2011, Gotera transferred her interest in the Property to JBNWO  
14 Revocable Living Trust as evidenced by the Grant Deed recorded in the Official Records of Clark  
15 County, Nevada, as Inst. No. 20110527-0004010 and attached hereto as **Exhibit "I"**.

16           12.      On May 27, 2011, Kristin Jordal, acting in her capacity as the Trustee of the JBNWO  
17 Revocable Living Trust, transferred her interest in the Property to Stacy Moore as evidenced by the  
18 Grant Deed recorded in the Official Records of Clark County, Nevada, as Inst. No. 20110527-  
19 0004011 and attached hereto as **Exhibit "J"**.

20           13.      On November 2, 2011, MERS assigned the Loan and the Deed of Trust to U.S.  
21 BANK, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund  
22 ("US Bank") by virtue of that certain Assignment of Deed of Trust recorded in the Official Records  
23 of Clark County, Nevada ("Assignment") as Inst. No. 20111101-0000754. A true and correct copy  
24 of the Assignment is attached hereto as **Exhibit "K"**.

25           14.      On September 11, 2012, Shadow Mountain HOA and its agent, Alessi, recorded a  
26 new Notice of Delinquent Assessment Lien against the Property in the Official Records of Clark  
27

28 <sup>1</sup> The amount of \$5,757.00 as stated in the HOA NOS appears to include additional trustee fees charged by Alessi & Koenig as the account ledger for the Property indicates a balance of \$2,602.94 on January 31, 2011. *See* **Exhibit "H"**.

County, Nevada, as Inst. No. 20120911-0002023 ("Second HOA Lien"). The Second HOA Lien stated the amount due Shadow Mountain HOA was \$6,448.00 **which included assessments, late fees, interest, collection costs and balance transfer from the prior owner, Gotera, in the amount of \$2,730.00.** A true and correct copy of the Second HOA Lien is attached hereto as **Exhibit "L".** See also Shadow Mountain HOA's Ledger attached hereto as **Exhibit "M".**

15. The HOA Ledgers show that no payments were made on this HOA account after the 1<sup>st</sup> HOA Lien was recorded May 7, 2008, and that **all of the same assessments included in the First HOA Lien were included in the Second HOA Lien** recorded September 11, 2012. See HOA Ledgers attached as **Exhibits "G" and "M".**

16. On or about July 5, 2013, Shadow Mountain HOA and its agent, Alessi, recorded against the Property, a Notice of Default and Election to Sell in the Official Records of Clark County, Nevada, as Inst. No. 20130705-0000950 ("Second HOA NOD"). The Second HOA NOD stated the amount due Shadow Mountain HOA was \$6,631.41 which included assessments, late fees, interest, and collection costs. A true and correct copy of the Shadow Mountain HOA is attached hereto as **Exhibit "N".**

17. On October 1, 2013, MERS assigned its remaining interest as the servicer of the Loan to Nationstar Mortgage, LLC by virtue of that certain Assignment of Deed of Trust recorded in the Official Records of Clark County, Nevada ("Second Assignment") as Inst. No. 20131001-0002401. A true and correct copy of the Assignment is attached hereto as **Exhibit "O".**

18. On or about December 10, 2013, Shadow Mountain HOA and its agent, Alessi, recorded a Notice of Trustee's Sale against the Property, as Inst. No. 20131210-0001308, in the Official Records of Clark County, Nevada (the "Second HOA NOS"). The Second HOA NOS stated the amount due to Shadow Mountain HOA was \$8,017.11 which included assessments, late fees, interest, and collection costs. A true and correct copy of the Second HOA NOS is attached hereto as **Exhibit "P".**

19. On May 7, 2014, Shadow Mountain HOA and its agent, Alessi, conducted a foreclosure sale of the Property, whereat SFR Investments Pool 1, LLC ("SFR") purported to be the highest bidder and allegedly purchased the Property for \$59,000.00 (the "HOA Sale") as evidenced

1 by that certain Trustee's Deed Upon Sale in favor of SFR recorded in the Official Records of Clark  
2 County, Nevada as Inst. No. 20140113-0001460 ("TDUS"). A true and correct copy of the TDUS is  
3 attached as **Exhibit "Q"**. The TDUS recites that title was conveyed "without warranty expressed or  
4 implied" to SFR.

5 20. At the time of the foreclosure sale, the fair market value of the Property was  
6 \$306,000.00. See Declaration of R. Scott Dugan, SRA attached hereto as **Exhibit "R"**. The  
7 purchase price of \$59,000.00 for the Property at the HOA's foreclosure sale was 19.2% of the  
8 Property's fair market value.

9 **III.**

10 **STATEMENT OF AUTHORITIES**

11 **A. LEGAL STANDARD**

12 "Summary judgment is appropriate if, when viewed in the light most favorable to the non-  
13 moving party, the record reveals there are no genuine issues of material fact and the moving party is  
14 entitled to judgment as a matter of law." *DTJ Design, Inc. v. First Republic Bank*, 130 Nev. Adv.  
15 Op. 5, 318 P.3d 709, 710 (2014) (citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713, 57  
16 P.3d 82, 87 (2002)). While the party moving for summary judgment must make the initial showing  
17 that no genuine issue of material fact exists, where, as here, the non-moving party will bear the  
18 burden of persuasion at trial, the party moving for summary judgment need only: "(1) submit  
19 evidence that negates an essential element of the nonmoving party's claim, or (2) 'point out ... that  
20 there is an absence of evidence to support the nonmoving party's case.'" *Francis v. Wynn Las*  
21 *Vegas, LLC*, 127 Nev. Adv. Op. 60, 262 P.3d 705, 714 (2011). Once this showing is met, summary  
22 judgment must be granted unless "the nonmoving party [can] transcend the pleadings and, by  
23 affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material  
24 fact." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007).

25 There are no contested issues of material fact that will preclude summary judgment in this  
26 case. Based upon the uncontested facts presented herein, Nationstar Mortgage is entitled to a  
27 judgment as a matter of law on SFR's claims.  
28

**IV.**

**ADMISSIBILITY OF EXHIBITS**

Nationstar requests that the Court take judicial notice of the following exhibits pursuant to N.R.S. § 47.130: **Exhibits “A”, “B”, “C”, “D”, “F”, “H”, “I”, “J”, “K”, “L”, “N”, “O”, “P” and “Q”** as they are self-authenticating documents pursuant to N.R.S. § 52.165 due to these documents being acknowledged with a notarial certificate and recorded in the public records of Clark County, Nevada. **Exhibits “E”, “E-1”, “E-2”, “E-3”, “E-4”, and “E-5”** are supported by the Affidavit of Douglas Miles, Esq. of Miles Bauer & Winters, LLP. **Exhibits “G” and “M”** were produced by either the HOA or HOA Trustee in response to a Subpoena *Duces Tecum* and are authenticated by the Deposition testimony of David Alessi, attached hereto as **Exhibit “X”** pages 37-39. **Exhibit “R”** is supported by the Declaration of R. Scott Dugan, SRA, Certified General Appraiser and Nationstar’s designated expert witness in this case. **Exhibit “W”** is SFR’s Responses to Nationstar’s Interrogatories.

Nationstar requests that this Court take judicial notice of **Exhibits “S”, “T”, “U”, and “V”** in accordance with N.R.S. § 47.140, as they are judicial orders or publications issued, respectively, by the Nevada Real Estate Division, the Nevada Supreme Court, and Federal District Court, District of Nevada constituting the record from another case.

**V.**

**LEGAL ARGUMENT**

**A. NATIONSTAR’S PREDECESSOR IN INTEREST REDEEMED THE FIRST DEED OF TRUST’S PRIORITY BY TENDERING THE FULL AMOUNT OF THE HOA’S SUPER-PRIORITY LIEN**

**1. The Payment Of The Super-Priority Lien Preserved The Deed of Trust**

Nationstar is entitled to summary judgment because its predecessor in interest tendered a check to pay off the full, undisputed super-priority amount of the HOA’s lien to the HOA Trustee before the foreclosure sale. NRS 116.3116(1) gives a homeowner’s association a lien against its homeowners' properties when they fail to pay monthly assessments. But, only a portion of an association's lien has priority over a first deed of trust. As the Nevada Supreme Court explained in SFR Investments:



As to first deeds of trust, NRS 116.3116(2) . . . splits an HOA lien into two pieces, a superpriority piece and a subpriority piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges, is "prior to" a first deed of trust. The subpriority piece, consisting of all other HOA fees or assessments, is subordinate to a first deed of trust.

*SFR Inv. Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 411 (Nev. 2014).

The Nevada Supreme Court acknowledges a lender may preserve its interest by determining the super-priority amount and paying that amount in advance of the sale. *Id.* at 418. The Nevada Real Estate Division agrees. It confirms as much in its 2012 advisory opinion, relying upon UCOIA, upon which NRS chapter 116 is based. *See* December 12, 2012 NRED Advisory Opinion No. 13-01, at 11 attached hereto as **Exhibit "S"**. UCIOA § 3-116's commentary acknowledges the superpriority concept is "a significant departure from existing practice," but "strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity of protecting the priority of the security interest of lenders." *Id.* at 9. Therefore, "as a practical matter, secured lenders will most likely pay the [9] months' assessments demanded by the association rather than having the association foreclose on the unit." *Id.* "Payment of [the superpriority charges] relieves their superpriority status." *Id.* at 11 (emphasis added).

2. **BAC Tendered The Full Super-Priority Amount To The HOA Rendering The HOA Sale Void**

The Nevada Supreme Court has confirmed that an association's super-priority lien is limited to nine months of delinquent assessments. *Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, 373 P.3d 66, 73 (2016) ("[W]e conclude the superpriority lien . . . is limited to an amount equal to the common expense assessments due during the nine months before foreclosure.") In *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, the Supreme Court stated that a mortgagee's pre-foreclosure tender of the super-priority amount prevents the deed of trust from being extinguished. 334 P.3d 408, 414 ("[A]s junior lienholder, [the holder of the first deed of trust] could have paid off the [HOA] lien to avert loss of its security[.]"); *Id.*, at 413 ("[S]ecured lenders will most likely pay the [9] months' assessments demanded by the association rather than having the association foreclose on the unit.") (emphasis added).

1 The super-priority portion of the lien includes maintenance and nuisance abatement charges  
2 and assessments "which would have become due in the absence of acceleration during *the 9 months*  
3 *immediately preceding institution of an action to enforce the lien.*" NRS 116.3116(2). A party has  
4 instituted "an action to enforce the lien" for purposes of NRS 116.3116(6) when it provides the  
5 notice of delinquent assessment. *Saticoy Bay LLC Series 2021 Gray Eagle Way* 338 P.3d at 231.

6 Here, the HOA recorded its First HOA Lien notice on May 7, 2008 seeking \$957.00 of  
7 which \$620.00 were collection costs, attorney's fees and interest, leaving outstanding assessments  
8 of no more than \$337.00. *See Exhibit "C"*. The monthly assessments were \$23.00 per month so 9  
9 months of assessments equaled \$207.00. *Id.* The HOA was also charging a late charge of \$10.00  
10 per month which was not included in the super-priority lien amount. *Id.* The relevant time period  
11 for calculation of the super-priority portion of the HOA's lien is the preceding 9 months – August  
12 2007 through May 2008. On or about September 28, 2010, Miles Bauer delivered a check for  
13 \$207.00 to Alessi, which represented nine months of common assessments. *See Exhibit "E"* and its  
14 subparts. This full tender extinguished the super-priority portion of the HOA's lien and rendered  
15 any subsequent HOA sale void if the tendered super-priority lien assessments were included in the  
16 subsequent foreclosure. *See Bank of America, N.A. v. Ferrell Street Trust*, Case No. 70299 (April  
17 27, 2018, Nev.) (unpublished order). In *Ferrell Street Trust* the Supreme Court stated that "[a]  
18 tender of payment operates to discharge a lien. *Power Transmission Equip. Corp.* 201 N.W.2d 13,  
19 16 (Wis. 1972) ("Common-law and statutory liens continue in existence until they are satisfied or  
20 terminated by some manner recognized by law. A lien may be lost by ... tender of the proper  
21 amount of the debt secured by the lien.')." *Id.* at 2. The Supreme Court in *Ferrell Street Trust* went  
22 on to state that "[w]hen rejection of a valid tender is unjustified, the tender effectively discharges the  
23 lien. *See e.g. Hohn v. Morrison*, 870 P.2d 513, 516-17 (Colo. App. 1993); *Lanier v. Mandeville*  
24 *Mills*, 189 S.E. 532, 534-35 (Ga. 1937); *see also* 59 C.J.S. *Mortgages* § 582 (2016)." *Id.* Finally, the  
25 Supreme Court stated that

26  
27 A valid tender of a mortgage lien invalidates a foreclosure sale on that lien because  
28 the sale purports to extinguish the tenderer's interest in the property. *See* 1 Grant S.  
Nelson, Dale A. Whitman, Ann M. Burkhart & R. Wilson Freyermuth, *Real Estate*  
*Finance Law* § 7:21 (6<sup>th</sup> ed. 2014). ("The most common defect that renders a sale

void is that the mortgagee had no right to foreclose.”); *see also Henke v. First S. Props., Inc.* 586 S.W.2d 6117, 620 (Tex. App. 1979) (payment of past-due installments cured loan’s default such that subsequent foreclosure on the property was void). Thus, when a valid tender satisfies the superpriority portion of the HOA’s assessment lien, a foreclosure sale for the entire lien results in a void sale, as only part of the lien remains in default.

*Id.* at 3. A copy of the Order in *Ferrell Street Trust* is attached hereto as **Exhibit “W”**.

The tender facts in this case is virtually identical to the facts in *Ferrell Street Trust*. The tender materials from the appellate appendix in *Ferrell Street Trust* are attached as **Exhibit “U”** for the Court’s review. The first letter sent by Miles Bauer to the HOA in *Ferrell Street Trust* matches nearly word-for word the first letter sent by Miles Bauer to the HOA in this case. The second letters sent in both cases are also a match except for property addresses and amounts constituting the superpriority component. The language on the check stubs accompanying the delivered checks also match. Miles Bauer wrote in its tender letter in this case:

Our client has authorized us to make payment to you in the amount of \$207.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$207.00, which represents the maximum 9 months' worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BAC's financial obligations towards the HOA in regards to the real property located at 5327 Marsh Butte Street have now been “paid in full.”

*See Exhibit E-3* (September 30, 2010 letter).

In the *Ferrell Street Trust* case, Miles Bauer wrote in its tender letter as follows:

Our client has authorized us to make payment to you in the amount of \$150.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$150.00, which represents the maximum 9 months' worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BAC's financial obligations towards the HOA in regards to the real property located at 994 River Walk Ct. have now been “paid in full.”

1 See Appellant Appendix Ex. “4” from Ferrell Street Trust attached hereto as **Exhibit “U”**. These  
2 two tender letters are identical except for the amount of payment, the entity the check was made to,  
3 and the property address. After examining Bank of America's tender in *Ferrell Street Trust*, the  
4 Nevada Supreme Court concluded that "Bank of America's tender appears valid, an unconditional  
5 offer to pay the superpriority portion of the lien in full . . . ." See **Exhibit “T”** at 3.

6 **3. Bank of America’s Unconditional Tender Discharged the Super-Priority Lien**

7 The tender doctrine is designed “to enable the debtor to ... relieve his property of  
8 encumbrance by offering his creditor all that he has any right to claim,” which “does not mean that  
9 the debtor must offer an amount beyond reasonable dispute, but it means the amount due, —  
10 actually due.” *Dohrman v. Tomlinson*, 399 P.2d 255, 258 (Id. 1965) (emphasis added). Tender is  
11 complete when “the money is offered to a creditor who is entitled to receive it.” *Cladianos v.*  
12 *Friedhoff*, 69 Nev. 41, 45, 240 P.2d 208, 210 (1952); see also *Ebert v. W. States Refining Co.*, 75  
13 Nev. 217, 222, 337 P.2d 1075, 1077 (1959) (enforcing option contract where corporation offered to  
14 pay full amount to exercise option). After the money owed is offered to the creditor, “nothing  
15 further remains to be done, and the transaction is completed and ended.” *Cladianos*, 69 Nev. at 45.

16 A tender is not rendered ineffective by the tendering party’s demand for matters to which it  
17 is entitled. “[The definition of tender] is more precisely stated as an offer of payment that is coupled  
18 either with no conditions or only with conditions upon which the tendering party has a right to  
19 insist.” *Fresk v. Kraemer*, 337 Or. 513, 522, 99 P.3d 282, 287 (2004) (emphasis added) (finding  
20 that under a statute precluding an attorney’s fee award to a party to whom full damages were  
21 tendered prior to litigation, tender was not invalidated by conditioning payment upon a release of  
22 liability); *Millhollin v. Conveyor Co.*, 287 Mont. 377, 383, 954 P.2d 1163, 1166 (1998); *Dull v.*  
23 *Dull*, 138 Ariz. 357, 359, 674 P.2d 911, 913 (Ct. App. 1983).

24 Nevada’s federal courts have also held that BAC’s Miles Bauer tenders are unconditional  
25 tenders that extinguish an association’s super-priority lien. *U.S. Bank, N.A. v. SFR Investments Pool*  
26 *I, LLC*, 2016 WL 4473427 at \*6 (D. Nev. Aug. 24, 2016) (rejecting the foreclosure-sale purchaser’s  
27 argument that Bank of America’s tender was conditional, explaining that “a reasonable jury could  
28 not interpret the evidence that way.”); *U.S. Bank, N.A. v. Bacara Ridge Assoc.*, 2016 WL 5334655 at

\*3 (D. Nev. Sep. 22, 2016) (same); *U.S. Bank, N.A. v. Emerald Ridge Landscape Maintenance Ass'n*, 2:15-cv-00117-MMD-PAL (D. Nev. Sep. 30, 2016). In *Emerald Ridge*, the court explained that the Miles Bauer tender letter was not conditional because accepting the tender did not require the association or its collection agent to “take any actions or waive any rights,” explaining:

The language Miles Bauer included with their cashier’s check states that Miles Bauer, and presumably their client, will understand endorsement of the check to mean they have fulfilled their obligations. It simply delineates how the tenderer will interpret the action of the recipient (which also turned out to be the correct interpretation of the law). It does not require [the association’s trustee] to take any actions or waive any rights. And it does not depend on an uncertain event or contingency.

*Emerald Ridge*, 2:15-cv-00117-MMD-PAL, at 7.<sup>2</sup> Because BAC’s super-priority tender was unconditional, the *Emerald Ridge* Court held the tender “was proper,” meaning the tender extinguished the super-priority portion of the association’s lien. *Id.*

The tender facts in this case are nearly identical to those in *U.S. Bank, Bacara Ridge*, and *Emerald Ridge*, where courts held that Miles Bauer’s tenders are unconditional tenders that extinguish an association’s super-priority lien if the tendered amount is greater than or equal to the statutory super-priority amount. Examining the language of the Miles Bauer letter proves the *U.S. Bank, Bacara Ridge*, and *Emerald Ridge Courts* are correct.

BAC reiterated when it tendered the check that it wished to satisfy only the super-priority portion of the HOA’s lien, stating that it “is the beneficiary/servicer of the first deed of trust loan secured by the property” and “wishes to make a good faith attempt to fulfill [BAC’s] obligations” to the HOA. *Id.* (emphasis added). By the letter’s unequivocal terms, the \$207.00 check: (1) was meant to extinguish the super-priority lien only, and would have no effect on the HOA’s ability to collect and foreclose the sub-priority portion of its lien, as it clearly explained NRS 116.3116’s split-lien dichotomy, and (2) would have no effect on the HOA’s ability to collect assessments and fees from the Deed of Trust holder if that holder ever obtained title to the Property through its own foreclosure sale, as the letter explicitly stated that the tender was meant to satisfy BAC’s “obligations” only “as 1st lienholder.” *See Id.*

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<sup>2</sup> A copy of the Summary Judgment Order in *U.S. Bank v. Emerald Ridge Landscape Maintenance Association*, Case No. 2:15-cv-00117-MMD-PAL is attached as **Exhibit “V”**.

Extinguishing a lien by paying the undisputed lien amount in full is surely no “condition,” and is in fact the purpose behind the tender doctrine, which allows junior lienholders to discharge senior liens by submitting full payment of that lien to the senior lienholder. *See Richardson v. Cont’l Grain Co.*, 336 F.3d 1103, 1107 (9th Cir. 2003) (“The condition of dropping a claim is implicit in all tenders because they are made ‘to satisfy a debt or obligation.’ A tender is called an ‘unconditional’ offer only because there are no additional conditions.”) (internal citations omitted); *Dull*, 674 P.2d at 912 (“A tender is not conditional, however, if the condition is one which the person making the tender has a legal right to insist upon.”). The tender doctrine is tailored for the exact fact pattern of this case – where a senior lienholder unjustifiably rejects a junior lienholder’s full payment of the senior lien amount, the tender doctrine protects the junior lienholder from that unjustified rejection by operating to discharge the senior lien. *See Richardson*, 336 F.3d at 1107; *Dull*, 674 P.2d at 912.

Like the Miles Bauer letters in *U.S. Bank, Bacara Ridge*, and *Emerald Ridge*, the Miles Bauer letter here did not contain any impermissible conditions, and the check enclosed in that letter was for an amount much greater than the super-priority amount of the HOA’s lien. *See Exhibits “E-3”* BAC’s tender thus discharged the super-priority portion of the HOA’s lien, meaning the HOA’s foreclosure of its remaining sub-priority lien did not extinguish the Deed of Trust. *See SFR Investments*, 334 P.3d at 414 (“[A]s junior lienholder, [the holder of the first deed of trust] could have paid off the [HOA] lien to avert loss of its security[.]”); *Id.*, at 413 (“As a practical matter, secured lenders will most likely pay the [9] months’ assessments demanded by the association rather than having the association foreclose on the unit.”); *Emerald Ridge*, 2:15-cv-00117-MMD-PAL, at 7.

#### 4. The Second Notice of Lien Does Not Trigger A New Super-Priority Lien

The fact that the HOA released its First HOA Lien on November 30, 2010 (after receiving the tender), and recorded the Second HOA Lien on September 11, 2013, does not change the fact that the HOA’s super-priority lien was discharged through the tender described above. The Nevada Supreme Court recently clarified that NRS 116.3116 does not limit an HOA to one lien enforcement action or one super-priority lien per property forever. *See Property Plus Investments*,

1 *LLC v. Mortgage Electronic Registration Systems Inc.*, 401 P.3d 728, 730-732, 133 Nev. Ad. Op. 62  
2 (2017). However, under *Property Plus* to trigger a new super-priority lien, the HOA must  
3 commence a new enforcement action. This can occur in two ways: (1) by completing a prior  
4 enforcement action through foreclosure, or (2) by recording a rescission of a prior lien. *Id. Property*  
5 *Plus* states, “[t]herefore, when an HOA rescinds a superpriority lien on a property, the HOA may  
6 subsequently assert a separate superpriority lien on the same property based on monthly HOA dues,  
7 and any maintenance and nuisance abatement charges, accruing *after the rescission of the previous*  
8 *superpriority lien.*” *Id.* at 732-733 (emphasis added). The *Property Plus* Court clearly held that  
9 **“[a]n HOA cannot simply reject payment and release the lien, only to turn around and record**  
10 **another lien based on the same unpaid assessments in order to safeguard the superpriority**  
11 **status.”** See *Id.* at 9. Yet, that is precisely what occurred in this case.

12 Based on the undisputed facts, it is clear that Alessi rescinded the May 7, 2008 First HOA  
13 Lien after rejecting the tender payment in order to safeguard the super-priority status of its lien. On  
14 September 28, 2010, Miles Bauer delivered a check to Alessi to satisfy the super-priority lien. That  
15 check was wrongfully rejected. On November 30, 2010, Alessi recorded the Release of Lien. On  
16 September 11, 2012, the HOA recorded the Second HOA Lien **which included all of the**  
17 **assessments, late fees, interest, collection costs and balance included in the First HOA Lien.**  
18 See Second HOA Lien at **Exhibit "L"** and the HOA’s Ledger at **Exhibits “G” and “M”**.

19 Based on the HOA’s records, it is clear that the Second HOA Lien’s balance of \$6,448.00  
20 included the entire balance from the First HOA as evidenced by Alessi’s demand statement that was  
21 to Miles Bauer on September 13, 2010 and by Shadow Mountain’s account ledgers. Accordingly,  
22 the HOA’s release of lien was accomplished to safeguard the superpriority status of the lien, in  
23 violation of *Property Plus*. There can be no dispute the amount paid was sufficient to fully  
24 discharge the super-priority portion of the HOA’s lien and the payment was wrongfully rejected by  
25 Alessi. This tender discharged the super-priority portion of the HOA's lien, which carried over to the  
26 Second HOA Lien.  
27  
28

**B. THE FORECLOSURE SALE IS INVALID BECAUSE THE SALES PRICE WAS GROSSLY INADEQUATE AND PATENTLY UNFAIR**

The decision of the Nevada Supreme Court in *Shadow Wood. v. NYCB*, 366 P.3d 1105, (Nev. 2016), examined the issue of commercial reasonableness and provides that a grossly inadequate purchase price compared to the fair market value at the time of the HOA Sale can be sufficient to set aside a sale when coupled with unfairness. The *Shadow Wood* decision recognized the Restatement (Third) of Property: Mortgages § 8.3 ant. b ( 1997) position that while "[g]ross inadequacy cannot be precisely defined in terms of a specific percentage of fair market value, (generally ... a court is warranted in invalidating a sale where the price is less than 20 percent of fair market value and, absent other foreclosure defects, is usually not warranted in invalidating a sale that yields in excess of that amount."

The Nevada Supreme Court recently confirmed that to hold that an association's foreclosure sale did not extinguish a senior deed of trust on equitable grounds, there "must [ ] be a showing of fraud, unfairness, or oppression." *See Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. Adv. Op. 91, 405 P.3d 641, 642 (2017). The Nevada Supreme Court made clear that the foreclosure-sale price is a highly relevant factor, explaining that "very slight additional evidence of unfairness" is all that is needed if the price "inadequacy is palpable and great". It is universally recognized that inadequacy of price is a circumstance of greater or lesser weight to be considered in connection with other circumstances impeaching the fairness of the transaction as a cause of vacating it, and that, where the inadequacy is palpable and great, very slight additional evidence of unfairness or irregularity is sufficient to authorize the granting of the relief sought. *Id.* (emphasis added) (internal citation omitted).

In *Shadow Wood*, the Nevada Supreme Court explained that a foreclosure-sale price below 20% of fair market value is "obviously inadequate." *See Shadow Wood*, 366 P.3d at 1116. If construed as a super-priority foreclosure, then the HOA's sale of the Property for \$59,000.00 did not extinguish the Deed of Trust because it was both oppressive and unfair. A sale price of \$59,000.00 is a "palpabl[y] and great[ly]" inadequate sales price when compared to the fair market value of the Property on the date of the HOA Sale. Nationstar's expert valued the Property at \$306,000.00 at the time of the HOA Sale. *See Exhibit "R-1"*. Thus, the Property sold below the 20% threshold,



1 rendering the sale price grossly inadequate. These facts are not in dispute, as SFR has not provided  
2 any evidence that the purchase price was greater than 20 percent of the fair market value of the  
3 Property at the time of the HOA Sale. In light of this "palpabl[y] and great[ly]" inadequate sales  
4 price, "very slight evidence of unfairness" is all that is needed to show the sale did not extinguish  
5 the Deed of Trust on equitable grounds. *See Nationstar*, 405 P.3d at 658. There is more than enough  
6 evidence to satisfy that standard here where the tender rendered the sale void, the HOA had no  
7 authority to proceed with the sale, and the HOA was artificially attempting to get around the tender  
8 by recording a new notice of lien for the same assessments for which the tender was received and  
9 rejected.

10  
11 **C. THE BONA FIDE PURCHASER DOCTRINE IS IRRELEVANT, AND SFR IS NOT**  
12 **A BONA FIDE PURCHASER FOR VALUE**

13 SFR's status as an alleged bona fide purchaser is completely irrelevant in this matter. The  
14 HOA Sale was either void, resulting in no Property interest being transferred to SFR, or the sale was  
15 subject to the Deed of Trust. Under either scenario a bona fide purchaser defense is legally  
16 irrelevant. Even if bona fide purchaser status could provide a windfall to an HOA-sale purchaser  
17 after a sub-priority sale, Plaintiff is not entitled to that windfall because it is not a bona fide  
18 purchaser.

19  
20 **1. SFR's Bona Fide Purchaser Status Is Irrelevant As The Sale Is Void**

21 Defects in the exercise of the statutory authority requisite to hold a non-judicial  
22 foreclosure sale can be categorized as *void*, *voidable* or *inconsequential*. "Some defects are so  
23 substantial that they render the sale *void*. In this situation, neither legal nor equitable title transfers  
24 to the sale purchaser or subsequent grantees, except perhaps by adverse possession." 1 Grant S.  
25 Nelson, Dale A. Whitman, Ann M. Burkhart & R. Wilson Freyermuth, *Real Estate Finance Law* §  
26 7:21 (6<sup>th</sup> ed. 2014). The sale is void where the trustee proceeds without authorization (such as when  
27 a tender has already satisfied the super-priority lien amount), **or where "the mortgagee or trustee**  
28

1 **did not give statutorily-required notice”.**<sup>3</sup> *Id.* Other examples of defects rendering a sale void are,  
2 fraud, incapacity or failing to properly appoint a trustee or a successor trustee. *Id.*

3 Most defects render the foreclosure sale *voidable* and not void. When a voidable error  
4 occurs, bare legal title passes to the sale purchaser, subject to the redemption rights of those injured  
5 by the defect. *Id.* Courts have held that a sale is voidable “when the mortgagee published the notice  
6 of sale for slightly fewer times that the statutorily prescribed number or when the sale is conducted  
7 at the east door rather than the west front door of the county courthouse.” *Id.* “If the defect only  
8 renders the sale voidable, the redemption rights can be cut off if a bona fide purchaser for value  
9 acquires the land.” *Id.*

10 An inherent feature of a voidable sale (as opposed to one that is void) is that all rights  
11 to set aside the sale will be cut off if the land passes into the hands of a bona fide  
12 purchaser for value. When this occurs, the purchaser’s title is immune from attack  
13 and an action for damages against the foreclosing mortgagee or trustee may be the  
14 aggrieved party’s only remedy. This is the critical difference between void and  
15 voidable foreclosures, because in the former event bona fide purchasers are subject to  
16 the risk of having the sale set aside.

17 Grant S. Nelson and Dale A. Whitman, *Reforming Foreclosure: The Uniform Nonjudicial*  
18 *Foreclosure Act* Duke Law Journal Vol. 53 at 1501-1502 (March 2004). In 7912 *Limbwood*  
19 *Court Trust v. Wells Fargo Bank, N.A.*, 2:13-CV-00506-APG-GWF (D. Nev. 2015), the  
20 United States District Court for the District of Nevada held that under Nevada law, when a  
21 sale is void no title passes to a purchaser, even if the purchaser is a bona fide purchaser. The  
22 *Limbwood* Court stated that:

23 When a sale is void, it is ‘ineffectual.’ *Deep v. Rose*, 364 S.E.2d 228, 232 (Va.  
24 1988). No title, legal or equitable, passes to the purchaser. *Id.*; *see, e.g., Gilroy v.*  
25 *Ryberg*, 667 N.W.2d 544, 554 (Neb. 2003) (stating ‘**when a sale is void, ‘no title,  
26 legal or equitable, passes to the sale purchaser or subsequent grantee’ even if the  
27 property is bought by a bona fide purchaser** (quoting 1 Grant S. Nelson & Dale A.  
28 Whitman, Real Estate Finance Law § 7.20 (3d ed. 1993) & citing 12 Thompson on  
Real Property, *supra*, § 101.04(c)(2)(ii) at 403 (David A. Thomas ed.  
1994). Consequently, no title passed to the plaintiff via the HOA’s foreclosure  
sale.

---

<sup>3</sup> Citation to the 11 cases referenced in the 1 Grant S. Nelson treatise in support of this statement are not listed. The Grant S. Nelson treatise has been extensively cited by the Nevada Supreme Court, including in the *Shadow Wood, Stone Hollow* and *Ferrell Street Trust* decisions and it provides a clear statement of the distinction between void and voidable title.

1 7912 *Limbwood*, at 6-7 (emphasis added). *Accord Gibson v. Westoby*, 115 Cal. App.2d 273, 277-78  
2 (1953); (citing *Bryce v. O'Brien*, 5 Cal.2d 615, 616, 55 P.2d 488 (1950)) (“A void conveyance  
3 passes no title and cannot be made the foundation of good title even under the equitable doctrine of  
4 bona fide purchase”); *Lucero v. Bank of America Home Loans*, 2:11-cv-1326-RCJ-RJJ (D. Nev.  
5 2012) (Plaintiff properly stated a claim to set aside trustee’s sale and have it declared void based  
6 upon defect in the foreclosure process).

7 Accordingly, the distinction between a sale being *void* or *voidable* is that if a sale defect  
8 renders the sale void, no title passes to any subsequent purchaser, not even a bona fide purchaser,  
9 whereas if the defect is merely *voidable* it is subject to a bona fide purchaser defense.

10 **2. The Bona Fide Purchaser Doctrine Cannot Change the HOA’s Sub-Priority**  
11 **Foreclosure into a Super-Priority Sale**

12 The Nevada Supreme Court previously held that the bona fide purchaser doctrine is  
13 irrelevant in cases where, like here, the senior mortgagee tendered the super-priority amount before  
14 the foreclosure sale. *Stone Hollow II*, 382 P.3d at 911. While *Stone Hollow II* was vacated on  
15 separate grounds by the *en banc* Nevada Supreme Court, the Court has not retreated from its holding  
16 that a valid super-priority tender extinguishes an association’s super-priority lien, and that whether  
17 the HOA-sale purchaser is a bona fide purchaser is irrelevant in super-priority tender cases.  
18 Furthermore, the Nevada Supreme Court recently held that “[a] valid tender of a mortgage lien  
19 invalidates a foreclosure sale on that lien, because the sale purports to extinguish the tenderer’s  
20 interest in the property.” *See Bank of America, N.A. vs. Ferrell Street Trust*, No. 70299 (Nev. Apr.  
21 27, 2018). As BAC made a valid tender in the amount of \$207.00 that was wrongfully rejected by  
22 the HOA Trustee even though it satisfied the Shadow Mountain’s superpriority lien, the HOA  
23 foreclosure sale is void as a matter of law, even if SFR is a bona fide purchaser. *Ferrell Street Trust*  
24 makes clear the bona fide purchaser doctrine does not protect SFR from the legal effect of BAC’s  
25 tender or Shadow Mountain HOA’s decision to foreclose on its sub-priority lien here.

26 **3. SFR Bears The Burden Of Proving It Is A Bona Fide Purchaser**

27 Even if the bona fide purchaser doctrine were relevant in this case, SFR still would  
28 bear the burden of proving it is a bona fide purchaser. Under Nevada law, the bona fide purchaser  
status is an affirmative defense. *Bailey v. Butner*, 64 Nev. 1, 4, 176 P.2d 226, 229 (1947) (the right

1 to protection as a bona fide purchaser is ordinarily regarded as an affirmative defense). The party  
2 asserting an affirmative defense always bears the burden of proving each element of that defense.  
3 *See Nev. Ass'n Servs., Inc. v. Eighth Judicial Dist. Court*, 130 Nev. Adv. Rep. 94, 338 P.3d 1250,  
4 1254 (2014) (noting that the party asserting an **affirmative defense** bears the **burden** of proving  
5 each element of that defense); *Schwartz v. Schwartz*, 95 Nev. 202, 206 n.2, 591 P.2d 1137, 1140 n.2  
6 (1979) (A party who asserts an **affirmative defense** has the **burden** to prove each element of the  
7 defense).

8 **4. SFR Is Not A Bona Fide Purchaser**

9 In *Huntington v. MILA, Inc.*, 119 Nev. 355, 357, 75 P.3d 354, 356 (2003), the  
10 Nevada Supreme Court stated that:

11 *NRS 111.325*, Nevada's statutory recording act, provides:

12 Every conveyance of real property within this state hereafter made,  
13 which shall not be recorded as provided in this chapter, shall be void  
14 as against any subsequent purchaser, in good faith and for a valuable  
15 consideration, of the same real property, or any portion thereof, where  
16 his own conveyance shall be first duly recorded.

17 **A subsequent purchaser with notice, actual or constructive, of an interest in  
18 property superior to that which he is purchasing is not a purchaser in good faith,  
19 and is not entitled to the protection of the recording act.**

20 A duty of inquiry arises

21 “when the circumstances are such that a purchaser is in possession of  
22 facts which would lead a reasonable man in his position to make an  
23 investigation that would advise him of the existence of prior  
24 unrecorded rights. He is said to have constructive notice of their  
25 existence whether he does or does not make the investigation. The  
26 authorities are unanimous in holding that he has notice of whatever the  
27 search would disclose.” (emphasis added and citations omitted).

28 119 Nev. at 357, 75 P.3d at 356.

Thus, under the recording statute, (NRS 111.325), every prior recorded document creates a  
superior interest to a subsequent purchaser. It is undisputable that the Deed of Trust was recorded  
prior to the Plaintiff purchasing at the HOA sale, and accordingly, unless the HOA Sale  
extinguished the Deed of Trust, the Plaintiff took its title subject to the prior recorded Deed of Trust  
and cannot be a “purchaser in good faith” because the Deed of Trust was “superior” as being

1 recorded first in time. SFR's bona fide purchaser status as against the holder of the Deed of Trust is  
2 thus dependent upon the HOA Sale having been properly conducted, and the Plaintiff having  
3 conducted a due diligence investigation without discovering (i) that BAC Home Loans Servicing,  
4 LP (the holder of the Deed of Trust) was maintaining its lien would still be valid after the HOA  
5 Sale, (ii) that properties being purchased at an HOA Sale in 2014 were always subjected to  
6 litigation over the validity of the pre-existing deed of trust, and (iii) the small purchase price  
7 compared to the fair market value of the Property was evidence the lender was still claiming a valid  
8 lien against the Property.

9 Under Nevada law, "it was [Plaintiff's] burden to show that it made a "due investigation  
10 without discovering the prior right or title [Plaintiff] was bound to investigate." *Berge v.*  
11 *Fredericks*, 95 Nev. 183, 190, 591 P.2d 246, 249 (1979). In other words, it was [Plaintiff's]  
12 obligation to show that it made a due investigation and that the investigation did not reveal the  
13 existence of the unrecorded [interest]." See *Telegraph Road Trust v. Bank of America*, Case No.  
14 67787, *unpub. order* (Nev. Sept. 16, 2016). *Accord Freedom Mortgage Corp.v. Trovare*  
15 *Homeowners Association*, 2:11-cv-01403-MMD-GWF (2014) (citing *Berge v. Fredericks*, 95 Nev.  
16 183, 188, 591 P.2d 246, 248 (1979)). The point made in *Freedom Mortgage* and reaffirmed by the  
17 Nevada Supreme Court in *Telegraph Road Trust*, is that a putative bona fide purchaser must  
18 conduct a due investigation and is charged with notice of unrecorded information he or she would  
19 learn through that investigation. This is referred to by the Nevada Supreme Court as a *duty of*  
20 *inquiry*.

21 [The purchaser] would not qualify as a bona fide purchaser without notice if, prior to  
22 the payment of consideration and the transfer of legal title, she was under a *duty of inquiry*.  
23 Such duty arises when the circumstances are such that a purchaser is in possession of facts  
24 which would lead a reasonable man in his position to make an investigation that would advise  
25 him of the existence of prior unrecorded rights. He is said to have constructive notice of their  
26 existence whether he does or does not make the investigation. The authorities are unanimous  
27 in holding that he has notice of whatever the search would disclose. *Berge v. Fredericks*, 95  
28 Nev. 183, 188-189, 591 P.2d 246, 249 (1979) (emphasis added).

Any investor purchasing property at an HOA Sale in 2014, especially SFR, was well aware of the circumstances surrounding such sales and was aware that lenders were contending their liens survived any HOA Sale (which was further evidenced by the ridiculously low price properties for which properties were being sold), and taking steps to tender the super-priority lien amount. These circumstances required any putative bona fide purchaser to conduct a “due investigation” before the purchase or lose the possibility of bona fide purchaser status. Any “due investigation” in this case would have disclosed (i) BAC’s unconditional offer to pay the full super-priority lien amount. In its responses to Nationstar’s Interrogatories, SFR responded as follows concerning whether it conducted a due investigation prior to the sale:

“After reviewing its file with due diligence, with the exception of the email regarding properties scheduled for sale on a specific date, SFR does not recall having any pre-sale communications with any entity, including but not limited to, the HOA, the HOA Trustee, or the Bank—including the Bank’s predecessor(s) in interest—regarding the Property, the HOA Foreclosure Sale, or attempts by any entity to pay the HOA lien, if any such attempts actually occurred.”

See copy of Answer to Interrogatory No. 16 of SFR’s Responses to Nationstar’s First Set of Interrogatories attached hereto as **Exhibit “W”**.

Consequently, SFR is not a bona fide purchaser, and thus cannot attempt to shield itself from the effect of BAC’s super-priority-plus tender, the HOA’s decision to foreclose on only its sub-priority lien, or the invalidity of the sale based on its commercial unreasonableness. Accordingly, to the extent Plaintiff has any interest in the Property, that interest is subject to the Deed of Trust.

This Court should grant summary judgment in Nationstar’s favor.

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**VI.**

**CONCLUSION**

WHEREFORE, for the foregoing reasons, Nationstar Mortgage, LLC respectfully requests that this Court grant the instant Motion for Summary Judgment and enter a declaration that Shadow Mountain Ranch Community Association's foreclosure sale held on January 8, 2014 is void as a matter of law, or in the alternative, Third Party Counterclaimant/Cross-claimant SFR Investments Pool 1, LLC's interest, if any, in the Property, is subject to the Deed of Trust.

Dated this 29<sup>th</sup> day of June, 2018.

**GERRARD COX LARSEN**

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*Attorneys for Defendant / Counter-Defendant*

*Nationstar Mortgage, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of GERRARD COX LARSEN, and that on the 29<sup>th</sup> day of June, 2018, I served a copy of the **CROSS-DEFENDANT NATIONSTAR MORTGAGE, LLC'S MOTION FOR SUMMARY JUDGMENT**, by e-serving a copy on all parties *listed in the Master Service List pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.*

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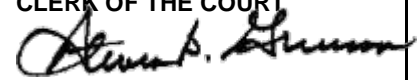
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Fredrick J. Biedermann, an employee of  
GERRARD COX LARSEN





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*Attorneys for Defendant Nationstar Mortgage, LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**ALESSI & KOENIG, LLC,**

Plaintiff,

v.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL, AS  
TRUSTEE FOR THE JBWNO REVOCABLE  
LIVING TRUST, a trust; U.S. BANK, N.A., a  
national banking association; NATIONSTAR  
MORTGAGE, LLC, a foreign limited liability  
company; REPUBLIC SILVER STATE  
DISPOSAL, INC., DBA REPUBLIC SERVICES, a  
domestic government entity; DOE INDIVIDUALS I  
through X, inclusive; and ROE CORPORATIONS  
XI through XX inclusive.

Defendants.

**U.S. BANK, N.A.,**

Counterclaimant,

vs.

**ALESSI & KOENIG, LLC, a Nevada limited  
liability company,**

Counter-Defendant.

Case No.: A-14-705563-C  
Dept. No.: XVII

**APPENDIX OF EXHIBITS FOR  
NATIONSTAR MORTGAGE, LLC'S  
MOTION FOR SUMMARY  
JUDGMENT PURSUANT TO E.D.C.R.  
2.27**

U.S. BANK, N.A.,  
  
Third Party Plaintiff,  
  
v.  
  
SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company; INDIVIDUAL DOES I  
through X, inclusive; and ROE CORPORATIONS  
I through X, inclusive.  
  
Third Party Defendants.

**APPENDIX OF EXHIBITS FOR NATIONSTAR MORTGAGE, LLC'S  
MOTION FOR SUMMARY JUDGMENT PURSUANT TO E.D.C.R. 2.27**

EXHIBIT NO.	DESCRIPTION	PAGE NOS.
<b>A</b>	Grant Bargain Sale Deed - Gotera	001-003
<b>B</b>	Deed of Trust, recorded November 21, 2005	004-030
<b>C</b>	Notice of Delinquent Assessment Lien, May 7, 2008	031-032
<b>D</b>	Notice of Default and Election To Sell -	033-034
<b>E</b>	Affidavit of Douglas Miles	035-040
<b>E-1</b>	Miles Bauer Letter dated September 2, 2010	042-049
<b>E-2</b>	Alessi & Koenig, LLC Facsimile Cover Letter w/ Ledger	050-056
<b>E-3</b>	Miles Bauer Letter w/ Tendered Check dated September 30, 2010	057-060
<b>E-4</b>	Alessi & Koenig Rejection Letter	061-062
<b>E-5</b>	Screenshot of Miles Bauer's Case Management Notes	063-064
<b>F</b>	Release of Notice of Delinquent Assessment Lien	065-066
<b>G</b>	Shadow Mountain Ranch HOA's Account Ledger - 12/31/08 to 06/14/2011	067-069
<b>H</b>	Notice of Trustee's Sale	070-071
<b>I</b>	Grant Deed to JBNWO Revocable Living Trust	072-076
<b>J</b>	Grant Deed to Stacy Moore	077-081
<b>K</b>	Assignment of Deed of Trust	082-084
<b>L</b>	(Second) Notice of Delinquent Assessment Lien September 11, 2012	085-086

<b>M</b>	Shadow Mountain Ranch HOA's Account Ledger - 06/01/2011 to 06/01/2013	087-089
<b>N</b>	Notice of Default and Election to Sell - July 5, 2013	090-091
<b>O</b>	Assignment of Deed of Trust - October 1, 2013	092-093
<b>P</b>	(Second) Notice of Trustee's Sale - December 10, 2013	094-095
<b>Q</b>	Trustee's Deed Upon Sale	096-098
<b>R</b>	Declaration of R. Scott Dugan, SRA	099-102
<b>R-1</b>	Appraisal of Real Property	103-128
<b>S</b>	Nevada Real Estate Division Advisory Opinion	129-149
<b>T</b>	Nevada Supreme Court's Order in <i>Bank of America v. Ferrell Street Trust</i> , No. 70299	150-155
<b>U</b>	Appellant's Appendix Volume II in <i>Bank of America v. Ferrell Street Trust</i> , No. 70299	156-174
<b>V</b>	Summary Judgment Order in <i>U.S. Bank v. Emerald Ridge Landscape Maintenance Association</i> , Case No. 2:15-cv-00117-MMD-PAL	175-184
<b>W</b>	SFR Investments Pool 1, LLC's Objections and Answers to Nationstar Mortgage, LLC's First Set of Interrogatories to SFR Investments Pool 1, LLC's	185-199
<b>X</b>	Deposition Transcription of David Alessi NRCP 30(b)(6) witness for Alessi & Koenig, LLC	200-235

DATED this 29<sup>th</sup> day of June, 2018.

**GERRARD COX LARSEN**

/s/ Fredrick J. Biedermann, Esq.  
Douglas D. Gerrard, Esq.  
Nevada Bar No. 4613  
Fredrick J. Biedermann, Esq.  
Nevada Bar No. 11918  
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Henderson, Nevada 89074  
Attorneys for Defendant Nationstar  
Mortgage, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of GERRARD COX LARSEN, and that on the 29<sup>th</sup> day of June, 2018, I served a copy of the **APPENDIX OF EXHIBITS FOR NATIONSTAR MORTGAGE, LLC'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO E.D.C.R. 2.27**, by e-serving a copy on all parties listed in the Master Service List pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

Melanie D. Morgan, Esq.  
Donna Wittig, Esq.  
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*Attorneys for Defendant, Nationstar Mortgage, LLC and Defendant/ Counterclaimant/ Third-Party Defendant U.S. Bank, National Association, as Trustee for the Certificate Holders of the LXS 2006-4N Trust Fund, erroneously plead as U.S. Bank, N.A.*

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*Attorneys for SFR Investment Pool 1, LLC*

/s/ Fredrick J. Biedermann, Esq.  
Fredrick J. Biedermann, an employee of  
GERRARD COX LARSEN

# EXHIBIT “A”

20051121-0005566

**RECORDING REQUESTED BY:**

Fidelity National Title Agency of Nevada  
Escrow No. 05-191253-TH  
Title Order No. 00191253

Fee: \$15.00 RPTT: \$2,728.50  
N/C Fee: \$0.00

11/21/2005 14:38:39  
T20050211957

Requestor:  
FIDELITY NATIONAL TITLE

Frances Deane JSB  
Clark County Recorder Pgs: 2

**When Recorded Mail Document  
and Tax Statement To:**

Ms. Magnolia Gotera

1090 Twin Creeks Drive  
Salinas, CA. 93905

RPTT: 2,728.50  
APN: 163-30-312-007

**GRANT, BARGAIN, SALE DEED**

THIS INDENTURE WITNESSETH: That **Wei Hong Yang, An Unmarried Woman**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do(es) hereby Grant,  
Bargain, Sell and

Convey to **Magnolia Gotera, A Single Woman**

all that real property situated in the Clark County, State of Nevada, bounded and described as follows:

Lot 7 in Block 1 of Final Map of Section 30 R2-60/70 No. 5, as shown by map thereof on file in Book  
102 of Plats, Page 28 in the Office of the County Recorder of Clark County, Nevada.

SUBJECT TO: 1. Taxes for the fiscal year 2005-06  
2. Covenants, Conditions, Reservations, Rights, Rights of Way and Easements  
now of record.

Together with all and singular tenements, hereditaments and appurtenances thereunto belonging or  
in anywise appertaining.

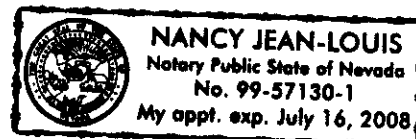
DATED: November 14, 2005

STATE OF NEVADA  
COUNTY OF Clark

This instrument was acknowledged before me  
on November 14, 2005  
by Wei Hong Yang

Signature Nancy Jean-Louis Notary Public  
My Commission Expires: 7/16/08

Wei Hong Yang  
Wei Hong Yang



# STATE OF NEVADA DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a) 163-30-312-007  
b) \_\_\_\_\_  
c) \_\_\_\_\_  
d) \_\_\_\_\_

2. Type of Property:

- a) ☐ Vacant Land      b) ☒ Single Fam. Res. <sup>27</sup>  
c) ☐ Condo/Twnhse      d) ☐ 2 - 4 Plex  
e) ☐ Apt. Bldg.      f) ☐ Comm'l/Ind'l  
g) ☐ Agricultural      h) ☐ Mobile Home  
☐ Other \_\_\_\_\_

FOR RECORDER'S OPTIONAL USE ONLY

Document/Instrument #: \_\_\_\_\_

Book: \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

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

3. Total Value/Sales Price of the Property \$ 535,000.00  
Deed in Lieu of Foreclosure Only (Value of Property) ( \_\_\_\_\_ )  
Transfer Tax Value: \$ 535,000.00  
Real Property Transfer Tax Due \$ 2,728.50

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section 0  
b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: 100%

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

Signature Wei Hong Yang Capacity Grantor

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

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

Print Name: Wei Hong Yang  
Address: 7201 Mission Hill Dr.  
City, State, Zip: Las Vegas NV 89103

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

Print Name: Magnolia Gotera  
Address: 1090 Twin Creeks Dr.  
City, State, Zip: Salinas, CA 93905

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

Print Name: Fidelity National Title Agency of Nevada Escrow #: 05-191253-TH  
Address: 5597 W. Spring Mountain Road  
City, State and Zip: Las Vegas, NV 89102

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

# EXHIBIT “B”



  
20051121-0005567

Assessor's Parcel Number:  
16330312007  
After Recording Return To:  
COUNTRYWIDE HOME LOANS, INC.

Fee: \$39.00  
N/C Fee: \$0.00

11/21/2005 14:38:39  
T20050211957

Requestor:  
FIDELITY NATIONAL TITLE

Frances Deane J5B  
Clark County Recorder Pgs: 26

MS SV-79 DOCUMENT PROCESSING  
P.O.Box 10423  
Van Nuys, CA 91410-0423  
Prepared By:  
APRIL MESA  
Recording Requested By:  
J. KEPHART

COUNTRYWIDE HOME LOANS, INC.

650 WHITE DRIVE, STE 280  
LAS VEGAS  
NV 89119

[Space Above This Line For Recording Data]

0519191253 00012143406811005  
[Escrow/Closing #] [Doc ID #]

## DEED OF TRUST

MIN 1000157-0006127350-0

### DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated NOVEMBER 10, 2005 , together with all Riders to this document.

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

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VMP Mortgage Solutions - (800)521-7291

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(B) "Borrower" is  
MAGNOLIA GOTERA, A SINGLE WOMAN

Borrower is the trustor under this Security Instrument.  
(C) "Lender" is  
COUNTRYWIDE HOME LOANS, INC.

Lender is a  
CORPORATION

organized and existing under the laws of NEW YORK  
P.O. Box 10219  
Van Nuys, CA 91410-0219  
(D) "Trustee" is  
CTC REAL ESTATE SERVICES

Lender's address is

400 COUNTRYWIDE WAY, MSN SV-88, SIMI VALLEY, CA 93065 , ,

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

(F) "Note" means the promissory note signed by Borrower and dated NOVEMBER 10, 2005  
The Note states that Borrower owes Lender  
FIVE HUNDRED EIGHT THOUSAND TWO HUNDRED FIFTY and 00/100

Dollars (U.S. \$ 508,250.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than DECEMBER 01, 2035 .

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

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

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

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

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

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

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

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

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

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

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

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

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

#### TRANSFER OF RIGHTS IN THE PROPERTY

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

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irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property  
located in the COUNTY of

[Type of Recording Jurisdiction]

CLARK

[Name of Recording Jurisdiction]

LOT 7 IN BLOCK 1 OF FINAL MAP OF SECTION 30 R2-60/70 NO. 5,  
AS SHOWN BY MAP THEREOF ON FILE IN BOOK 102 OF PLATS, PAGE 28  
IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.  
ASSESSOR'S PARCEL NO: 163-30-312-007

which currently has the address of

5327 MARSH BUTTE STREET, LAS VEGAS

[Street/City]

Nevada 89148-4669 ("Property Address"):

[Zip Code]

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

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is

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

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

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

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

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

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

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive

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from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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

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

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

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

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

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

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees,

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property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

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Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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

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

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

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

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

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

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

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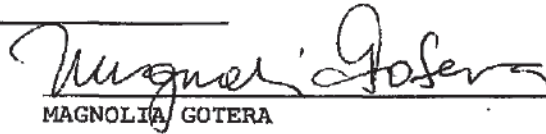
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Initials *[Signature]*  
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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

  
MAGNOLIA GOTERA

(Seal)

-Borrower

(Seal)

-Borrower

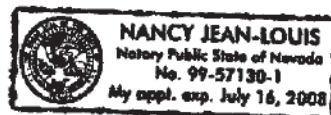
(Seal)

-Borrower

(Seal)

-Borrower

DOC ID #: 00012143406811005

STATE OF NEVADA  
COUNTY OF*Clark*This instrument was acknowledged before me on November 15, 2005 by*Magnolia Gotera**Nancy Jean-Louis*Mail Tax Statements To:  
TAX DEPARTMENT SV3-24450 American Street  
Simi Valley CA, 93065

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**ADJUSTABLE RATE RIDER**  
(PayOption MTA Twelve Month Average Index - Payment Caps)

0519191253                      00012143406811005  
[Escrow/Closing #]                      [Doc ID #]

THIS ADJUSTABLE RATE RIDER is made this Tenth day of  
NOVEMBER, 2005, 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 ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to  
COUNTRYWIDE HOME LOANS, INC.

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

5327 MARSH BUTTE STREET  
LAS VEGAS, NV 89148-4669  
[Property Address]

THE NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE  
MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY  
PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD  
BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE  
MAXIMUM LIMIT STATED IN THE NOTE.

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

**A. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

The Note provides for changes in the interest rate and the monthly payments, as follows:

• PayOption MTA ARM Rider  
1E310-XX (12/04)(d)

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**2. INTEREST****(A) Interest Rate**

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 3.000 %. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of the Note.

**(B) Interest Rate Change Dates**

The interest rate I will pay may change on the first \_\_\_\_\_ day of JANUARY, 2006, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

**(C) Index**

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

**(D) Calculation of Interest Rate Changes**

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding THREE & 75/1000 percentage point(s) ( 3.075 %) ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.950 %. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

**3. PAYMENTS****(A) Time and Place of Payments**

I will make a payment every month.

I will make my monthly payments on the FIRST \_\_\_\_\_ day of each month beginning on January, 2006. I will make these payments every month until I have paid all the Principal and interest and any other charges described below that I may owe under the Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on DECEMBER 01, 2035, I still owe amounts under the Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

\* PayOption MTA ARM Rider  
1E310-XX (12/04)

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I will make my monthly payments at  
P.O. Box 10219, Van Nuys, CA 91410-0219

or at a different place if required by the Note Holder.

**(B) Amount of My Initial Monthly Payments**

Each of my initial monthly payments until the first Payment Change Date will be in the amount of  
U.S. \$ 2,142.80 , unless adjusted under Section 3 (F).

**(C) Payment Change Dates**

My monthly payment may change as required by Section 3(D) below beginning on the  
first day of JANUARY, 2007 , and on that day every 12th  
month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also  
will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment.  
The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment  
which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If  
the Minimum Payment is not sufficient to cover the amount of the interest due then negative  
amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment  
Change Date or as provided in Section 3(F) or 3(G) below.

**(D) Calculation of Monthly Payment Changes**

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of  
the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe  
at the Payment Change Date in full on the maturity date in substantially equal payments at the interest  
rate effective during the month preceding the Payment Change Date. The result of this calculation is  
called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment  
effective on a Payment Change Date, will not increase by more than 7.5% of my prior monthly  
payment. This 7.5% limitation is called the "Payment Cap." This Payment Cap applies only to the  
Principal and interest payment and does not apply to any escrow payments Lender may require under  
the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my  
Minimum Payment due the month preceding the Payment Change Date and multiplying it by the  
number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or  
3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the  
Limited Payment and the Full Payment. I also have the option to pay the Full Payment for my monthly  
payment.

• PayOption MTA ARM Rider  
1E310-XX (12/04)

Page 3 of 6

DOC ID #: 00012143406811005

**(E) Additions to My Unpaid Principal**

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3(D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3(A).

**(F) Limit on My Unpaid Principal; Increased Monthly Payment**

My unpaid Principal can never exceed the Maximum Limit equal to ONE HUNDRED FIFTEEN percent ( 115 %) of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the 7.5% Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

**(G) Required Full Payment**

On the fifth Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

**(H) Payment Options**

After the first Interest Rate Change Date, Lender may provide me with up to three (3) additional payment options that are greater than the Minimum Payment, which are called "Payment Options." I may be given the following Payment Options:

(i) **Interest Only Payment:** the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) **Fully Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) at the Maturity Date in substantially equal payments.

(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

\* PayOption MTA ARM Rider  
1E310-XX (12/04)

Page 4 of 6



DOC ID #: 00012143406811005

These Payment Options are only applicable if they are greater than the Minimum Payment.

**B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**

Section 18 of the Security Instrument entitled "Transfer of the Property or a Beneficial Interest in Borrower" is amended to read as follows:

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

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by

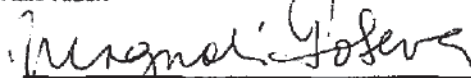
\*PayOption MTA ARM Rider  
1E310-XX (12/04)

Page 5 of 6

DOC ID #: 00012143406811005

this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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



MAGNOLIA GOTERA

-Borrower

-Borrower

-Borrower

-Borrower

\* PayOption MTA ARM Rider  
1E310-XX (12/04)

Page 6 of 6

**PLANNED UNIT DEVELOPMENT RIDER**

After Recording Return To:  
COUNTRYWIDE HOME LOANS, INC.  
MS SV-79 DOCUMENT PROCESSING  
P.O.Box 10423  
Van Nuys, CA 91410-0423

PARCEL ID #:  
16330312007

Prepared By:  
APRIL MESA

0519191253  
[Escrow/Closing #]

00012143406811005  
[Doc ID #]

THIS PLANNED UNIT DEVELOPMENT RIDER is made this TENTH day of  
NOVEMBER, 2005, 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

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

**VMP-7R (0411)**

**CHL (11/04)(d)**

Page 1 of 4

Initials *AM*

VMP Mortgage Solutions, Inc. (800)521-7291

Form 3150 1/01



DOC ID #: 00012143406811005

undersigned (the "Borrower") to secure Borrower's Note to  
COUNTRYWIDE HOME LOANS, INC.

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

5327 MARSH BUTTE STREET  
LAS VEGAS, NV 89148-4669  
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with  
other such parcels and certain common areas and facilities, as described in  
THE COVENANTS, CONDITIONS, AND RESTRICTIONS FILED OF RECORD  
THAT AFFECT THE PROPERTY

(the "Declaration"). The Property is a part of a planned unit development known as  
SPRING VALLEY SECTION 30

[Name of Planned Unit Development]

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

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

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

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

Initials: 

 -7R (0411)

CHL (11/04)

Page 2 of 4

Form 3150 1/01



DOC ID #: 00012143406811005

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

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

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

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

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

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

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

Initials 

 7R (0411)

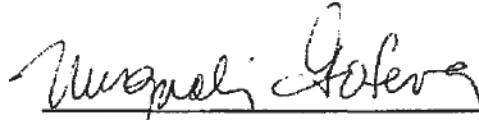
CHL (11/04)

Page 3 of 4

Form 3150 1/01

DOC ID #: 00012143406811005

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



MAGNOLIA GOTERA

(Seal)

- Borrower

(Seal)

- Borrower

(Seal)

- Borrower

(Seal)

- Borrower

# EXHIBIT “C”

20080507-0001731

Fee: \$14.00  
N/C Fee: \$0.00  
05/07/2008 12:02:42  
T20080081618  
Requestor:  
NORTH AMERICAN TITLE COMPANY  
Debbie Conway JJF  
Clark County Recorder Pgs: 1

When recorded return to:

ALESSI TRUSTEE CORPORATION  
9500 W. Flamingo Rd., Suite 100  
Las Vegas, Nevada 89147  
Phone: (702) 222-4033

www.alessitrustee.com

UN

A.P.N. 163-30-312-007

Trustee Sale # SMR-5327-N

## NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) recorded on **Pending**, as Instrument No: **pending**, of the official records of **Clark County, Nevada, Shadow Mountain Ranch HOA** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **5327 Marsh Butte St. , Las Vegas, NV 89148** and more particularly legally described as: **Lot 7 Block 1 Book 102 Page 28** in the County of **Clark**.


The owner(s) of record as reflected on the public record as of today's date is (are): **Magnolia Gotera**

The mailing address(es) is: **1090 Twin Creeks Dr., Salinas, CA 93905**

The total amount due through today's date is: **\$957.00**. Of this total amount **\$570.00** represent Collection and/or Attorney fees and **\$50.00** represent collection costs, late fees, service charges and interest. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

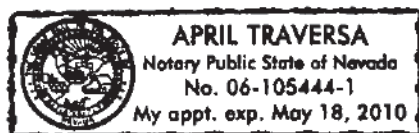
Date: **April 15, 2008**

By:

  
Aileen Ruiz - Trustee Sale Officer  
Alessi Trustee Corporation, on behalf of **Shadow Mountain Ranch**

SUBSCRIBED and SWORN before me **April 15, 2008**

(Seal)



(Signature)

  
NOTARY PUBLIC

# EXHIBIT “D”

Inst #: 201007010000190

Fees: \$14.00

N/C Fee: \$0.00

07/01/2010 08:33:21 AM

Receipt #: 409704

Requestor:

JUNES LEGAL SERVICES

Recorded By: DXI Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:

**THE ALESSI & KOENIG, LLC**  
**9500 West Flamingo Rd., Ste 100**  
**Las Vegas, Nevada 89147**  
**Phone: 702-222-4033**

A.P.N. 163-30-312-007

Trustee Sale No. SMR-5327-N

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN**

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!** You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is **\$3,140.00** as of **June 28, 2010** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Shadow Mountain Ranch**, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 100, Las Vegas, NV 89147.

THIS NOTICE pursuant to that certain Assessment Lien, recorded on **May 7, 2008** as document number **20080507-01731**, of Official Records in the County of **Clark**, State of Nevada. Owner(s): **Magnolia Gotera**, of **Lot 7 Block 1**, as per map recorded in **Book 102, Pages 28**, as shown on the Condominium Plan, Recorded on as document number **pending** as shown on the Subdivision map recorded in Maps of the County of **Clark**, State of Nevada. PROPERTY ADDRESS: **5327 Marsh Butte St., Las Vegas, NV 89148**. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. **REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.** NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated **May 7, 2008**, executed by **Shadow Mountain Ranch** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: **June 28, 2010**



Miro Jetic, Alessi & Koenig, LLC on behalf of **Shadow Mountain Ranch**

# EXHIBIT “E”

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**MILES, BERGSTROM & WINTERS LLP BORROWER LETTER AFFIDAVIT**

---

State of California    }  
                              }ss.  
Orange County         }

Affiant being first duly sworn, deposes and says:

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

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

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

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

Loan Number: 121434068

Borrower(s): Magnolia Gotera

Property Address: 5327 Marsh Butte Street, Las Vegas, NV 89148

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Page 1 of 2



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

6. Based on Miles Bauer's business records, attached as **Exhibit 1** is a copy of a September 2, 2010 letter from Rock K. Jung, Esq., an attorney with Miles Bauer, to Magnolia Carter.

FURTHER DECLARANT SAYETH NOT.

Date: 2/3/17



Declarant Douglas E. Miles

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

State of California

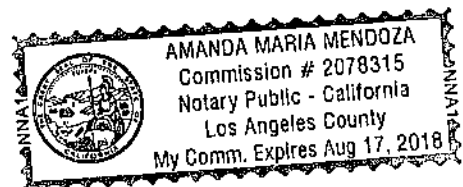
County of Orange

Subscribed and sworn to (or affirmed) before me on this 3<sup>rd</sup> day of February, 2017,

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

the person who appeared before me.

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



---

**MILES, BERGSTROM & WINTERS, LLP AFFIDAVIT**

---

State of California     }  
                                      }ss.  
Orange County         }

Affiant being first duly sworn, deposes and says:

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

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

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

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

Loan Number: 121434068

Borrower(s): Magnolia Gotera

Property Address: 5327 Marsh Butte Street, Las Vegas, NV 89148

{40660669\_1.doc}

Page 1 of 3

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

6. Based on Miles Bauer's business records, attached as **Exhibit 1** is a copy of a September 2, 2010 letter from Rock K. Jung, Esq., an attorney with Miles Bauer, to Shadow Mountain Ranch, care of The Alessi & Koenig, LLC.

7. Based on Miles Bauer's business records, attached as **Exhibit 2** is a copy of a Statement of Account from Alessi & Koenig dated September 13, 2010 and received by Miles Bauer in response to the letter identified above.

8. Based on Miles Bauer's business records, attached as **Exhibit 3** is a copy of a September 30, 2010 letter from Mr. Jung to Alessi & Koenig, LLC enclosing a check for \$207.00.

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9. Based on Miles Bauer's business records, attached as **Exhibit 4** is a copy of a September 8, 2010 letter from Alessi & Koenig, LLC indicating the \$207.00 would be rejected. A copy of a screenshot containing the relevant case management note confirming the check was rejected is attached as **Exhibit 5**.

FURTHER DECLARANT SAYETH NOT.

Date: 2/3/17



Declarant Douglas E. Miles

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

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this 3<sup>rd</sup> day of February, 2017,  
by Douglas E. Miles, proved to me on the basis of satisfactory evidence to be  
(Name of Signer)

the person who appeared before me.

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



# EXHIBIT 1

DOUGLAS E. MILES \*  
Also Admitted in Nevada and Illinois  
RICHARD J. BAUER, JR.\*  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
FRED TIMOTHY WINTERS\*  
KEENAN E. MCLENAHAN\*  
MARK T. DOMEYER\*  
Also Admitted in District of  
Columbia & Virginia  
TAMI S. CROSBY\*  
L. BRYANT JAQUEZ \*  
DANIEL L. CARTER \*  
GINA M. CORENA  
WAYNE A. RASH \*  
ROCK K. JUNG  
VY T. PHAM \*  
KRISTA J. NIELSON  
MARK S. BRAUN  
Also Admitted in Iowa & Missouri  
HADI R. SEYED-ALI \*  
ROSEMARY NGUYEN \*  
JORY C. GARABEDIAN  
THOMAS M. MORLAN  
Admitted in California  
KRISTIN S. WEBB \*  
BRIAN H. TRAN \*  
ANNA A. GHAMJAR \*



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

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

\* CALIFORNIA OFFICE  
1231 E. DYER ROAD  
SUITE 100  
SANTA ANA, CA 92705  
PHONE (714) 481-9100  
FACSIMILE (714) 481-9141

September 2, 2010

Magnolia Gotera  
5327 Marsh Butte Street  
Las Vegas, NV 89148

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 5327 Marsh Butte Street, Las Vegas, NV 89148*  
*MBBW File No. 10-H1641*

Ms. Gotera:

This letter is written in response to the attached Notice of Default your HOA caused to be issued and recorded as a result of you allegedly neglecting to timely pay your required HOA assessments on the above described real property. This firm represents the interests of MERS as nominee for BAC Home Loans Servicing, LP aka Countrywide Home Loans, Inc. (hereinafter "BAC") with regard to these issues. As you know, BAC is the beneficiary/servicer of the first deed of trust loan secured by the property.

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

The association has a lien on a unit for:

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

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

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

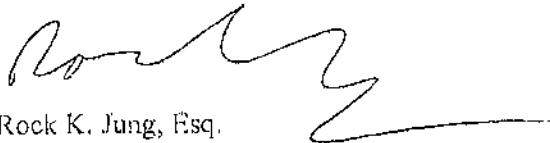
The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

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

Please be advised that, in the event you do not immediately bring your HOA account current by paying all sums past due, BAC *may* advance the sums necessary to protect *its lien interest* on the property. If BAC does in fact advance said sums, those sums may be added on to the balance you owe on the first position note and deed in trust you executed. BAC may do this per Nevada law and per the express terms of the note and deed of trust you executed. Further, BAC may add the attorney's fees and costs that are being incurred as a result of this matter to your loan. BAC may also do this per Nevada law and per the express terms of the note and deed of trust you executed. Please note that the HOA foreclosure sale may still occur despite any advancement of sums made by BAC in order to protect its lien interest on the property. Thus, we strongly advise that you contact your HOA and/or Alessi & Koenig, LLC immediately and make the necessary arrangements to bring your HOA account current. If you have already brought your HOA account current or are currently working with Alessi & Koenig, LLC to do so, then please disregard this letter.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Rock K. Jung, Esq.

7113 8257 1474 3965 2623

Inst #: 201007010000190

Fees: \$14.00

N/C Fee: \$0.00

07/01/2010 08:33:21 AM

Receipt #: 409704

Requestor:

JUNES LEGAL SERVICES

Recorded By: DXI Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

FORECLOSURE#6

JUL 14 2010

RECEIVED

When recorded mail to:

THE ALESSI & KOENIG, LLC  
9500 West Flamingo Rd., Ste 100  
Las Vegas, Nevada 89147  
Phone: 702-222-4033

A.P.N. 163-30-312-007

Trustee Sale No. SMR-5327-N

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN**

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!** You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is \$3,140.00 as of June 28, 2010 and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: Shadow Mountain Ranch, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 100, Las Vegas, NV 89147.

THIS NOTICE pursuant to that certain Assessment Lien, recorded on May 7, 2008 as document number 20080507-01731, of Official Records in the County of Clark, State of Nevada. Owner(s): Magnolia Gotera, of Lot 7 Block 1, as per map recorded in Book 102, Pages 28, as shown on the Condominium Plan, Recorded on as document number pending as shown on the Subdivision map recorded in Maps of the County of Clark, State of Nevada. PROPERTY ADDRESS: 5327 Marsh Butte St., Las Vegas, NV 89148. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated May 7, 2008, executed by Shadow Mountain Ranch to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.  
Dated: June 28, 2010

Miro Jetric, Alessi & Koenig, LLC on behalf of Shadow Mountain Ranch



107#6601



Alessi & Koenig, LLC  
PO Box 9075  
Temecula, CA 92589-9075



PRESORT  
First-Class Mail  
U.S. Postage and  
Fees Paid  
WSO

7113 8257 1474 3965 2623

Return Receipt (Electronic)

*Send Payments to:*  
Alessi & Koenig, LLC  
9500 W. Flamingo Rd.  
Suite 100  
Las Vegas, NV 89147

*Send Correspondence to:*  
Alessi & Koenig, LLC  
9500 W. Flamingo Rd.  
Suite 100  
Las Vegas, NV 89147

20100707-96  
NOD

Countrywide Home Loans, Inc.  
Min 1000157-0006127350-0  
PO Box 515503  
Los Angeles, CA 90051-6803



1103-v5

MILES, BAUER,  
BERGSTROM & WINTERS, LLP

ATTORNEYS AT LAW

2203 Paseo Verde Parkway, Suite 250  
Henderson, Nevada 89052



Magnolia Gatera  
5327 Marsh Butte Street  
Las Vegas, NV 89148

Re: Property Address: 5327 Marsh Butte Street, Las V.  
MRRW File No 10-H1641

NIXIE

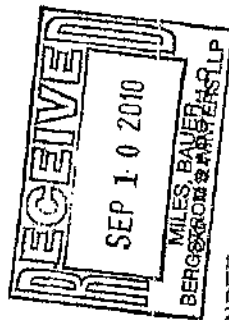
891 DC 1

RETURN TO SENDER  
ATTEMPTED - NOT KNOWN  
UNABLE TO FORWARD

BC: 890520270450

\*0294-03257-08-39

8905202704



Cotery

# EXHIBIT 1

DOUGLAS E. MILES \*  
Also Admitted in Nevada and Illinois  
RICHARD J. BAUER, JR. \*  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
FRED TIMOTHY WINTERS \*  
KEENAN E. MCLENAHAN \*  
MARK T. DOMEYER \*  
Also Admitted in District of  
Columbia & Virginia  
TAMI S. CROSBY \*  
L. BRYANT JAQUEZ \*  
DANIEL L. CARTER \*  
GINA M. CORENA  
WAYNE A. RASH \*  
ROCK K. JUNG  
VY T. PHAM \*  
KRISTA J. NIELSON  
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ROSEMARY NGUYEN \*  
JORY C. GARABEDIAN  
THOMAS M. MORLAN  
Admitted in California  
KRISTIN S. WEBB \*  
BRIAN H. TRAN \*  
ANNA A. GHAJAR \*



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

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

\* CALIFORNIA OFFICE  
1231 E. DYER ROAD  
SUITE 100  
SANTA ANA, CA 92705  
PHONE (714) 481-9100  
FACSIMILE (714) 481-9141

September 2, 2010

Shadow Mountain Ranch  
c/o THE ALESSI & KOENIG, LLC  
9500 West Flamingo Rd., Ste 100  
Las Vegas, NV 89147

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 5327 Marsh Butte Street, Las Vegas, NV 89148*  
*MBBW File No. 10-H1641*

Dear Sirs:

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

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

The association has a lien on a unit for:

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

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

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

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

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

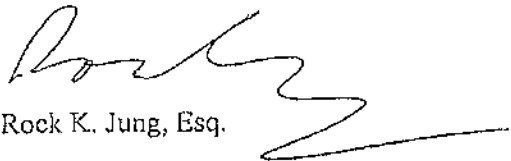
Based on Section 2(b), a portion of your HOA lien is arguably senior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated June 28, 2010. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BAC should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

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

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

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Rock K. Jung, Esq.

# EXHIBIT 2

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

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



*A Multi-Jurisdictional Law Firm*

9500 W. Flamingo Road, Suite 100  
 Las Vegas, Nevada 89147  
 Telephone: 702-222-4033  
 Facsimile: 702-222-4043  
 www.alessikoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA  
 PHONE: 818-735-9600

RENO NV  
 PHONE: 775-626-2323  
 &  
 DIAMOND BAR CA  
 PHONE: 909-861-8300

**FACSIMILE COVER LETTER**

To:	Alex Bhame	Re:	5327 Marsh Butte St./HO #6601
From:	Aileen Ruiz	Date:	Monday, September 13, 2010
Fax No.:		Pages:	1, including cover
		HO #:	6601

Dear Alex Bhame:

This cover will serve as an amended demand on behalf of Shadow Mountain Ranch for the above referenced escrow; property located at 5327 Marsh Butte St., Las Vegas, NV. The total amount due through October, 15, 2010 is \$3,554.00. The breakdown of fees, interest and costs is as follows:

Notice of Intent To Lien -- Nevada	\$95.00
Notice of Delinquent Assessment Lien -- Nevada	\$345.00
Notice of Default	\$395.00
9/13/2010 Demand Fee	\$100.00
<b>Total</b>	<b>\$935.00</b>
1. Attorney and/or Trustees fees:	\$935.00
2. Costs (Notary, Recording, Copies, Mailings, Publication and Posting)	\$550.00
3. Assessments Through October 15, 2010	\$1,284.00
4. Late Fees Through September 13, 2010	\$10.00
5. Fines Through September 13, 2010	\$0.00
6. Interest Through September 13, 2010	\$0.00
7. RPIR-GI Report	\$85.00
8. Title Research (10-Day Mailings per NRS 116.31163)	\$240.00
9. Management Company Audit Fee	\$200.00
10. Management Document Processing & Transfer Fee	\$250.00
11. Progress Payments:	\$0.00
<b>Sub-Total:</b>	<b>\$3,554.00</b>
<b>Less Payments Received:</b>	<b>\$0.00</b>
<b>Total Amount Due:</b>	<b>\$3,554.00</b>

Please have a check in the amount of \$3,554.00 made payable to the Alessi & Koenig, LLC and mailed to the below listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

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

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

Magnolia Gotera  
1090 Twin Creeks Dr  
Salinas, CA 93905

Property Address: 5327 Marsh Butte St.  
Account #: 28100

Code	Date	Amount	Balance	Check#	Memo
FN	8/24/2009	100.00	100.00		
FN	8/31/2009	100.00	200.00		
FN	9/15/2009	100.00	300.00		
FN	9/29/2009	100.00	400.00		
FN	9/30/2009	100.00	500.00		
FN	10/14/2009	100.00	600.00		
FN	10/14/2009	100.00	700.00		
FN	10/26/2009	100.00	800.00		
FN	11/5/2009	100.00	900.00		
FN	11/5/2009	100.00	1,000.00		
FN	12/3/2009	100.00	1,100.00		
FN	12/3/2009	100.00	1,200.00		
FN	12/3/2009	100.00	1,300.00		
FN	12/3/2009	100.00	1,400.00		
FN	12/3/2009	100.00	1,500.00		
FN	12/3/2009	100.00	1,600.00		
FN	12/17/2009	100.00	1,700.00		
FN	12/17/2009	100.00	1,800.00		
FN	1/8/2010	100.00	1,900.00		
FN	1/8/2010	100.00	2,000.00		
FN	1/27/2010	100.00	2,100.00		
FN	1/27/2010	100.00	2,200.00		
FN	2/5/2010	100.00	2,300.00		
FN	2/5/2010	100.00	2,400.00		
FN	2/18/2010	100.00	2,500.00		
FN	2/18/2010	100.00	2,600.00		

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149

Make check payable to: Shadow Mountain Ranch Homeowners Association

9/13/2010



Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

FN	3/11/2010	100.00	2,700.00
FN	3/11/2010	100.00	2,800.00
FN	3/11/2010	100.00	2,800.00
FN	3/11/2010	100.00	3,000.00
FN	3/11/2010	100.00	3,100.00
FN	3/18/2010	100.00	3,200.00
FN	3/24/2010	100.00	3,300.00
FN	4/6/2010	100.00	3,400.00
FN	4/6/2010	100.00	3,500.00
FN	4/26/2010	100.00	3,600.00
FN	4/26/2010	100.00	3,700.00
FN	4/26/2010	100.00	3,800.00
FN	4/26/2010	100.00	3,900.00
FN	5/6/2010	100.00	4,000.00
FN	5/6/2010	100.00	4,100.00
FN	5/19/2010	100.00	4,200.00
FN	5/19/2010	100.00	4,300.00
FN	5/19/2010	100.00	4,400.00
FN	5/19/2010	100.00	4,500.00
Fine	6/7/2010	100.00	4,600.00
Fine	6/7/2010	100.00	4,700.00
Fine	6/7/2010	100.00	4,800.00
Fine	6/7/2010	100.00	4,900.00
Fine	6/17/2010	100.00	5,000.00
Fine	6/17/2010	100.00	5,100.00
Fine	6/17/2010	100.00	5,200.00
Fine	6/17/2010	100.00	5,300.00
Fine	7/9/2010	100.00	5,400.00
Fine	7/9/2010	100.00	5,500.00
Fine	7/9/2010	100.00	5,600.00
Fine	7/9/2010	100.00	5,700.00
Fine	7/9/2010	100.00	5,800.00
Fine	7/9/2010	100.00	5,900.00
Fine	7/9/2010	100.00	6,000.00
Fine	7/9/2010	100.00	6,100.00
Fine	7/22/2010	100.00	6,200.00
Fine	7/22/2010	100.00	6,300.00

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149  
Make check payable to: Shadow Mountain Ranch Homeowners Association

9/13/2010

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

Fine	7/22/2010	100.00	6,400.00	
Fine	7/22/2010	100.00	6,500.00	
Fine	8/4/2010	100.00	6,600.00	
Fine	8/4/2010	100.00	6,700.00	
Fine	8/18/2010	100.00	6,800.00	
Fine	8/18/2010	100.00	6,900.00	
Fine	8/18/2010	100.00	7,000.00	
Fine	8/18/2010	100.00	7,100.00	
Fine	8/18/2010	100.00	7,200.00	
Fine	8/18/2010	100.00	7,300.00	
Fine	8/20/2010	100.00	7,400.00	06/02/10: Maintenance & Repair
Fine	9/9/2010	100.00	7,500.00	
Fine	9/9/2010	100.00	7,600.00	
Fine	9/9/2010	100.00	7,700.00	
Fine	9/9/2010	100.00	7,800.00	
Fine	9/9/2010	100.00	7,900.00	
Fine	9/9/2010	100.00	8,000.00	
Fine	9/9/2010	100.00	8,100.00	06/02/10: Maintenance & Repair
Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance: 8,100.00
1,400.00	800.00	1,200.00	4,900.00	

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149  
Make check payable to: Shadow Mountain Ranch Homeowners Association

9/13/2010

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

Magnolia Gotera  
1090 Twin Creeks Dr  
Salinas, CA 93905

Property Address: 5327 Marsh Butte St.  
Account #: 21103

Code	Date	Amount	Balance	Check#	Memo
Beg Bal	12/31/2008	588.00	588.00		Begin Balance
MA	1/1/2009	23.00	611.00		Monthly Assessment
LF	1/15/2009	10.00	621.00		
MA	2/1/2009	23.00	644.00		Monthly Assessment
LF	2/15/2009	10.00	654.00		
MA	3/1/2009	23.00	677.00		Monthly Assessment
MA	4/1/2009	23.00	700.00		Monthly Assessment
LF	4/16/2009	10.00	710.00		Late Fee Processed
MA	5/1/2009	23.00	733.00		Monthly Assessment
LF	5/16/2009	10.00	743.00		Late Fee Processed
MA	6/1/2009	23.00	766.00		Monthly Assessment
LF	6/16/2009	10.00	776.00		Late Fee Processed
MA	7/1/2009	23.00	799.00		Monthly Assessment
LF	7/16/2009	10.00	809.00		Late Fee Processed
MA	8/1/2009	23.00	832.00		Monthly Assessment
LF	8/16/2009	10.00	842.00		Late Fee Processed
MA	9/1/2009	23.00	865.00		Monthly Assessment
LF	9/16/2009	10.00	875.00		Late Fee Processed
MA	10/1/2009	23.00	898.00		Monthly Assessment
LF	10/16/2009	10.00	908.00		Late Fee Processed
MA	11/1/2009	23.00	931.00		Monthly Assessment
LF	11/16/2009	10.00	941.00		Late Fee Processed
MA	12/1/2009	23.00	964.00		Monthly Assessment
LF	12/16/2009	10.00	974.00		Late Fee Processed
MA	1/1/2010	23.00	997.00		Monthly Assessment
LF	1/16/2010	10.00	1,007.00		Late Fee Processed

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149  
Make check payable to: Shadow Mountain Ranch Homeowners Association

9/13/2010

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

MA	2/1/2010	23.00	1,030.00	Monthly Assessment
LF	2/16/2010	10.00	1,040.00	Late Fee Processed
MA	3/1/2010	23.00	1,063.00	Monthly Assessment
LF	3/16/2010	10.00	1,073.00	Late Fee Processed
MA	4/1/2010	23.00	1,096.00	Monthly Assessment
LF	4/16/2010	10.00	1,106.00	Late Fee Processed
MA	5/1/2010	23.00	1,129.00	Monthly Assessment
LF	5/16/2010	10.00	1,139.00	Late Fee Processed
MA	6/1/2010	23.00	1,162.00	Monthly Assessment
Late Fee	6/16/2010	10.00	1,172.00	Late Fee Processed
Monthly Assessment	7/1/2010	23.00	1,195.00	Monthly Assessment
Late Fee	7/16/2010	10.00	1,205.00	Late Fee Processed
Monthly Assessment	8/1/2010	23.00	1,228.00	Monthly Assessment
Late Fee	8/16/2010	10.00	1,238.00	Late Fee Processed
Monthly Assessment	9/1/2010	23.00	1,261.00	Monthly Assessment
Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance: 1,261.00
33.00	33.00	33.00	1,162.00	

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149  
Make check payable to: Shadow Mountain Ranch Homeowners Association

9/13/2010

# EXHIBIT 3

DOUGLAS E. MILES \*  
Also Admitted in Nevada and Illinois  
RICHARD J. BAUER, JR.\*  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
FRED TIMOTHY WINTERS\*  
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THOMAS M. MORLAN  
Admitted in California  
KRISTIN S. WEBB\*  
BRIAN H. TRAN\*  
ANNA A. GHAJAR\*



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

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

\* CALIFORNIA OFFICE  
1231 E. DYER ROAD  
SUITE 100  
SANTA ANA, CA 92705  
PHONE (714) 481-9100  
FACSIMILE (714) 481-9141

September 30, 2010

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

Re: *Property Address:* 5327 Marsh Butte Street  
HO #: 6601  
LOAN #: 121434068  
*MBBW File No.* 10-H1641

Dear Sir/Madame:

As you may recall, this firm represents the interests of BAC Home Loans Servicing, LP (aka Countrywide Home Loans, Inc. (hereinafter "BAC")) with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by in regards to the above-referenced address shows a full payoff amount of \$3,554.00. BAC is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

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

The association has a lien on a unit for:

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

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

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

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

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

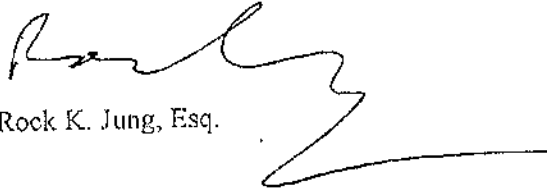
Based on Section 2(b), a portion of your HOA lien is arguably prior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that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

Our client has authorized us to make payment to you in the amount of \$207.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$207.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BAC's financial obligations towards the HOA in regards to the real property located at 5327 Marsh Butte Street have now been "paid in full".

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

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*

  
Rock K. Jung, Esq.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct  
 Payee: Alessi & Koenig, LLC  
 10-H1641  
 Date: 9/28/2010 Amount: 207.00  
 Check #: 5169 Initials: TLC

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
9/28/2010	6601	To Cure HOA Deficiency	207.00			

Miles, Bauer, Bergstrom & Winters, LLP  
 Trust Account

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

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

16-66/1220  
 1020  
 10-H1641

Loan # 121434068

5169

Date: 9/28/2010

Amount \$\*\*\*\* 207.00

Check Void After 90 Days

Pay \$\*\*\*\*Two Hundred Seven & No/100 Dollars  
 to the order of

Alessi & Koenig, LLC

Security Features. Details on back.

⑈ 5169 ⑈ ⑆ 122400724 ⑆ 501006878973 ⑈



# EXHIBIT 4

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

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



*A Multi-Jurisdictional Law Firm*

9500 West Flamingo Road, Suite 100  
Las Vegas, Nevada 89147  
Telephone: 702-222-4033  
Facsimile: 702-222-4043  
[www.alessikoenig.com](http://www.alessikoenig.com)

GoKra 1641  
ADDITIONAL OFFICES

AGOURA HILLS, CA  
PHONE: 818- 735-9600

RENO NV  
PHONE: 775-626-2323

&  
DIAMOND BAR CA  
PHONE: 909-843-6590

Nevada Licensed Qualified Collection Manager  
AMANDA LOWER

September 8, 2010

Miles, Bauer, Bergstrom & Winters  
2200 Paseo Verde Parkway, Suite 250  
Henderson, NV 89052

Re: Rejection of Partial Payments

Gentlepersons,

This letter will serve to inform you that we are unable to accept the partial payments offered by your clients as payment in full. While we understand how you read NRS 116.3116 as providing a super priority lien only with respect to 9 months of assessments, case authority exists which provides that the association's lien also includes the reasonable cost of collection of those assessments. (see *Korbel Family Trust v. Spring Mountain Ranch Master Association*, Case No. 06-A-523959-C.)

If the association were to accept your offer that only includes assessments, Alessi & Koenig would be left with a lien against the association for our substantial out-of-pocket expenses and fees generated. The association could end up having *lost* money in attempting to collect assessments from the delinquent homeowner.

If you would like to discuss these matters further, please do not hesitate to call.

Sincerely,

Ryan Kerbow, Esq.

# EXHIBIT 5

File Edit View Help

Client ID: 10-H1641

Client: BANK OF AMERICA, N.A. (DNF)

Date: 8/23/2014

Doc: 163-30312-007

General Notes Billing Contacts Mailings Events Inquiry Settlement Cnt Connect Info Custom Doc Info New Invoice

163-30312-007 8/23/2014

8/31/2010: EMF AWP re: New Federal

9/2/2010: RVO REFERRAL: OPENED 08/31/10

9/2/2010: 9/2 EMT CLIENT WITH INITIAL LETTERS ATTACHED:

9/2/2010: mMail letters re: 10-H1641 Golea.mog

9/22/2010: 9/22 EMT CLIENT HDA UPDATE WITH PO ATTACHED: FU

9/22/2010: Status Update re: 10-H1641 (1st) Golea.mog

9/23/2010: EMF Cnt re: wire submitted for 207.00 on 9/23

10/1/2010: 10/1 CHECK SENT TO HDA: FU 10/25 SEE IF CHECK WAS

10/6/2010: EMF HKJ re: Payoff Funds: 10-H1641, 5327 Marsh Bu

10/25/2010: 10/25 CHECK RETURNED: FU 10/14 MONITOR EX PARTE

10/25/2010: EMF RKJ re: Status of Payoff Funds (Rejected), 10-H1641, 5327 Marsh Bu

12/28/2010: LIEN HAS BEEN RELEASED: FU 1/4 COPY OF LIEN

1/6/2011: LIEN RELEASE RECORDED 11/30/11 FOR DIFFERENT LIEN;

1/31/2011: EMT CLT RE INVS

9/17/2012: 10-H1641 scanned file docs.PDF

12/6/2012: REJECTED FILE: FU 1/17 MONITOR

1/18/2013: REJECTED FILE: FU 3/1 MONITOR

3/4/2013: REJECTED FILE: FU 4/6 MONITOR

3/25/2013: EMF CL-Cloning Instructions

3/28/2013: EMT Lori Garcia w/group 2 Invoices

4/8/2013: EMF Matt Compton re: will work on closed market invoices this week.

# EXHIBIT “F”

Inst #: 201011300003315

Fees: \$14.00

N/C Fee: \$0.00

11/30/2010 01:50:42 PM

Receipt #: 594414

Requestor:

PASION TITLE SERVICES

Recorded By: ADF Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN # 163-30-312-007

NAS # N54998

Title Company: First American Title Nevada/NDTS

Order #:

**RELEASE OF NOTICE DELINQUENT ASSESSMENT LIEN**

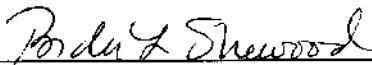
In accordance with Nevada Revised Statutes, the Notice of Delinquent Assessment Lien, recorded by Shadow Mountain Ranch, is satisfied and released. Said lien was recorded on January 12, 2010 as instrument number 0002157 Book 20100112, against the property legally described as: Section 30 R2 60 70 # 5, Plat Book 102, Page 28, Lot 7, Block 1 recorded in the County Recorder of Clark County, Nevada.

The owner(s) of record as reflected on said lien is (are):

Magnolia Gotera

Commonly referred to as: 5327 Marsh Butte Street, Las Vegas, NV 89148


Dated: November 24, 2010

  
By: Brenda Sherwood, of Nevada Association Services, Inc.  
on behalf of Shadow Mountain Ranch  
STATE OF NEVADA           )  
COUNTY OF CLARK        )

On November 24, 2010, before me, Heather Hendershot, personally appeared Brenda Sherwood, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.  
WITNESS my hand and seal.

(Signature)

(Seal)

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



# EXHIBIT “G”

# Shadow Mountain Ranch Community Association

c/o Level Property Management

8966 Spanish Ridge Ave #100

Las Vegas, NV 89148

702.433.0149

www.levelprop.com

702.444.2416 Fax

Magnolia Gotera  
1090 Twin Creeks Dr  
Salinas, CA 93905

**Property Address:** 5327 Marsh Butte St.

**Account #:** 21103

Code	Date	Amount	Balance	Check#	Memo
Beg Bal	12/31/2008	588.00	588.00		Begin Balance
MA	1/1/2009	23.00	611.00		Monthly Assessment
LF	1/15/2009	10.00	621.00		
MA	2/1/2009	23.00	644.00		Monthly Assessment
LF	2/15/2009	10.00	654.00		
MA	3/1/2009	23.00	677.00		Monthly Assessment
MA	4/1/2009	23.00	700.00		Monthly Assessment
LF	4/16/2009	10.00	710.00		Late Fee Processed
MA	5/1/2009	23.00	733.00		Monthly Assessment
LF	5/16/2009	10.00	743.00		Late Fee Processed
MA	6/1/2009	23.00	766.00		Monthly Assessment
LF	6/16/2009	10.00	776.00		Late Fee Processed
MA	7/1/2009	23.00	799.00		Monthly Assessment
LF	7/16/2009	10.00	809.00		Late Fee Processed
MA	8/1/2009	23.00	832.00		Monthly Assessment
LF	8/16/2009	10.00	842.00		Late Fee Processed
MA	9/1/2009	23.00	865.00		Monthly Assessment
LF	9/16/2009	10.00	875.00		Late Fee Processed
MA	10/1/2009	23.00	898.00		Monthly Assessment
LF	10/16/2009	10.00	908.00		Late Fee Processed
MA	11/1/2009	23.00	931.00		Monthly Assessment
LF	11/16/2009	10.00	941.00		Late Fee Processed
MA	12/1/2009	23.00	964.00		Monthly Assessment
LF	12/16/2009	10.00	974.00		Late Fee Processed
MA	1/1/2010	23.00	997.00		Monthly Assessment
LF	1/16/2010	10.00	1,007.00		Late Fee Processed
MA	2/1/2010	23.00	1,030.00		Monthly Assessment
LF	2/16/2010	10.00	1,040.00		Late Fee Processed
MA	3/1/2010	23.00	1,063.00		Monthly Assessment
LF	3/16/2010	10.00	1,073.00		Late Fee Processed
MA	4/1/2010	23.00	1,096.00		Monthly Assessment
LF	4/16/2010	10.00	1,106.00		Late Fee Processed

**Include your account number and make checks payable to:**

**Shadow Mountain Ranch Community Association**

**PO Box 64114**

**Phoenix, AZ 85082**



# Shadow Mountain Ranch Community Association

c/o Level Property Management

8966 Spanish Ridge Ave #100

Las Vegas, NV 89148

702.433.0149

www.levelprop.com

702.444.2416 Fax

Code	Date	Amount	Balance	Check#	Memo
MA	5/1/2010	23.00	1,129.00		Monthly Assessment
LF	5/16/2010	10.00	1,139.00		Late Fee Processed
MA	6/1/2010	23.00	1,162.00		Monthly Assessment
Late Fee	6/16/2010	10.00	1,172.00		Late Fee Processed
Monthly Assessment	7/1/2010	23.00	1,195.00		Monthly Assessment
Late Fee	7/16/2010	10.00	1,205.00		Late Fee Processed
Monthly Assessment	8/1/2010	23.00	1,228.00		Monthly Assessment
Late Fee	8/16/2010	10.00	1,238.00		Late Fee Processed
Monthly Assessment	9/1/2010	23.00	1,261.00		Monthly Assessment
Late Fee	9/16/2010	10.00	1,271.00		Late Fee Processed
Monthly Assessment	10/1/2010	23.00	1,294.00		Monthly Assessment
Legal Fees	10/6/2010	575.00	1,869.00		Legal Fees for Compliance & Demand Lette
Late Fee	10/16/2010	10.00	1,879.00		Late Fee Processed
Monthly Assessment	11/1/2010	23.00	1,902.00		Monthly Assessment
Nuisance Abatement	11/1/2010	395.00	2,297.00		Nuisance abatement-landscaping
Nuisance Abatement	11/1/2010	225.00	2,522.00		Nuisance abatement-pigeon clean up/contro
Late Fee	11/16/2010	10.00	2,532.00		Late Fee Processed
Monthly Assessment	12/1/2010	23.00	2,555.00		Monthly Assessment
Late Fee	12/16/2010	10.00	2,565.00		Late Fee Processed
Late Fee	12/31/2010	2.42	2,567.42		Late Fee Processed
Monthly Assessment	1/1/2011	23.00	2,590.42		Monthly Assessment
Late Fee	1/16/2011	10.00	2,600.42		Late Fee Processed
Interest	1/31/2011	2.52	2,602.94		Late Fee Processed
Monthly Assessment	2/1/2011	23.00	2,625.94		Monthly Assessment
Late Fee	2/16/2011	10.00	2,635.94		Late Fee Processed
Interest	2/28/2011	2.72	2,638.66		Late Fee Processed
Monthly Assessment	3/1/2011	23.00	2,661.66		Monthly Assessment
Late Fee	3/16/2011	10.00	2,671.66		Late Fee Processed
Interest	3/31/2011	2.72	2,674.38		Late Fee Processed
Monthly Assessment	4/1/2011	23.00	2,697.38		Monthly Assessment
Waive Late Fee	4/14/2011	-2.52	2,694.86		Reverse interest per BOD
Waive Late Fee	4/14/2011	-2.72	2,692.14		Reverse interest per BOD
Waive Late Fee	4/14/2011	-2.72	2,689.42		Reverse interest per BOD
Late Fee	4/16/2011	10.00	2,699.42		Late Fee Processed
Monthly Assessment	5/1/2011	23.00	2,722.42		Monthly Assessment
Late Fee	5/16/2011	10.00	2,732.42		Late Fee Processed
Waive Late Fee	5/25/2011	-2.42	2,730.00		Reverse interest per BOD
Balance Transfer	6/14/2011	-2,730.00	0.00		

Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance:	0.00
0.00	0.00	0.00	0.00		

**Include your account number and make checks payable to:**

**Shadow Mountain Ranch Community Association**

**PO Box 64114**

**Phoenix, AZ 85082**

# EXHIBIT “H”

Inst #: 201101260002852  
Fees: \$14.00  
N/C Fee: \$0.00  
01/26/2011 09:05:00 AM  
Receipt #: 654197  
Requestor:  
ALESSI & KOENIG LLC (JUNES  
Recorded By: KXC Pgs: 1  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

When recorded mail to:  
Alessi & Koenig, LLC  
9500 West Flamingo Rd., Suite 100  
Las Vegas, NV 89147  
Phone: 702-222-4033

APN: 163-30-312-007

TSN SMR-5327-N

### NOTICE OF TRUSTEE'S SALE

**WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL The Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.**

**NOTICE IS HEREBY GIVEN THAT:**

On **March 9, 2011**, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on **May 7, 2008**, as instrument number **20080507-01731**, of the official records of **Clark County, Nevada**, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: **4:00 P.M. at 930 S. 4th Street, Las Vegas Nevada 89101.**

The street address and other common designation, if any, of the real property described above is purported to be: **5327 Marsh Butte St., Las Vegas, NV 89148.** The owner of the real property is purported to be: **Magnolia Gotera**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is **\$5,757.00**. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: **December 16, 2010**



---

By: Branko Jetic on behalf of Shadow Mountain Ranch Community Association

# EXHIBIT “I”

When Recorded mail Document  
and tax statement to:  
JBWNO revocable living trust  
5327 Marsh Butte St.  
Las Vegas, NV 89148

COA-1

Inst #: 201105270004010  
Fees: \$16.00 N/C Fee: \$25.00  
RPTT: \$0.00 Ex: #007  
05/27/2011 04:12:48 PM  
Receipt #: 792751  
Requestor:  
STACY MOORE  
Recorded By: SOL Pgs: 4  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

APN: 163-30-312-007

## GRANT DEED

STATE OF NEVADA )

)ss

COUNTY OF CLARK )

KNOW ALL MEN BY THESE PRESENTS, That for and in consideration of the sum of Ten Dollars and zero Cents ( \$10.00 ) in hand paid to Gotera Magnolia (hereinafter called the Grantor), the receipt of whereof is hereby acknowledged, the Grantor, Gotera Magnolia hereby RELEASES, QUITCLAIMS, GRANTS, SELLS, AND CONVEYS to JBWNO revocable living trust, JBWNO revocable living trust, (hereinafter called Grantee), all of the Grantors' right, title, interest, and claim in or to the following described real estate, situated in Clark County, Nevada, to-wit:  
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

DATED:

State of Nevada

County of Clark

I hereby certify that Magnolia Gotera whose name(s) are/is signed to the foregoing conveyance, and are known to me (or provided to me on the basis of Satisfactory evidence), acknowledged before me on this day, that, being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

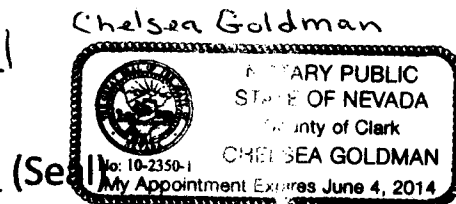
Magnolia Gotera  
Grantor

On May 27, 2011 before me,

Magnolia Gotera  
(here insert name and title of the officer)

WITNESS my hand and official seal. May 27, 2011

Signature Chelsea Goldman  
Chelsea Goldman, Notary Public



MAIL TAX STATEMENTS AS DIRECTED ABOVE

**Exhibit A**

**Legal description as recorded on document number  
20051121-0005566**

**Also known as:**

**APN: 163-30-312-007**

**5327 MARSH BUTTE ST  
LAS VEGAS, NV 89148**

**Lot 7 in Block 1 of Final Map of Section 30 R2-60/70 No. 5, as  
shown by map thereof on file in Book 102 of Plats, Page 28 in the  
Office of the County Recorder of Clark County, Nevada**

STATE OF NEVADA  
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

a. 163-30-312-007  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

2. Type of Property:

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

FOR RECORDER'S OPTIONAL USE ONLY	
Book: _____	Page: _____
Date of Recording: _____	
Notes: _____	

3. a. Total Value/Sales Price of Property \$ 0  
b. Deed in Lieu of Foreclosure Only (value of property) ( )  
c. Transfer Tax Value: \$ 0  
d. Real Property Transfer Tax Due \$ 0

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section 7  
b. Explain Reason for Exemption: Transfer to or from a trust  
without consideration

5. Partial Interest: Percentage being transferred: 100 %

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

Signature Kristin Jorda Capacity Trustee

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

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

Print Name: Magnolia Gotera  
Address: 5327 Marsh Butte St.  
City: Las Vegas  
State: NV Zip: 89148

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

Print Name: JBWNO revocable living  
Address: 5327 Marsh Butte St.  
City: Las Vegas  
State: NV Zip: 89148

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

Print Name: \_\_\_\_\_ Escrow #: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED



# EXHIBIT “J”

When Recorded mail Document  
and tax statement to:  
Stacy Moore  
5327 Marsh Butte St.  
Las Vegas, NV 89148

① -1

Inst #: 201105270004011  
Fees: \$16.00 N/C Fee: \$0.00  
RPTT: \$0.00 Ex: #007  
05/27/2011 04:12:48 PM  
Receipt #: 792751  
Requestor:  
STACY MOORE  
Recorded By: SOL Pgs: 4  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

APN: 163-30-312-007

## GRANT DEED

STATE OF NEVADA )  
)ss  
COUNTY OF CLARK )

KNOW ALL MEN BY THESE PRESENTS, That for and in consideration of the sum of Ten Dollars and zero Cents ( \$10.00 ) in hand paid to JBWNO revocable living trust (hereinafter called the Grantor), the receipt of whereof is hereby acknowledged, the Grantor, JBWNO revocable living trust hereby RELEASES, QUITCLAIMS, GRANTS, SELLS, AND CONVEYS to Stacy Moore, Stacy Moore, (hereinafter called Grantee), all of the Grantors' right, title, interest, and claim in or to the following described real estate, situated in Clark County, Nevada, to-wit:  
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

**Exhibit A**

**Legal description as recorded on document number  
20051121-0005566**

**Also known as:**

**APN: 163-30-312-007**

**5327 MARSH BUTTE ST  
LAS VEGAS, NV 89148**

**Lot 7 in Block 1 of Final Map of Section 30 R2-60/70 No. 5, as  
shown by map thereof on file in Book 102 of Plats, Page 28 in the  
Office of the County Recorder of Clark County, Nevada**

DATED:

State of Nevada

County of Clark

I hereby certify that Kristin Jordal whose name(s) are/is signed to the foregoing conveyance, and are known to me (or provided to me on the basis of Satisfactory evidence), acknowledged before me on this day, that, being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Kristin Jordal  
Kristin Jordal  
Grantor / Trustee

On MAY 27<sup>th</sup>, 2011 before me,

Kristin Jordal - Trustee  
(here insert name and title of the officer)

WITNESS my hand and official seal.

Signature

[Signature]



(Seal)

Exp 8-14-14  
Cert No 10-1531-1

MAIL TAX STATEMENTS AS DIRECTED ABOVE

STATE OF NEVADA  
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

a. 163-30-312-007  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

2. Type of Property:

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

FOR RECORDER'S OPTIONAL USE ONLY

Book: \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

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

3. a. Total Value/Sales Price of Property

\$ 0

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

( \_\_\_\_\_ )

c. Transfer Tax Value:

\$ 0

d. Real Property Transfer Tax Due

\$ 0

4. **If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section 7

b. Explain Reason for Exemption: Transfer to or from a trust  
without consideration

5. Partial Interest: Percentage being transferred: 100 %

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

Signature Kristin Jordal Capacity Trustee

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

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

Print Name: JBWNO revocable living trust  
Address: 5327 Marsh Butte St  
City: Las Vegas  
State: NV Zip: 89148

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

Print Name: Stacy Moore  
Address: 5327 Marsh Butte St.  
City: Las Vegas  
State: NV Zip: 89148

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

Print Name: \_\_\_\_\_ Escrow #: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

# EXHIBIT “K”

Inst #: 201111020000754

Fee: \$18.00

N/C Fee: \$25.00

11/02/2011 08:02:44 AM

Receipt #: 965446

Requestor:

CORELOGIC

Recorded By: MSH Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

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



DocID# 14612143406815262

Tax ID: 163-30-312-007

Property Address:

5327 Marsh Butte St

Las Vegas, NV 89148-4669

NV0-ADT 14727720 10/26/2011

This space for Recorder's use

MIN #: 1000157-0006127350-0

MERS Phone #: 888-679-6377

**ASSIGNMENT OF DEED OF TRUST**

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 3300 S.W. 34th Avenue, Suite 101 Ocala, FL 34474 does hereby grant, sell, assign, transfer and convey unto U.S. BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE LXS 2006-4N TRUST FUND whose address is 10350 PARK MEADOWS DR, LITTLETON, CO 80124 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: COUNTRYWIDE HOME LOANS, INC.

Made By: MAGNOLIA GOTERA, A SINGLE WOMAN

Trustee: CTC REAL ESTATE SERVICES

Date of Deed of Trust: 11/10/2005 Original Loan Amount: \$508,250.00

Recorded in Clark County, NV on: 11/21/2005, book N/A, page N/A and instrument number 20051121-0005567

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

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

10/27/11

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC.

By: Christopher Herrera Assistant Secretary

State of California  
County of Ventura

On 10-27-2011 before me, Norma Rojas, Notary Public, personally appeared Christopher Herrera, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

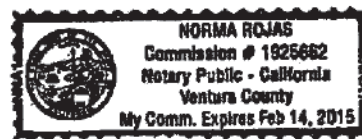
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
Notary Public:

My Commission Expires: \_\_\_\_\_

(Seal)



DocID# 14612143406815262



# EXHIBIT “L”

Inst #: 201209110002023  
Fees: \$17.00  
N/C Fee: \$0.00  
09/11/2012 08:05:52 AM  
Receipt #: 1302455  
Requestor:  
ALESSI & KOENIG LLC  
Recorded By: DXI Pgs: 1  
**DEBBIE CONWAY**  
CLARK COUNTY RECORDER

When recorded return to:

**ALESSI & KOENIG, LLC**  
9500 W. Flamingo Rd., Suite 205  
Las Vegas, Nevada 89147  
Phone: (702) 222-4033

**A.P.N. 163-30-312-007**

Trustee Sale # **SMR-5327-N**

**NOTICE OF DELINQUENT ASSESSMENT (LIEN)**

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark** County, Nevada, **Shadow Mountain Ranch Community Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **5327 Marsh Butte St., Las Vegas, NV 89148** and more particularly legally described as: **SECTION 30 R2-60 70 #5 Lot 7 Block 1 Book 102 Page 28** in the County of **Clark**.

The owner(s) of record as reflected on the public record as of today's date is (are): **STACY MOORE**

The mailing address(es) is: **5327 MARSH BUTTE ST, LAS VEGAS, NV 89148**

The total amount due through today's date is: **\$6,448.00**. Of this total amount **\$5,823.00** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$625.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

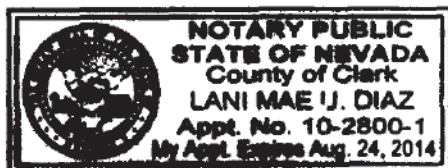
Date: **August 13, 2012**

By: \_\_\_\_\_

**Huong Lam, Esq. of Alessi & Koenig, LLC on behalf of Shadow Mountain Ranch Community Association**

State of Nevada  
County of Clark  
SUBSCRIBED and SWORN before me August <sup>23</sup>13, 2012

(Seal)



(Signature)

\_\_\_\_\_  
NOTARY PUBLIC

# EXHIBIT “M”

# Shadow Mountain Ranch Community Association

c/o Level Property Management

8966 Spanish Ridge Ave #100

Las Vegas, NV 89148

702.433.0149

www.levelprop.com

702.444.2416 Fax

Stacy Moore

5327 Marsh Butte St.

Las Vegas, NV 89148

**Property Address:** 5327 Marsh Butte St.

**Account #:** 31243

Code	Date	Amount	Balance	Check#	Memo
Monthly Assessment	6/1/2011	23.00	23.00		Monthly Assessment
Balance Transfer	6/14/2011	2,730.00	2,753.00		Balance from Prior Owner
Late Fee	6/16/2011	10.00	2,763.00		Late Fee Processed
Monthly Assessment	7/1/2011	23.00	2,786.00		Monthly Assessment
Late Fee	7/16/2011	10.00	2,796.00		Late Fee Processed
Monthly Assessment	8/1/2011	23.00	2,819.00		Monthly Assessment
Late Fee	8/16/2011	10.00	2,829.00		Late Fee Processed
Monthly Assessment	9/1/2011	23.00	2,852.00		Monthly Assessment
Late Fee	9/16/2011	10.00	2,862.00		Late Fee Processed
Monthly Assessment	10/1/2011	23.00	2,885.00		Monthly Assessment
Late Fee	10/17/2011	10.00	2,895.00		Late Fee Processed
Monthly Assessment	11/1/2011	23.00	2,918.00		Monthly Assessment
Late Fee	11/16/2011	10.00	2,928.00		Late Fee Processed
Monthly Assessment	12/1/2011	23.00	2,951.00		Monthly Assessment
Late Fee	12/16/2011	10.00	2,961.00		Late Fee Processed
Monthly Assessment	1/1/2012	23.00	2,984.00		Monthly Assessment
Late Fee	1/16/2012	10.00	2,994.00		Late Fee Processed
Monthly Assessment	2/1/2012	23.00	3,017.00		Monthly Assessment
Late Fee	2/16/2012	10.00	3,027.00		Late Fee Processed
Monthly Assessment	3/1/2012	23.00	3,050.00		Monthly Assessment
Late Fee	3/16/2012	10.00	3,060.00		Late Fee Processed
Monthly Assessment	4/1/2012	23.00	3,083.00		Monthly Assessment
Late Fee	4/16/2012	10.00	3,093.00		Late Fee Processed
Monthly Assessment	5/1/2012	23.00	3,116.00		Monthly Assessment
Late Fee	5/16/2012	10.00	3,126.00		Late Fee Processed
Monthly Assessment	6/1/2012	23.00	3,149.00		Monthly Assessment
Late Fee	6/16/2012	10.00	3,159.00		Late Fee Processed
Monthly Assessment	7/1/2012	23.00	3,182.00		Monthly Assessment
Late Fee	7/16/2012	10.00	3,192.00		Late Fee Processed
Monthly Assessment	8/1/2012	23.00	3,215.00		Monthly Assessment
Late Fee	8/16/2012	10.00	3,225.00		Late Fee Processed
Monthly Assessment	9/1/2012	23.00	3,248.00		Monthly Assessment

**Include your account number and make checks payable to:**

**Shadow Mountain Ranch Community Association**

**PO Box 64114**

**Phoenix, AZ 85082**

5/29/2013

**088**



Page 1 of 2

**088**

Shadow Mountain Ranch Community Association  
c/o Level Property Management  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

702.433.0149      www.levelprop.com      702.444.2416 Fax

Code	Date	Amount	Balance	Check#	Memo
Late Fee	9/16/2012	10.00	3,258.00		Late Fee Processed
Monthly Assessment	10/1/2012	23.00	3,281.00		Monthly Assessment
Late Fee	10/16/2012	10.00	3,291.00		Late Fee Processed
Monthly Assessment	11/1/2012	23.00	3,314.00		Monthly Assessment
Late Fee	11/16/2012	10.00	3,324.00		Late Fee Processed
Late Fee	12/16/2012	10.00	3,334.00		Late Fee Processed
Monthly Assessment	1/1/2013	23.00	3,357.00		Monthly Assessment
Late Fee	1/16/2013	10.00	3,367.00		Late Fee Processed
Monthly Assessment	2/1/2013	23.00	3,390.00		Monthly Assessment
Late Fee	2/16/2013	10.00	3,400.00		Late Fee Processed
Monthly Assessment	3/1/2013	23.00	3,423.00		Monthly Assessment
Hearing Notice Fee	3/8/2013	10.00	3,433.00		Hearing Notice Fee
Late Fee	3/16/2013	10.00	3,443.00		Late Fee Processed
Monthly Assessment	4/1/2013	23.00	3,466.00		Monthly Assessment
Late Fee	4/16/2013	10.00	3,476.00		Late Fee Processed
Monthly Assessment	5/1/2013	23.00	3,499.00		Monthly Assessment
Late Fee	5/16/2013	10.00	3,509.00		Late Fee Processed
Monthly Assessment	6/1/2013	23.00	3,532.00		Monthly Assessment
Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance:	3,532.00
56.00	33.00	43.00	3,400.00		

Include your account number and make checks payable to:

Shadow Mountain Ranch Community Association

PO Box 64114

Phoenix, AZ 85082

5/29/2013

Page 2 of 2

# EXHIBIT “N”

Inst #: 201307050000950

Fees: \$17.00

N/C Fee: \$0.00

07/05/2013 09:02:36 AM

Receipt #: 1681415

Requestor:

ALESSI & KOENIG LLC

Recorded By: MAT Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:

**THE ALESSI & KOENIG, LLC**  
**9500 West Flamingo Rd., Ste 205**  
**Las Vegas, Nevada 89147**  
**Phone: 702-222-4033**

A.P.N. 163-30-312-007

Trustee Sale No. 6601

28

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN**

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!** You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is **\$6,631.41** as of the date of this notice and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Shadow Mountain Ranch Community Association, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147, (702)222-4033.**

THIS NOTICE pursuant to that certain Notice of Delinquent Assessment Lien, recorded on **September 11, 2012** as document number **0002023**, of Official Records in the County of **Clark**, State of Nevada. Owner(s): **STACY MOORE**, of **SECTION 30 R2-60 70 #5 LOT 7 BLOCK 1**, as per map recorded in Book **102**, Pages **28**, as shown on the Plan and Subdivision map recorded in the Maps of the County of **Clark**, State of Nevada. PROPERTY ADDRESS: **5327 MARSH BUTTE ST, LAS VEGAS, NV 89148-4669**. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT Alessi & Koenig, LLC is appointed trustee agent under the above referenced lien, dated **September 11, 2012**, on behalf of **Shadow Mountain Ranch Community Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from **February 1, 2008** and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated:

JUL 01 2013

  
\_\_\_\_\_  
Huong Lam, Esq. of Alessi & Koenig, LLC on behalf of **Shadow Mountain Ranch Community Association**

# EXHIBIT “O”



Recording Requested By:  
Bank of America, N.A.  
Prepared By: Marcus Jones

When recorded mail to:  
CoreLogic  
Mail Stop: ASGN  
1 CoreLogic Drive  
Westlake, TX 76262-9823



DocID# 18712143406842077

Tax ID: 163-30-312-007

Property Address:

5327 Marsh Butte St

Las Vegas, NV 89148-4669

NVC-ADT 26012666 7/1/2013 NS0610A

Inst #: 201310010002401

Fees: \$18.00

N/C Fee: \$0.00

10/01/2013 01:29:41 PM

Receipt #: 1794477

Requestor:

CORELOGIC

Recorded By: MSH Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

This space for Recorder's use

### ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063 does hereby grant, sell, assign, transfer and convey unto NATIONSTAR MORTGAGE, LLC whose address is 350 HIGHLAND DRIVE, LEWISVILLE, TX 75067 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE  
FOR COUNTRYWIDE HOME LOANS, INC.

Made By: MAGNOLIA GOTERA, A SINGLE WOMAN

Trustee: CTC REAL ESTATE SERVICES

Date of Deed of Trust: 11/10/2005 Original Loan Amount: \$508,250.00

Recorded in Clark County, NV on: 11/21/2005, book N/A, page N/A and instrument number 20051121-0005567

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

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

7/1/13

Bank of America, N.A.

By:

*Kathleen Loera*

Kathleen Loera

Assistant Vice President

# EXHIBIT “P”

Inst #: 201312100001308  
Fees: \$17.00  
N/C Fee: \$0.00  
12/10/2013 08:59:36 AM  
Receipt #: 1867800  
Requestor:  
ALESSI & KOENIG LLC  
Recorded By: RNS Pgs: 1  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

When recorded mail to:  
Alessi & Koenig, LLC  
9500 West Flamingo Rd., Suite 205  
Las Vegas, NV 89147  
Phone: 702-222-4033

APN: 163-30-312-007

TSN 6601

## NOTICE OF TRUSTEE'S SALE

**WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ALESSI & KOENIG AT 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY. 6926**

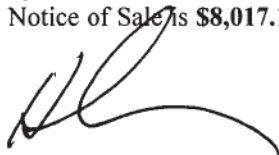
### NOTICE IS HEREBY GIVEN THAT:

On **January 8, 2014**, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on **September 11, 2012**, as instrument number **0002023**, of the official records of **Clark County, Nevada**, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2<sup>nd</sup> Floor)

The street address and other common designation, if any, of the real property described above is purported to be: **5327 MARSH BUTTE ST, LAS VEGAS, NV 89148-4669**. The owner of the real property is purported to be: **STACY MOORE**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is **\$8,017.11**. Payment must be in made in the form of certified funds.

Date: **NOV 14 2013**



By: Huong Lam, Esq. of Alessi & Koenig LLC on behalf of Shadow Mountain Ranch Community Association

# EXHIBIT “Q”

Inst #: 201401130001460  
Fees: \$17.00 N/C Fee: \$0.00  
RPTT: \$1519.80 Ex: #  
01/13/2014 01:10:44 PM  
Receipt #: 1899989  
Requestor:  
ALESSI & KOENIG, LLC  
Recorded By: SUO Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

When recorded mail to and  
Mail Tax Statements to:  
SFR Investments Pool 1, LLC  
5030 Paradise Road, B-214  
Las Vegas, NV 89119

A.P.N. No.163-30-312-007

TS No. 6601

### TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: SFR Investments Pool 1, LLC  
The Foreclosing Beneficiary herein was: Shadow Mountain Ranch Community Association  
The amount of unpaid debt together with costs: \$8,499.11  
The amount paid by the Grantee (Buyer) at the Trustee's Sale: \$59,000.00  
The Documentary Transfer Tax: \$1,519.80  
Property address: 5327 MARSH BUTTE ST, LAS VEGAS, NV 89148-4669  
Said property is in [ ] unincorporated area: City of LAS VEGAS  
Trustor (Former Owner that was foreclosed on): STACY MOORE

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded September 11, 2012 as instrument number 0002023, in Clark County, does hereby grant, without warranty expressed or implied to: SFR Investments Pool 1, LLC (Grantee), all its right, title and interest in the property legally described as: SECTION 30 R2-60 70 #5 LOT 7 BLOCK 1, as per map recorded in Book 102, Pages 28 as shown in the Office of the County Recorder of Clark County Nevada.

#### TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on January 8, 2014 at the place indicated on the Notice of Trustee's Sale.

Huong Lam, Esq.

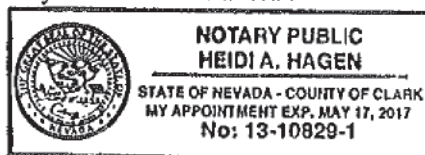
Signature of AUTHORIZED AGENT for Alessi & Koenig, Llc.

State of Nevada )  
County of Clark )

SUBSCRIBED and SWORN before me JAN 13 2014 by Huong Lam

WITNESS my hand and official seal.

(Seal)



(Signature)

STATE OF NEVADA  
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 163-30-312-007  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY

Book \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

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

3.a. Total Value/Sales Price of Property

\$ 59,000.00

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

c. Transfer Tax Value: \$ 297,577.00

d. Real Property Transfer Tax Due \$ 1,519.80

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section \_\_\_\_\_

b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: 100 %

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

Signature  Capacity: Grantor

Signature \_\_\_\_\_ Capacity: \_\_\_\_\_

SELLER (GRANTOR) INFORMATION  
(REQUIRED)

Print Name: Alessi & Koenig, LLC  
Address: 9500 W. Flamingo Rd., Ste. 205  
City: Las Vegas  
State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION  
(REQUIRED)

Print Name: SFR Investments Pool 1, LLC  
Address: 5030 Paradise Road, B-214  
City: Las Vegas  
State: NV Zip: 89119

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

Print Name: Alessi & Koenig, LLC  
Address: 9500 W. Flamingo Rd., Ste. 205  
City: Las Vegas

Escrow # N/A Foreclosure  
State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

# EXHIBIT “R”



1 **DECL**

2 Douglas D. Gerrard, Esq.

3 Nevada Bar No. 4613

4 [dgerrard@gerrard-cox.com](mailto:dgerrard@gerrard-cox.com)

5 Fredrick J. Biedermann, Esq.

6 Nevada Bar No. 11918

7 [fbiedermann@gerrard-cox.com](mailto:fbiedermann@gerrard-cox.com)

8 **GERRARD COX LARSEN**

9 2450 Saint Rose Pkwy., Suite 200

10 Henderson, Nevada 89074

11 Phone: (702) 796-4000

12 *Attorneys for Defendant Nationstar Mortgage, LLC*

13 Melanie D. Morgan, Esq.

14 Nevada Bar No. 8215

15 Donna Whittig, Esq.

16 Nevada Bar No. 11015

17 1635 Village Center Circle, Suite 200

18 Las Vegas, Nevada 89134

19 Telephone: (702) 634-5000

20 Facsimile: (702) 380-8572

21 Email: [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)

22 Email: [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

23 *Attorneys for Defendant Nationstar Mortgage, LLC*

24 *and Defendant/Counterclaimant/Third-Party Defendant U.S. Bank,*

25 *National Association, as Trustee for the Certificateholders of the LXS 2006-*  
26 *4N Trust Fund, erroneously pled as U.S. Bank, N.A.*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 ALESSI & KOENIG, LLC,

19 Plaintiff,

20 v.

21 STACY MOORE, an individual; MAGNOLIA  
22 GOTERA, an individual; KRISTIN JORDAL, AS  
23 TRUSTEE FOR THE JBWNO REVOCABLE  
24 LIVING TRUST, a trust; U.S. BANK, N.A., a  
25 national banking association; NATIONSTAR  
26 MORTGAGE, LLC, a foreign limited liability  
27 company; REPUBLIC SILVER STATE  
28 DISPOSAL, INC., DBA REPUBLIC SERVICES, a  
domestic government entity; DOE INDIVIDUALS  
I through X, inclusive; and ROE CORPORATIONS  
XI through XX inclusive.

Defendants.

Case No.: A-14-705563-C

Dept. No.: XVII

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



1 U.S. BANK, N.A.,  
2 Counterclaimant,  
3 vs.  
4 ALESSI & KOENIG, LLC, a Nevada limited  
liability company,  
5 Counter-Defendant.

6 U.S. BANK, N.A.,  
7 Third Party Plaintiff,  
8 v.  
9 SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company; INDIVIDUAL DOES I  
10 through X, inclusive; and ROE CORPORATIONS  
I through X, inclusive.  
11 Third Party Defendants.

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

13 I, R. SCOTT DUGAN, SRA, under penalty of perjury, declare as follows:

- 14 1. I am over 18 years of age, of sound mind, and capable of making this declaration.  
15 2. The statements in this declaration are true and correct and made on the basis of my  
16 personal knowledge.  
17 3. I have been retained as an expert to testify in the matter of *Alessi & Koenig, LLC,*  
18 *Plaintiff vs. Nationstar Mortgage, LLC, et al, Defendant(s)* filed in the Eighth Judicial District Court,  
19 State of Nevada, Case No. A-14-705563-C.  
20 4. I am a licensed Certified General Appraiser in the State of Nevada and Senior  
21 Managing Director of R. Scott Dugan Appraisal Company, Inc.  
22 5. I have conducted a retroactive appraisal analysis of the property located at 5327 Marsh  
23 Butte Street, Las Vegas, Nevada 89148 (the "Property"). The conclusions I reached are fully expressed  
24 in the Summary Appraisal Report, a true and correct copy of which is attached hereto as **Exhibit "1"**.  
25 6. I have determined that the fair market value of this Property on January 8, 2014 was  
26 \$306,000.00.  
27 7. All opinions, analysis, and conclusions expressed in my report fully comply with the  
28

1 Uniform Standard of Professional Appraisal Practice promulgated by the Appraisal Standards Board  
2 and of the Appraisal Foundation and the reporting requirements of the Appraisal Institute.

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

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

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

7 DATED this 28 day of June, 2018.



8  
9 R. SCOTT DUGAN, SRA  
10 Certified General Appraiser  
11 Lic. No. A.0000166-CG  
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# EXHIBIT “1”

## APPRAISAL OF REAL PROPERTY



### LOCATED AT

5327 Marsh Butte Street  
Las Vegas, NV 89148  
Section 30 R2-60 70 #5 Plat Book 102 Page 28 Lot 7 Block 1

### FOR

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

### AS OF

January 08, 2014

### BY

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

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

February 16, 2017

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

Re: Property: 5327 Marsh Butte Street  
 Las Vegas, NV 89148  
 Borrower: N/A  
 File No.: 5327 Marsh Butte Street

Opinion of Value: \$ 306,000  
 Effective Date: January 08, 2014

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

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

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

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

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

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

Thank you for the opportunity to service your appraisal needs.

Sincerely,



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

Client	Wright Finlay & Zak				File No. 5327 Marsh Butte Street		
Property Address	5327 Marsh Butte Street						
City	Las Vegas	County Clark			State NV	Zip Code	89148
Owner	Magnolia Gotera/Stacy Moore						

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RESIDENTIAL APPRAISAL REPORT

File No.: 5327 Marsh Butte Street

SUBJECT	Property Address: 5327 Marsh Butte Street		City: Las Vegas		State: NV		Zip Code: 89148																																																																																																																																																																																																																																																																																																																																																																																																																			
	County: Clark		Legal Description: Section 30 R2-60 70 #5 Plat Book 102 Page 28 Lot 7 Block 1																																																																																																																																																																																																																																																																																																																																																																																																																							
	Assessor's Parcel #: 163-30-312-007																																																																																																																																																																																																																																																																																																																																																																																																																									
	Tax Year: 2014		R.E. Taxes: \$ N/A		Special Assessments: \$ 0		Borrower (if applicable): N/A																																																																																																																																																																																																																																																																																																																																																																																																																			
ASSIGNMENT	Current Owner of Record: Magnolia Gotera/Stacy Moore		Occupant: <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant <input type="checkbox"/> Vacant <input type="checkbox"/> Manufactured Housing																																																																																																																																																																																																																																																																																																																																																																																																																							
	Project Type: <input checked="" type="checkbox"/> PUD <input type="checkbox"/> Condominium <input type="checkbox"/> Cooperative <input type="checkbox"/> Other (describe)		HOA: \$ 23		<input type="checkbox"/> per year <input checked="" type="checkbox"/> per month																																																																																																																																																																																																																																																																																																																																																																																																																					
	Market Area Name: Section 30 - Southwest Las Vegas		Map Reference: 62-A4		Census Tract: 58.50																																																																																																																																																																																																																																																																																																																																																																																																																					
	The purpose of this appraisal is to develop an opinion of: <input checked="" type="checkbox"/> Market Value (as defined), or <input type="checkbox"/> other type of value (describe)																																																																																																																																																																																																																																																																																																																																																																																																																									
MARKET AREA DESCRIPTION	This report reflects the following value (if not Current, see comments): <input type="checkbox"/> Current (the Inspection Date is the Effective Date) <input checked="" type="checkbox"/> Retrospective <input type="checkbox"/> Prospective																																																																																																																																																																																																																																																																																																																																																																																																																									
	Approaches developed for this appraisal: <input checked="" type="checkbox"/> Sales Comparison Approach <input type="checkbox"/> Cost Approach <input type="checkbox"/> Income Approach (See Reconciliation Comments and Scope of Work)																																																																																																																																																																																																																																																																																																																																																																																																																									
	Property Rights Appraised: <input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold <input type="checkbox"/> Leased Fee <input type="checkbox"/> Other (describe)																																																																																																																																																																																																																																																																																																																																																																																																																									
	Intended Use: Provide a Retrospective Market Value opinion for litigation involving the HOA foreclosure of the subject property. For definitions, refer to the attached Explanatory Comments - Retrospective Value and Definition of Value section in the Residential Certifications Addendum.																																																																																																																																																																																																																																																																																																																																																																																																																									
SITE DESCRIPTION	Intended User(s) (by name or type): Wright Finlay & Zak and/or legal professionals associated with this case.																																																																																																																																																																																																																																																																																																																																																																																																																									
	Client: Wright Finlay & Zak		Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117																																																																																																																																																																																																																																																																																																																																																																																																																							
	Appraiser: R. Scott Dugan, SRA		Address: 8930 W Tropicana Avenue, Suite 1, Las Vegas, NV 89147																																																																																																																																																																																																																																																																																																																																																																																																																							
	<table><tr><td>Location:</td><td><input type="checkbox"/> Urban</td><td><input checked="" type="checkbox"/> Suburban</td><td><input type="checkbox"/> Rural</td><td rowspan="2">Predominant Occupancy</td><td colspan="2">One-Unit Housing</td><td colspan="2">Present Land Use</td><td colspan="2">Change in Land Use</td></tr><tr><td>Built up:</td><td><input checked="" type="checkbox"/> Over 75%</td><td><input type="checkbox"/> 25-75%</td><td><input type="checkbox"/> Under 25%</td><td>PRICE</td><td>AGE</td><td>One-Unit</td><td>75 %</td><td><input checked="" type="checkbox"/> Not Likely</td><td></td></tr><tr><td>Growth rate:</td><td><input type="checkbox"/> Rapid</td><td><input checked="" type="checkbox"/> Stable</td><td><input type="checkbox"/> Slow</td><td><input checked="" type="checkbox"/> Owner</td><td>\$ (000)</td><td>(yrs)</td><td>2-4 Unit</td><td>0 %</td><td><input type="checkbox"/> Likely *</td><td><input type="checkbox"/> In Process *</td></tr><tr><td>Property values:</td><td><input type="checkbox"/> Increasing</td><td><input type="checkbox"/> Stable</td><td><input type="checkbox"/> Declining</td><td><input type="checkbox"/> Tenant</td><td>100</td><td>Low</td><td>1</td><td>Multi-Unit</td><td>5 %</td><td>* To:</td></tr><tr><td>Demand/supply:</td><td><input type="checkbox"/> Shortage</td><td><input checked="" type="checkbox"/> In Balance</td><td><input type="checkbox"/> Over Supply</td><td><input checked="" type="checkbox"/> Vacant (0-5%)</td><td>375</td><td>High</td><td>14</td><td>Comm'l</td><td>15 %</td><td></td></tr><tr><td>Marketing time:</td><td><input checked="" type="checkbox"/> Under 3 Mos.</td><td><input type="checkbox"/> 3-6 Mos.</td><td><input type="checkbox"/> Over 6 Mos.</td><td><input type="checkbox"/> Vacant (&gt;5%)</td><td>195</td><td>Pred</td><td>10</td><td>Vacant</td><td>5 %</td><td></td></tr></table>								Location:	<input type="checkbox"/> Urban	<input checked="" type="checkbox"/> Suburban	<input type="checkbox"/> Rural	Predominant Occupancy	One-Unit Housing		Present Land Use		Change in Land Use		Built up:	<input checked="" type="checkbox"/> Over 75%	<input type="checkbox"/> 25-75%	<input type="checkbox"/> Under 25%	PRICE	AGE	One-Unit	75 %	<input checked="" type="checkbox"/> Not Likely		Growth rate:	<input type="checkbox"/> Rapid	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Slow	<input checked="" type="checkbox"/> Owner	\$ (000)	(yrs)	2-4 Unit	0 %	<input type="checkbox"/> Likely *	<input type="checkbox"/> In Process *	Property values:	<input type="checkbox"/> Increasing	<input type="checkbox"/> Stable	<input type="checkbox"/> Declining	<input type="checkbox"/> Tenant	100	Low	1	Multi-Unit	5 %	* To:	Demand/supply:	<input type="checkbox"/> Shortage	<input checked="" type="checkbox"/> In Balance	<input type="checkbox"/> Over Supply	<input checked="" type="checkbox"/> Vacant (0-5%)	375	High	14	Comm'l	15 %		Marketing time:	<input checked="" type="checkbox"/> Under 3 Mos.	<input type="checkbox"/> 3-6 Mos.	<input type="checkbox"/> Over 6 Mos.	<input type="checkbox"/> Vacant (>5%)	195	Pred	10	Vacant	5 %																																																																																																																																																																																																																																																																																																																																																		
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Growth rate:	<input type="checkbox"/> Rapid	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Slow	<input checked="" type="checkbox"/> Owner	\$ (000)	(yrs)	2-4 Unit	0 %	<input type="checkbox"/> Likely *	<input type="checkbox"/> In Process *																																																																																																																																																																																																																																																																																																																																																																																																																
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Market Area Boundaries, Description, and Market Conditions (including support for the above characteristics and trends): Sunset Road - S, Ft. Apache Road - E, Tropicana Avenue - N, and Hualapai Way - W. The subject project is located in southwest Las Vegas in an area known as Spring Valley, which is an unincorporated township located in Clark County. There are a variety of residential tract housing with supporting services in the immediate area. The subject is within 1 to 3 +/- miles of major shopping/office/medical/school facilities, which includes the Grand Flamingo Center and Tropicana Beltway Center, Southern Hills Hospital & Medical Center, Bishop Gorman High School and Summerlin Mesa's 19 Acre Park. 7 to 10 +/- miles to the E and NE is the CBD and Resort Corridor (key employment centers) with good freeway and major street access. Current market conditions show increasing prices in this segment.																																																																																																																																																																																																																																																																																																																																																																																																																										
GENERAL DESCRIPTION	Dimensions: 70 x 108										Site Area: 7,539 SF (Final Map)																																																																																																																																																																																																																																																																																																																																																																																																															
	Zoning Classification: R-2										Description: Medium Density Residential (8 Units Per Acre)																																																																																																																																																																																																																																																																																																																																																																																																															
	Zoning Compliance: <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Legal nonconforming (grandfathered) <input type="checkbox"/> Illegal <input type="checkbox"/> No zoning																																																																																																																																																																																																																																																																																																																																																																																																																									
	Are CC&Rs applicable? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown										Have the documents been reviewed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																																																																																																																																																																																																																																																																																																																																																																																																															
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	Highest & Best Use as improved: <input checked="" type="checkbox"/> Present use, or <input type="checkbox"/> Other use (explain) The highest and best use is limited to single-family residential via zoning, master plan and CC&R's.																																																																																																																																																																																																																																																																																																																																																																																																																									
	Actual Use as of Effective Date: Single Family Residential										Use as appraised in this report: Single Family Residential																																																																																																																																																																																																																																																																																																																																																																																																															
	Summary of Highest & Best Use: The subject is zoned residential and limited to residential uses by zoning and CC&R's, with no other uses permitted. There is sufficient demand and therefore the current use is the Highest & Best Use.																																																																																																																																																																																																																																																																																																																																																																																																																									
UTILITIES	<table><tr><td>Utilities</td><td>Public</td><td>Other</td><td>Provider/Description</td><td>Off-site Improvements</td><td>Type</td><td>Public</td><td>Private</td><td>Topography</td><td>Built Up Pad</td></tr><tr><td>Electricity</td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td>NV Energy</td><td>Street</td><td>Asphalt</td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td>Size</td><td>Typical For Area</td></tr><tr><td>Gas</td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td>SW Gas</td><td>Curb/Gutter</td><td>Concrete</td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td>Shape</td><td>Rectangular/CDS</td></tr><tr><td>Water</td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td>LLVWD</td><td>Sidewalk</td><td>Concrete</td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td>Drainage</td><td>Appears Adequate</td></tr><tr><td>Sanitary Sewer</td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td>Clark County</td><td>Street Lights</td><td>Electric</td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td>View</td><td>Residential</td></tr><tr><td>Storm Sewer</td><td><input checked="" type="checkbox"/></td><td><input type="checkbox"/></td><td>Clark County</td><td>Alley</td><td>None</td><td><input type="checkbox"/></td><td><input type="checkbox"/></td><td></td><td></td></tr></table>										Utilities	Public	Other	Provider/Description	Off-site Improvements	Type	Public	Private	Topography	Built Up Pad	Electricity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	NV Energy	Street	Asphalt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Size	Typical For Area	Gas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SW Gas	Curb/Gutter	Concrete	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Shape	Rectangular/CDS	Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>	LLVWD	Sidewalk	Concrete	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Drainage	Appears Adequate	Sanitary Sewer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Clark County	Street Lights	Electric	<input checked="" type="checkbox"/>	<input type="checkbox"/>	View	Residential	Storm Sewer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Clark County	Alley	None	<input type="checkbox"/>	<input type="checkbox"/>																																																																																																																																																																																																																																																																																																																																																						
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Other site elements: <input type="checkbox"/> Inside Lot <input type="checkbox"/> Corner Lot <input checked="" type="checkbox"/> Cul de Sac <input checked="" type="checkbox"/> Underground Utilities <input type="checkbox"/> Other (describe)																																																																																																																																																																																																																																																																																																																																																																																																																										
FEMA Spec'l Flood Hazard Area <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No FEMA Flood Zone X FEMA Map # 32003C2550F FEMA Map Date 11/16/2011																																																																																																																																																																																																																																																																																																																																																																																																																										
Site Comments: The site is adjacent and across from similar uses, with improvements located onsite to maximize utility. Present use considered highest and best use as the improvements contribute to the overall value and no alternative use would result in a better use of the property.																																																																																																																																																																																																																																																																																																																																																																																																																										
DETAILED IMPROVEMENTS	<table><tr><td colspan="4">General Description</td><td colspan="4">Exterior Description</td><td colspan="2">Foundation</td><td colspan="2">Basement</td><td colspan="2"><input checked="" type="checkbox"/> None</td><td colspan="2">Heating</td><td colspan="2">Yes</td></tr><tr><td colspan="2"># of Units</td><td>One</td><td><input type="checkbox"/> Acc. Unit</td><td colspan="2">Foundation</td><td colspan="2">Concrete</td><td colspan="2">Slab</td><td colspan="2">Concrete</td><td colspan="2">Area Sq. Ft.</td><td colspan="2"></td><td colspan="2">Type</td><td colspan="2">FWA</td></tr><tr><td colspan="2"># of Stories</td><td>One</td><td colspan="2"></td><td colspan="2">Exterior Walls</td><td colspan="2">Stucco</td><td colspan="2">Crawl Space</td><td colspan="2">None</td><td colspan="2">% Finished</td><td colspan="2"></td><td colspan="2">Fuel</td><td colspan="2">Gas</td></tr><tr><td colspan="2">Type</td><td><input checked="" type="checkbox"/> Det.</td><td><input type="checkbox"/> Att.</td><td><input type="checkbox"/></td><td colspan="2">Roof Surface</td><td colspan="2">Tile</td><td colspan="2">Basement</td><td colspan="2">None</td><td colspan="2">Ceiling</td><td colspan="2"></td><td colspan="2"></td><td colspan="2"></td></tr><tr><td colspan="4">Design (Style) Ranch/1-Story</td><td colspan="4">Gutters &amp; Dwnspts.</td><td colspan="4">None</td><td colspan="2">Sump Pump</td><td colspan="2"><input type="checkbox"/> None</td><td colspan="2">Walls</td><td colspan="2">Cooling</td><td colspan="2">Yes</td></tr><tr><td colspan="4"><input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Und.Cons.</td><td colspan="4">Window Type</td><td colspan="4">Insulated</td><td colspan="2">Dampness</td><td colspan="2"><input type="checkbox"/> None</td><td colspan="2">Floor</td><td colspan="2">Central</td><td colspan="2">Yes</td></tr><tr><td colspan="4">Actual Age (Yrs.) 11</td><td colspan="4">Storm/Screens</td><td colspan="4">None</td><td colspan="2">Settlement</td><td colspan="2">None</td><td colspan="2">Outside Entry</td><td colspan="2">Other</td><td colspan="2">None</td></tr><tr><td colspan="4">Effective Age (Yrs.) 11</td><td colspan="4"></td><td colspan="4"></td><td colspan="2">Infestation</td><td colspan="2">None</td><td colspan="2"></td><td colspan="2"></td><td colspan="2"></td></tr><tr><td colspan="4">Interior Description</td><td colspan="4">Appliances</td><td colspan="4">Attic <input type="checkbox"/> None</td><td colspan="4">Amenities</td><td colspan="4">Car Storage <input type="checkbox"/> None</td></tr><tr><td colspan="4">Floors</td><td colspan="4">Exterior Only</td><td colspan="4">Refrigerator <input type="checkbox"/></td><td colspan="4">Stairs <input type="checkbox"/></td><td colspan="4">Fireplace(s) # 0</td><td colspan="4">Woodstove(s) #</td></tr><tr><td colspan="4">Walls</td><td colspan="4">Exterior Only</td><td colspan="4">Range/Oven <input checked="" type="checkbox"/></td><td colspan="4">Drop Stair <input type="checkbox"/></td><td colspan="4">Patio</td><td colspan="4">Yes</td></tr><tr><td colspan="4">Trim/Finish</td><td colspan="4">Exterior Only</td><td colspan="4">Disposal <input checked="" type="checkbox"/></td><td colspan="4">Scuttle <input checked="" type="checkbox"/></td><td colspan="4">Deck</td><td colspan="4">None</td></tr><tr><td colspan="4">Bath Floor</td><td colspan="4">Exterior Only</td><td colspan="4">Dishwasher <input checked="" type="checkbox"/></td><td colspan="4">Doorway <input type="checkbox"/></td><td colspan="4">Porch</td><td colspan="4">Yes</td></tr><tr><td colspan="4">Bath Wainscot</td><td colspan="4">Exterior Only</td><td colspan="4">Fan/Hood <input checked="" type="checkbox"/></td><td colspan="4">Floor <input type="checkbox"/></td><td colspan="4">Fence</td><td colspan="4">Yes</td></tr><tr><td colspan="4">Doors</td><td colspan="4">Exterior Only</td><td colspan="4">Microwave <input checked="" type="checkbox"/></td><td colspan="4">Heated <input type="checkbox"/></td><td colspan="4">Pool</td><td colspan="4">None</td></tr><tr><td colspan="4"></td><td colspan="4">Washer/Dryer <input type="checkbox"/></td><td colspan="4">Finished <input type="checkbox"/></td><td colspan="4">Spa</td><td colspan="4">None</td><td colspan="4"></td></tr><tr><td colspan="12">Finished area above grade contains: 7 Rooms 3 Bedrooms 2.5 Bath(s) 2,614 Square Feet of Gross Living Area Above Grade</td><td colspan="2"></td></tr><tr><td colspan="12">Additional features: The property is assumed to have standard features and amenities for this submarket.</td><td colspan="2"></td></tr><tr><td colspan="12">Describe the condition of the property (including physical, functional and external obsolescence): As of the physical date of inspection, the subject exterior was in average condition. 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RESIDENTIAL APPRAISAL REPORT

File No.: 5327 Marsh Butte Street

TRANSFER HISTORY

My research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s): GLVAR MLS & Clark County Public Records

1st Prior Subject Sale/Transfer

Analysis of sale/transfer history and/or any current agreement of sale/listing: No reported sales or transfers.

Date:

Price:

Source(s):

2nd Prior Subject Sale/Transfer

Date:

Price:

Source(s):

SALES COMPARISON APPROACH TO VALUE (if developed) ☐ The Sales Comparison Approach was not developed for this appraisal.

FEATURE	SUBJECT	COMPARABLE SALE # 1			COMPARABLE SALE # 2			COMPARABLE SALE # 3		
Address	5327 Marsh Butte Street Las Vegas, NV 89148	10029 Twilight Canyon Court Las Vegas, NV 89148			9731 Drayton Avenue Las Vegas, NV 89148			10129 W Mesa Vista Avenue Las Vegas, NV 89148		
Proximity to Subject		0.11 miles NE			0.48 miles E			0.11 miles SW		
Sale Price	\$			\$ 315,000			\$ 315,000			\$ 310,000
Sale Price/GLA	\$ /sq.ft.	\$ 119.14 /sq.ft.			\$ 120.83 /sq.ft.			\$ 117.25 /sq.ft.		
Data Source(s)	MLS-Pub Records	MLS-Public Records / DOM 26			MLS-Public Records / DOM 66			MLS-Public Records / DOM 81		
Verification Source(s)	Public Records	201312260:1661			201311080:1159			201306140:2445		
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION		+(-) \$ Adjust.	DESCRIPTION		+(-) \$ Adjust.	DESCRIPTION		+(-) \$ Adjust.
Sales or Financing Concessions		Traditional CONV \$0			Estate Sale CONV \$0			Traditional CASH \$0		
Date of Sale/Time		12/26/2013			11/08/2013			06/14/2013		
Rights Appraised	Fee Simple	Fee Simple			Fee Simple			Fee Simple		
Location	Section 30	Section 30			Providence Park			Section 30		
Site	7,539 SF/CDS	8,709 SF/CDS			7,700 SF/CDS			7,350 SF/Interior		
View	Residential	Residential			Residential			Residential		
Design (Style)	Ranch/1-Story	Ranch/1-Story			Ranch/1-Story			Ranch/1-Story		
Quality of Construction	Stucco	Stucco			Stucco			Stucco		
Age	11	13			13			11		
Condition	Average	Good		-13,200	Good		-13,000	Very Good		-26,400
Above Grade Room Count	Total Bdrms Baths	Total Bdrms Baths			Total Bdrms Baths			Total Bdrms Baths		
	7 3 2.5	7 3 2.5			7 3 2.5			7 3 2.5		
Gross Living Area	2,614 sq.ft.	2,644 sq.ft.			2,607 sq.ft.			2,644 sq.ft.		
Basement & Finished Rooms Below Grade	None	None			None			None		
Functional Utility	Average	Average			Average			Average		
Heating/Cooling	Central	Central			Central			Central		
Energy Efficient Items	Standard	Standard			Standard			Standard		
Garage/Carport	3 Car Garage	3 Car Garage			3 Car Garage			3 Car Garage		
Porch/Patio/Deck	L/S,C/Patio	L/S,C/Patio			L/S,C/Patio			L/S,C/Patio		
Pool Package	None	None			Pool/Spa		-15,750	None		
Contract Date	None	11/23/2013		+4,700	10/10/2013		+9,500	05/11/2013		+24,800
Rent/GRM	N/A	N/A			N/A			N/A		
Net Adjustment (Total)		<input type="checkbox"/> + <input checked="" type="checkbox"/> -		\$ -8,500	<input type="checkbox"/> + <input checked="" type="checkbox"/> -		\$ -19,250	<input type="checkbox"/> + <input checked="" type="checkbox"/> -		\$ -1,600
Adjusted Sale Price of Comparables				\$ 306,500			\$ 295,750			\$ 308,400
Summary of Sales Comparison Approach The comparables in this report range in gross living area (GLA) from 2,443 to 2,644 square feet, with three located in the subject project and one in a nearby competitive tract.										
The comparables required adjustments (rounded, unless otherwise stated) for variations in the following: condition of good and very good at \$5 and \$10 per square foot of gross living area (GLA), respectively, where all properties were recognized for better overall condition; GLA at \$70 per square foot; and pool/spa and pool each at 5% of sale price, with no evidence at this time that a pool/spa contributes more to value than a pool only. Comparables were adjusted for time at 1% percent per month of sale price from the date of contract, to reflect changes in market conditions over this period of time. This generally is considered consistent with price changes in this market segment. Cross comparison of the data did not support adjustments for minor variations in site, age, bath, or GLA. While these variations were noted, in most cases a consistent value difference indication between the sales could not be isolated.										
Minor value features, i.e., solar screens, storage sheds, etc., and or external factors lacking adjustment support, may not have been noted in the grid. If present, minor value features in the comparables were contrasted to the similar or offsetting items in the subject and factored into the reconciliation and final value opinion.										
In consideration of the above market transactions and current market conditions, greatest consideration is placed on the Sales Comparison Approach to Value. The value opinion is correlated at \$306,000. The package price per square foot of \$117 (rounded) includes land plus improvements. The closed comparable transactions indicate a package price from \$117 to \$123. The subject's package price is supported by the unadjusted sale price divided by gross living area of the comparables utilized which in the appraiser's determination would reasonably compete with the subject property. Comparable two sold as an estate sale and indicates a low sale. The adjusted range of comparable pricing brackets and supports the value conclusion. In the final analysis, the subject's central tendency is about \$304,000, with the final conclusion of value rounded up to \$306,000 as most weight is placed on the traditional transactions.										
Indicated Value by Sales Comparison Approach \$ 306,000										





## **ADDITIONAL COMPARABLE SALES**

**File No.: 5327 Marsh Butte Street**

[illegible]

Explanatory Comments

File No. 5327 Marsh Butte Street

Client	Wright Finlay & Zak			
Property Address	5327 Marsh Butte Street			
City	Las Vegas	County	Clark	State NV Zip Code 89148
Owner	Magnolia Gotera/Stacy Moore			

EXTRAORDINARY ASSUMPTION:

USPAP provides the following definition for “extraordinary assumption”:

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

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

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

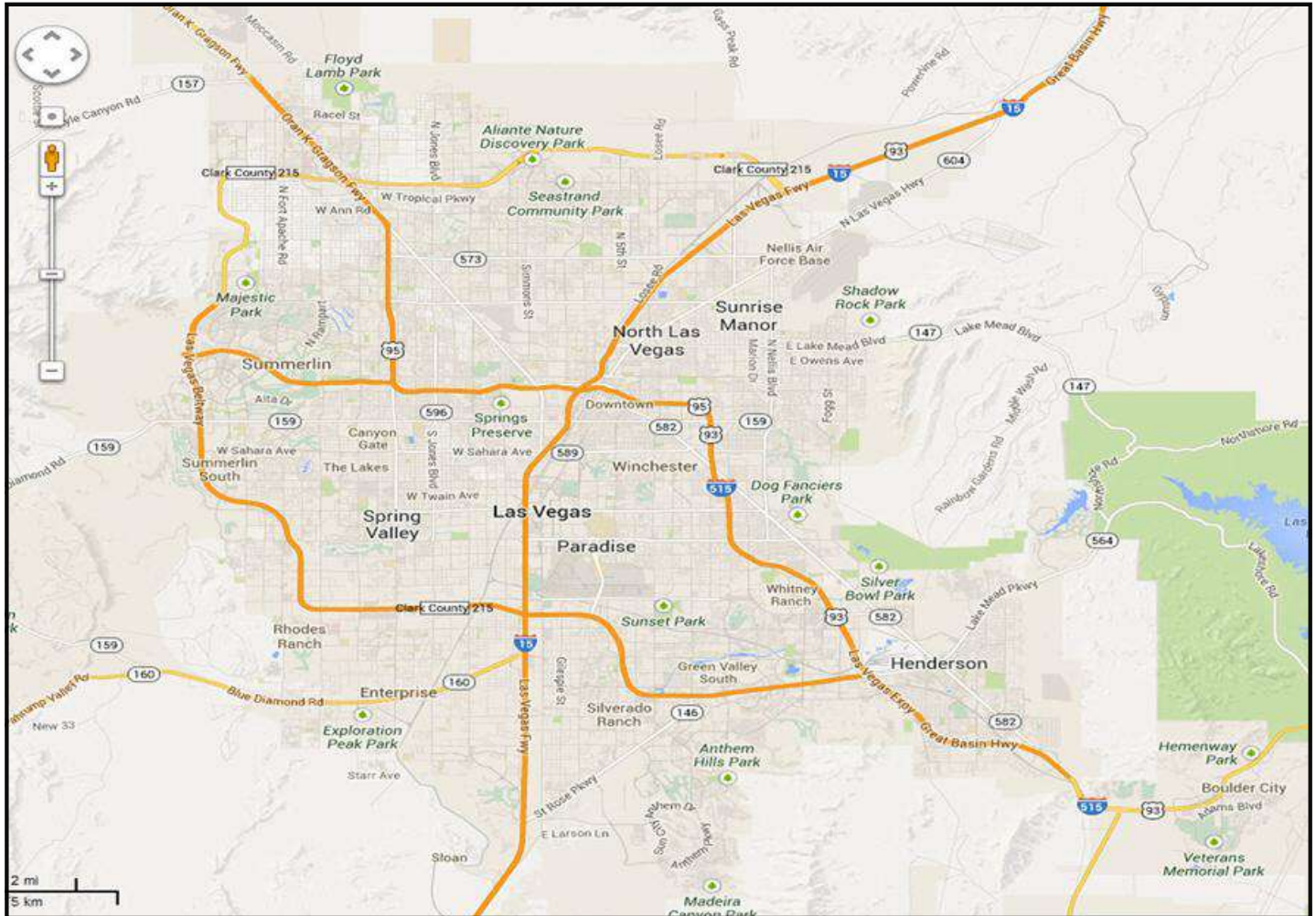
As indicated on page 1 of this report, if the assumptions invoked are found to be false, it could alter the value opinion and or other conclusions in this report. As such, the appraiser reserves the right to amend the value opinion and or conclusions based on new or revised information.

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

The final value within this appraisal assignment represents a "Retrospective" Market Value opinion as of the date of the HOA sale, January 8, 2014, the effective date of this report. The physical exterior inspection of the subject property was performed on February 5, 2017.

## Market Area Overview

Client	Wright Finlay & Zak				
Property Address	5327 Marsh Butte Street				
City	Las Vegas	County	Clark	State	NV
Owner	Magnolia Gotera/Stacy Moore				
Zip Code	89148				



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

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

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

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

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



Key Housing Indicators - Market Conditions

Client	Wright Finlay & Zak					
Property Address	5327 Marsh Butte Street					
City	Las Vegas	County	Clark	State	NV	Zip Code 89148
Owner	Magnolia Gotera/Stacy Moore					

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

Las Vegas Valley Market Overview - December 2013						
	2008	2009	2010	2011	2012	2013 & YTD
Job Growth - Annual	-15,700	-85,400	-23,300	-4,600	15,400	16,600
SFR Median Sale Price	\$222,500	\$140,000	\$135,347	\$124,750	\$132,393	\$177,500
Interest Rate %	6.03	5.01	4.75	3.88	3.94	4.48
PI with 80% LTV - No MI	\$1,071	\$602	\$565	\$470	\$502	\$717
PI with 95% LTV - No MI	\$1,398	\$794	\$744	\$628	\$671	\$852
3 BR Metro Avg Apt Rent	\$1,105	\$1,014	\$977	\$964	\$934	\$952
Metro SFR Median Rent	\$1,250	\$1,195	\$1,113	\$1,115	\$1,095	\$1,100
GLVAR MLS SFR Annual Activity - 2013 is Year End / New Homes include all product types						
Listings Total Year - YTD	61,038	57,016	56,643	55,174	40,271	39,819
Listings W/O Offer Yr End - YTD		8,405	12,417	8,831	3,688	7,063
Sales Volume	24,924	38,127	34,434	38,153	36,609	32,756
Sales Volume - New Homes	9,017	4,924	4,786	1,220	5,544	7,303
List to Sale Ratio	41%	67%	61%	69%	91%	82%
Med List Price (Annual & YTD)	\$189,500	\$149,900	\$135,000	\$128,500	\$145,000	\$186,500
Med Sale Price (Annual)	\$222,500	\$140,000	\$135,347	\$124,750	\$132,393	\$177,500
Med Sale Price - New Homes (Annual)	\$258,888	\$211,115	\$201,035	\$221,075	\$218,114	\$298,601
Average DOM	68	61	64	72	69	52
Case Shiller Jan 2000 = 100	131.4	104.38	99.2	90.48	102.19	Oct 127.23

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

**2010:** The market was dominated by sales of REOs, "all cash" to investors and liquidated at price points significantly below economic value (affordability), often 35%+/- or more below value. Physical condition ranged from average to poor.

**2011:** There was a shift from a market dominated by REOs to one dominated by short sales. Many short sales were in better condition and unlike 2010; lenders took an active participation in negotiations, increasing prices closer to economic value.

**2012:** Short sales remained dominant and investors (due to a lack of REO inventory) shifted to short sales. Legislation made it difficult for lenders to foreclose and REO inventory was limited.

**2013:** Observers indicate lenders are holding REO inventory (from 40,000 to 60,000 units), in effect, creating a temporary shortage. The effect of the shortage has been to increase demand and current prices. Upward shifts in mortgage rates may have a negative effect on demand from end users and could cause some cancelations in the new and resale housing market

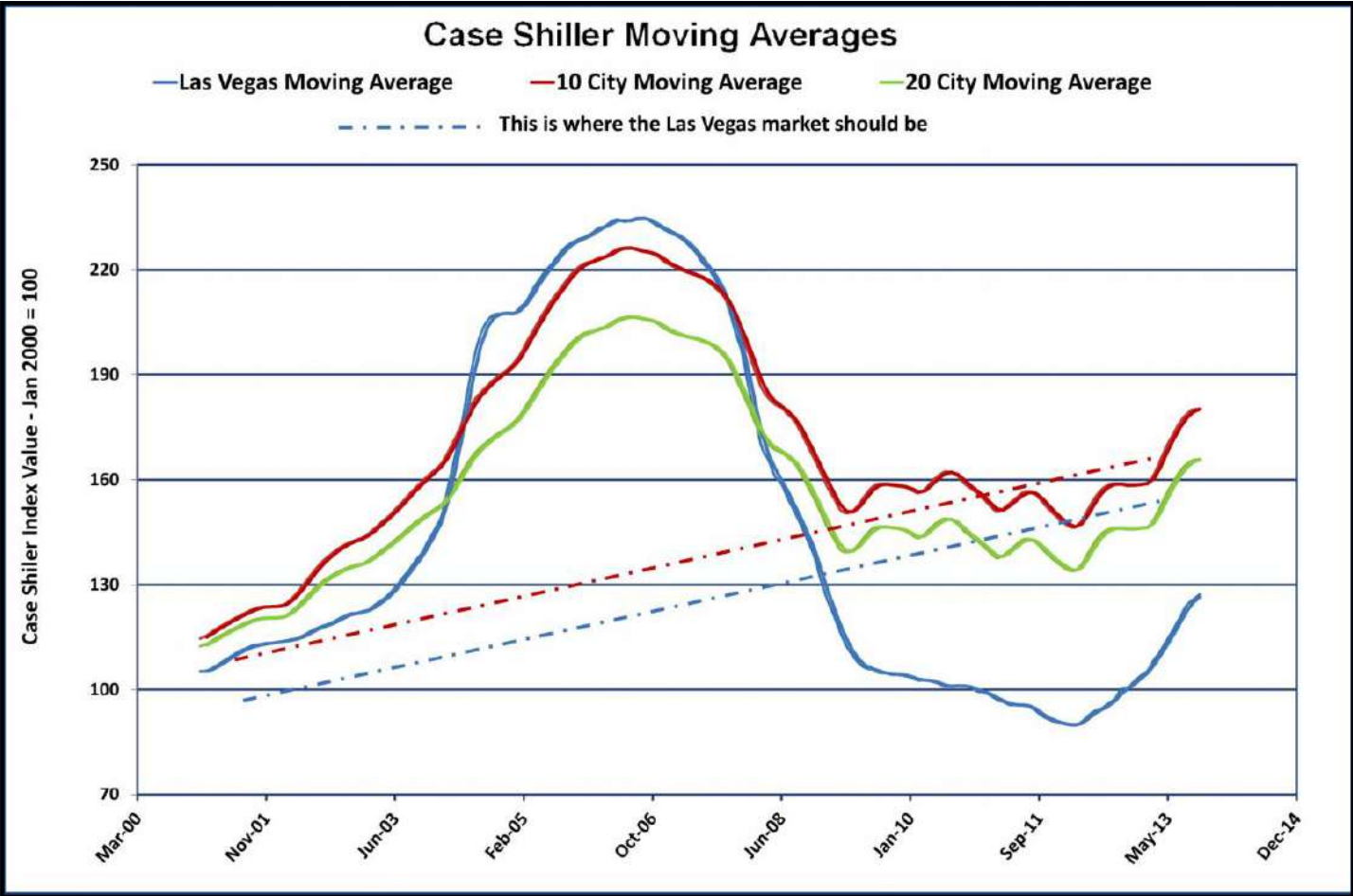
**2014:** In 2013, the market continued to correct and prices rose dramatically, by some accounts and in some submarkets, by 20% to 30% year over year. At the close of 2013 and heading into 2014, the market has slowed somewhat as prices reached short-term peaks and interest rose, affecting affordability. It appears we are seeing a short-term correction as asking prices significantly increased monthly home payments, while monthly rents increased moderately. The price gap between median new and resale continues to widen.

**Observations and Conclusions:** Statistical analysis and comparison of the current year to prior years are not reliable as the prior data reflects multiple sales of the same property (but in different condition), in the same year and or subsequent year and often, a disproportionate mix of highly dissimilar sales (condition). This will give the appearance of "appreciation", when in essence you are comparing "apples to oranges". In years past, or normal years, the sales volume reflects sales of a single property to end users as opposed to sale and resale of the same property. Economic correction requires a significant increase in employment. Rentals rates are soft and house prices (new and resale) have created a gap again, softening the market somewhat over the short term. As employment improves, the market will improve, however, over the short-term we can expect adjustments to demand and some price sensitivity and the general market seeks to recover.

Case Shiller - Market Conditions

Client	Wright Finlay & Zak			
Property Address	5327 Marsh Butte Street			
City	Las Vegas	County	Clark	State NV Zip Code 89148
Owner	Magnolia Gotera/Stacy Moore			

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



Las Vegas still is well below the 10 City and 20 City averages and well below where it should be if the housing market did not spin out of control in the mid 2000's. The two trend lines (red for the composites and blue for Las Vegas) illustrate the normal relationship between Las Vegas and the 10 and 20 City Composites. What we are seeing (current market conditions), is the market's attempt to correct.

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

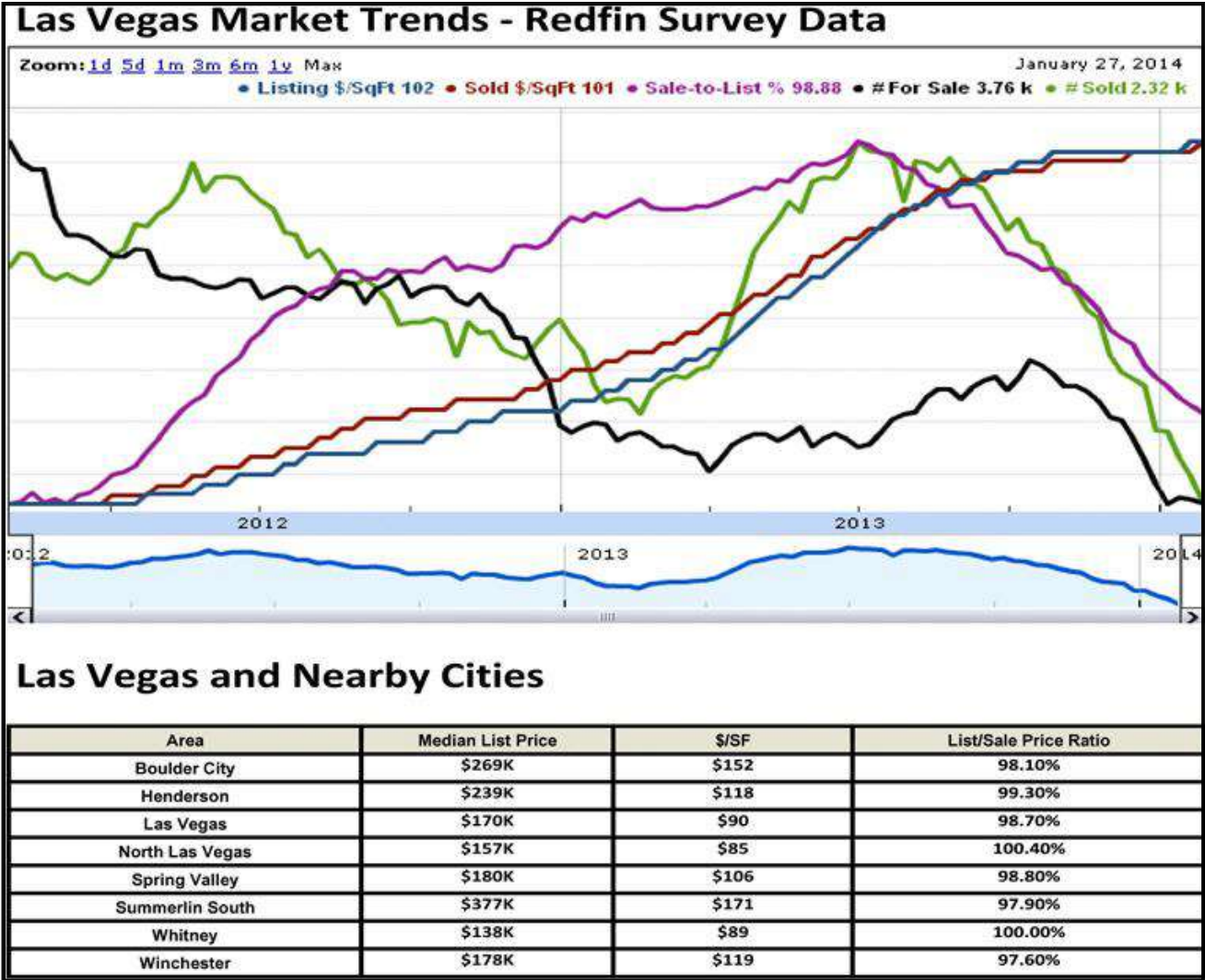
Investors dominated Las Vegas and other housing markets over the past several years because they realized what the rest of the market did not, housing in Las Vegas was "economically under-valued." This is changing as prices have continued an upward trend, slowing the market and reducing investor activity over the past year.

The Las Vegas housing market correction from 2006-2013, the excessive supply of homes (REO's and short sales) combined with unprecedented low interest rates, combined to create a buyer's market, essentially, conditions whereby buying a house is more affordable than renting one. The interest rates remain so low in fact, that an extra 10% increase in price is marginal in terms of additional monthly payment. We cannot project the sustainability of a market shift, only evidence an imbalance, to support a market conditions adjustment at this point.

Redfin - Las Vegas Market Overview - Market Conditions

Client	Wright Finlay & Zak			
Property Address	5327 Marsh Butte Street			
City	Las Vegas	County	Clark	State NV Zip Code 89148
Owner	Magnolia Gotera/Stacy Moore			

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



**Measuring and Reporting Market Conditions:** The appraiser's assignment is to identify the risk and place it into context of the market. It is the client's responsibility to measure and underwrite that risk. When reviewing the Las Vegas, NV market data, several things are clear. 1) Demand exceeds supply with demand bolstered by investors; 2) Purchasing power is greater than normal due to historically low interest rates; 3) Single family housing provides greater utility than apartments; and 4) Future supply is being held off the market.

This combination of factors acting in the market is creating a housing shortage and driving prices upwards, closing the gap between where we should have been and where we have been over the past few years. This is evident via multiple offers over list prices on many homes and shown in the Case-Shiller Index. The market is not in balance and therefore, this combination of influence (rates, investors, supply, demand) creates conditions that affect the market value criteria for the value opinion.

It is important to comprehend that a balanced market moves in concert, "all ships rise and fall with the tide". A correcting market however, will see rising segments first (where the most demand exists) until demand overflows onto a higher market tier. Therefore, while demand may be high for entry-level and lower move-up tiers, mid-range and upper tiers (below the luxury home market), may not be experiencing the same level of demand. This will continue until excess inventory is absorbed throughout the market.


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

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



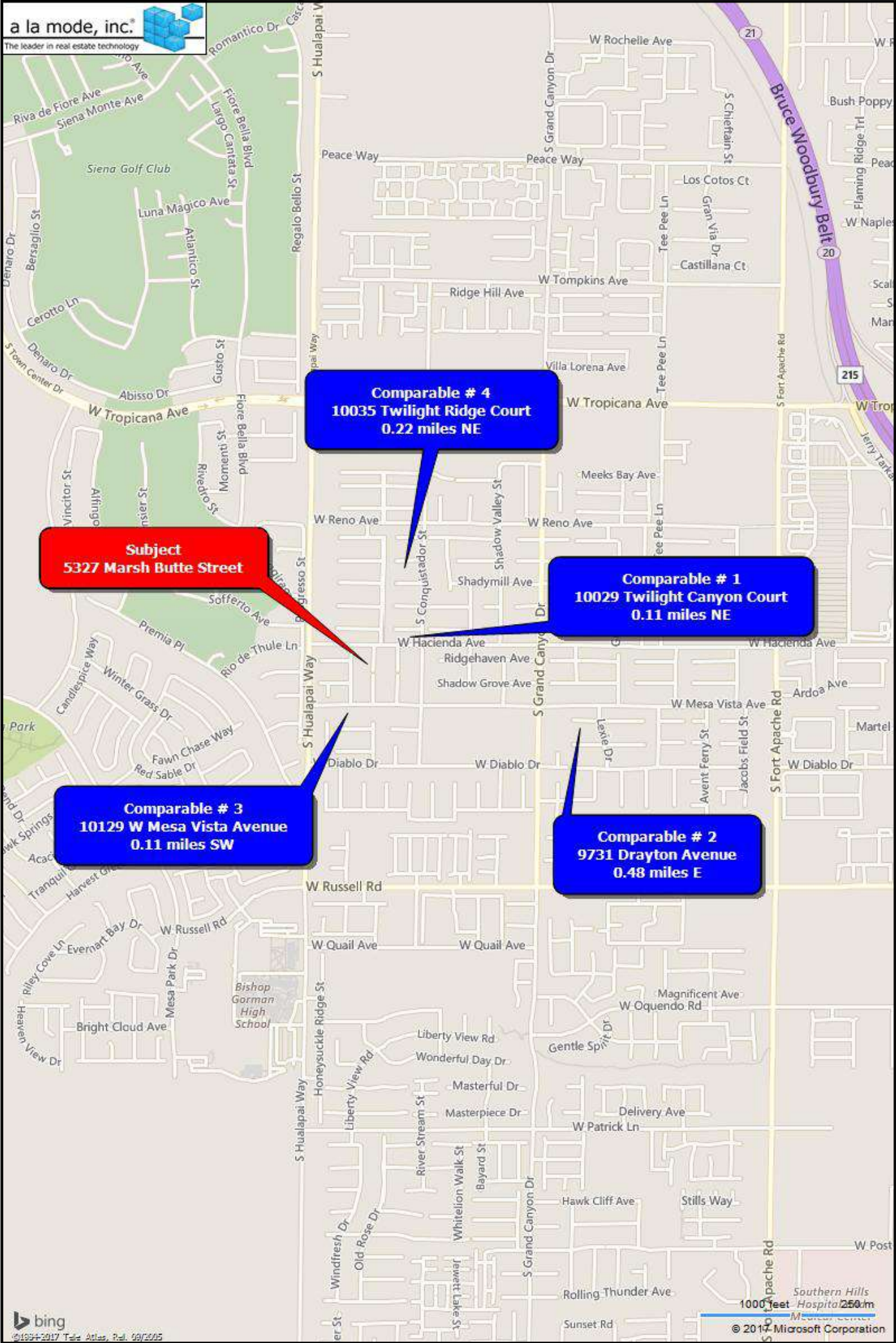


Assessor's Page - Page 2

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Location Map

Client	Wright Finlay & Zak			
Property Address	5327 Marsh Butte Street			
City	Las Vegas	County	Clark	State NV Zip Code 89148
Owner	Magnolia Gotera/Stacy Moore			







Building Sketch

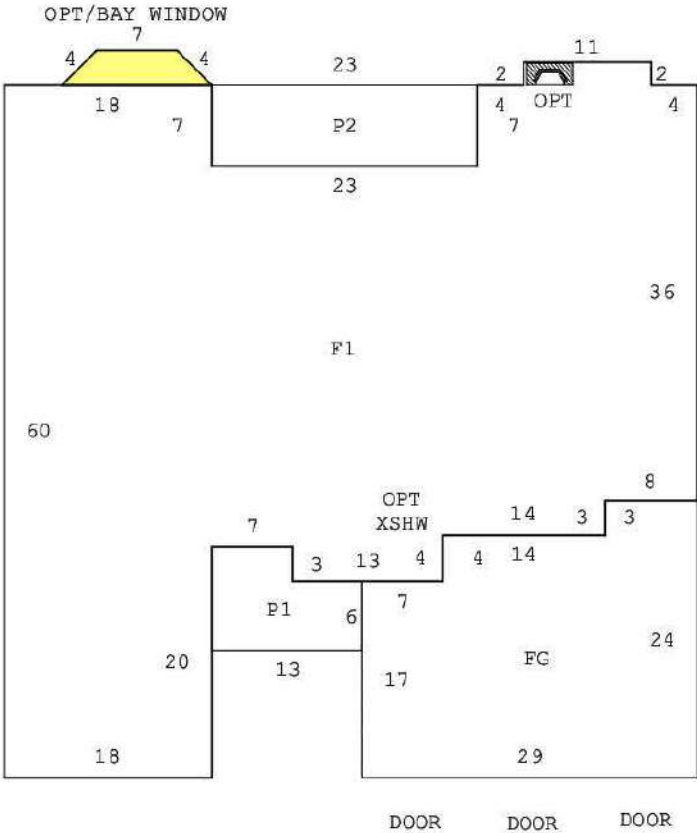
SKETCH/AREA TABLE ADDENDUM

S:\M\163\30\Montana\PLAN2.AX2

APN 163-30-

SUBJECT	Address		
	Date	07/2000	N/A LC#
	Subj/Project	MONTANNA	
	Model	PLAN 2	N/A SHADOW MOUNTAIN RANCH
	Drawn by #	120	N/A PARDEE HOMES

IMPROVEMENTS SKETCH



Comments: This is for Tax Assessment Purposes Only

AREA CALCULATIONS

Scale: 1" = 12'

AREA CALCULATIONS SUMMARY					
Code	Description	Factor	Net Size	Perimeter	Net Totals
GLA1	F1	1.00	2614.00	264.0	
	OPT/BAY WINDOW	1.00	30.00	28.5	2644.00
FG	FG	1.00	605.00	106.0	605.00
P1	P1	1.00	99.00	44.0	99.00
P2	P2	1.00	161.00	60.0	161.00
Net LIVABLE Area (rounded w/ factors)					2644

COMMENTS	
FIXTURES	



Subject Photo Page

Client	Wright Finlay & Zak				
Property Address	5327 Marsh Butte Street				
City	Las Vegas	County	Clark	State	NV      Zip Code 89148
Owner	Magnolia Gotera/Stacy Moore				



Subject Front

5327 Marsh Butte Street	
Sales Price	
Gross Living Area	2,614
Total Rooms	7
Total Bedrooms	3
Total Bathrooms	2.5
Location	Section 30
View	Residential
Site	7,539 SF/CDS
Quality	Stucco
Age	11



Subject Street

Comparable Photo Page

Client	Wright Finlay & Zak				
Property Address	5327 Marsh Butte Street				
City	Las Vegas	County	Clark	State	NV      Zip Code    89148
Owner	Magnolia Gotera/Stacy Moore				



Comparable 1

10029 Twilight Canyon Court	
Prox. to Subject	0.11 miles NE
Sales Price	315,000
Gross Living Area	2,644
Total Rooms	7
Total Bedrooms	3
Total Bathrooms	2.5
Location	Section 30
View	Residential
Site	8,709 SF/CDS
Quality	Stucco
Age	13



Comparable 2

9731 Drayton Avenue	
Prox. to Subject	0.48 miles E
Sales Price	315,000
Gross Living Area	2,607
Total Rooms	7
Total Bedrooms	3
Total Bathrooms	2.5
Location	Providence Park
View	Residential
Site	7,700 SF/CDS
Quality	Stucco
Age	13



Comparable 3

10129 W Mesa Vista Avenue	
Prox. to Subject	0.11 miles SW
Sales Price	310,000
Gross Living Area	2,644
Total Rooms	7
Total Bedrooms	3
Total Bathrooms	2.5
Location	Section 30
View	Residential
Site	7,350 SF/Interior
Quality	Stucco
Age	11

Comparable Photo Page

Client	Wright Finlay & Zak				
Property Address	5327 Marsh Butte Street				
City	Las Vegas	County	Clark	State	NV      Zip Code    89148
Owner	Magnolia Gotera/Stacy Moore				



Comparable 4

10035 Twilight Ridge Court  
Prox. to Subject      0.22 miles NE  
Sales Price            300,000  
Gross Living Area    2,443  
Total Rooms           7  
Total Bedrooms       3  
Total Bathrooms      3  
Location               Section 30  
View                    Residential  
Site                      7,875 SF/CDS  
Quality                  Stucco  
Age                       12

Clarification of Scope of Work

File No. 5327 Marsh Butte Street

Client	Wright Finlay & Zak			
Property Address	5327 Marsh Butte Street			
City	Las Vegas	County	Clark	State NV Zip Code 89148
Owner	Magnolia Gotera/Stacy Moore			

CLARIFICATION OF SCOPE OF WORK

(Rev. 02/08/2017)

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

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

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

The SPV conclusion is a "benchmark" in time, provided at the request of the client and or intended user of this report and for the purpose stated. Anyone relying upon the conclusions should read the report in its entirety, to comprehend and accept the assignment conditions as suitable and reliable for their purpose.

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

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

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

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

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

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

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



Clarification of Scope of Work

File No. 5327 Marsh Butte Street

Client	Wright Finlay & Zak			
Property Address	5327 Marsh Butte Street			
City	Las Vegas	County	Clark	State NV Zip Code 89148
Owner	Magnolia Gotera/Stacy Moore			

and governmental characteristics (the same criteria used to define census tracts). Over time, small areas merge and once distinct boundaries become less defined. **Comparable data was selected based upon the area proximate to the subject that a buyer would consider directly competitive.**

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

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

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

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

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

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

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

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

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

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

Clarification of Scope of Work

File No. 5327 Marsh Butte Street

Client	Wright Finlay & Zak			
Property Address	5327 Marsh Butte Street			
City	Las Vegas	County	Clark	State NV Zip Code 89148
Owner	Magnolia Gotera/Stacy Moore			

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

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

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

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

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

GP Residential Certifications Addendum

File No.: 5327 Marsh Butte Street

Property Address:	5327 Marsh Butte Street	City:	Las Vegas	State:	NV	Zip Code:	89148
Client:	Wright Finlay & Zak	Address:	7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117				
Appraiser:	R. Scott Dugan, SRA	Address:	8930 W Tropicana Avenue, Suite 1, Las Vegas, NV 89147				

**STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**INTENDED USE/USER:**

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




**SCOPE OF WORK:**

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

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

Certifications

File No.: 5327 Marsh Butte Street

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<b>APPRAISER'S CERTIFICATION</b>																																																															
<p>I certify that, to the best of my knowledge and belief:</p> <ul style="list-style-type: none"><li>— The statements of fact contained in this report are true and correct.</li><li>— The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.</li><li>— 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.</li><li>— I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.</li><li>— My engagement in this assignment was not contingent upon developing or reporting predetermined results.</li><li>— My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.</li><li>— My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.</li><li>— I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.</li><li>— Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.</li><li>— Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.</li></ul>																																																															
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<p><u>Supplemental Certification:</u> In compliance with the Ethics Rule of USPAP, I hereby certify that I have not performed any services with regard to the subject property within the 3-year period immediately preceding the engagement of this assignment.</p> <p><u>Supplemental Certification:</u> The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. As of the date of this report, I, R. Scott Dugan, SRA, Certified General Appraiser, have completed the continuing education program for Designated members of the Appraisal Institute.</p>																																																															
<b>Definition of Market Value:</b> (X) Market Value    ( ) Other Value																																																															
<b>Source of Definition:</b> FDIC Interagency Appraisal and Evaluation Guidelines (December 2, 2010) Appendix D																																																															
<p>As defined in the Agencies' appraisal regulations, the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:</p> <ol style="list-style-type: none"><li>1. Buyer and seller are typically motivated;</li><li>2. Both parties are well informed or well advised, and acting in what they consider their best interest;</li><li>3. A reasonable time is allowed for exposure in the open market;</li><li>4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and</li><li>5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.</li></ol> <p>*The definition of market value above is the most widely cited by federally regulated lending institutions, HUD and VA. Absent a specific definition from the client, this definition was used in the assignment.</p>																																																															
<table><tr><td colspan="2">Client Contact: Wright Finlay &amp; Zak</td><td colspan="2">Client Name: Wright Finlay &amp; Zak</td></tr><tr><td colspan="2">E-Mail: saslinger@wrightlegal.net</td><td colspan="2">Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117</td></tr><tr><td colspan="4"><b>APPRAISER</b></td></tr><tr><td colspan="4"></td></tr><tr><td colspan="4">Appraiser Name: R. Scott Dugan, SRA</td></tr><tr><td colspan="4">Company: R. Scott Dugan Appraisal Company, Inc.</td></tr><tr><td colspan="2">Phone: 702-876-2000</td><td colspan="2">Fax: 702-253-1888</td></tr><tr><td colspan="4">E-Mail: appraisals@rsdugan.com</td></tr><tr><td colspan="4">Date Report Signed: February 16, 2017</td></tr><tr><td colspan="2">License or Certification #: A.0000166-CG</td><td colspan="2">State: NV</td></tr><tr><td colspan="4">Designation: SRA</td></tr><tr><td colspan="4">Expiration Date of License or Certification: 05/31/2017</td></tr><tr><td colspan="4">Inspection of Subject: <input type="checkbox"/> Interior &amp; Exterior    <input checked="" type="checkbox"/> Exterior Only    <input type="checkbox"/> None</td></tr><tr><td colspan="4">Date of Inspection: February 05, 2017</td></tr></table>								Client Contact: Wright Finlay & Zak		Client Name: Wright Finlay & Zak		E-Mail: saslinger@wrightlegal.net		Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117		<b>APPRAISER</b>								Appraiser Name: R. Scott Dugan, SRA				Company: R. Scott Dugan Appraisal Company, Inc.				Phone: 702-876-2000		Fax: 702-253-1888		E-Mail: appraisals@rsdugan.com				Date Report Signed: February 16, 2017				License or Certification #: A.0000166-CG		State: NV		Designation: SRA				Expiration Date of License or Certification: 05/31/2017				Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input checked="" type="checkbox"/> Exterior Only <input type="checkbox"/> None				Date of Inspection: February 05, 2017			
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# EXHIBIT “S”



STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
REAL ESTATE DIVISION  
ADVISORY OPINION

Subject: The Super Priority Lien	Advisory No. <b>13-01</b>	21 pages
	Issued By:	Real Estate Division
	Amends/ Supersedes	N/A
Reference(s): NRS 116.3102; ; NRS 116.310312; NRS 116.310313; NRS 116.3115; NRS 116.3116; NRS 116.31162; Commission for Common Interest Communities and Condominium Hotels Advisory Opinion No. 2010-01	Issue Date: December 12, 2012	

**QUESTION #1:**

Pursuant to NRS 116.3116, may the portion of the association's lien which is superior to a unit's first security interest (referred to as the "super priority lien") contain "costs of collecting" defined by NRS 116.310313?

**QUESTION #2:**

Pursuant to NRS 116.3116, may the sum total of the super priority lien ever exceed 9 times the monthly assessment amount for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115, plus charges incurred by the association on a unit pursuant to NRS 116.310312?

**QUESTION #3:**

Pursuant to NRS 116.3116, must the association institute a "civil action" as defined by Nevada Rules of Civil Procedure 2 and 3 in order for the super priority lien to exist?

**SHORT ANSWER TO #1:**

No. The association's lien does not include "costs of collecting" defined by NRS 116.310313, so the super priority portion of the lien may not include such costs. NRS 116.310313 does not say such charges are a lien on the unit, and NRS 116.3116 does not make such charges part of the association's lien.

**SHORT ANSWER TO #2:**

No. The language in NRS 116.3116(2) defines the super priority lien. The super priority lien consists of unpaid assessments based on the association's budget and NRS 116.310312 charges, nothing more. The super priority lien is limited to: (1) 9 months of assessments; and (2) charges allowed by NRS 116.310312. The super priority lien based on assessments may not exceed 9 months of assessments as reflected in the association's budget, and it may not include penalties, fees, late charges, fines, or interest. References in NRS 116.3116(2) to assessments and charges pursuant to NRS 116.310312 define the super priority lien, and are not merely to determine a dollar amount for the super priority lien.

**SHORT ANSWER TO #3:**

No. The association must *take action* to enforce its super priority lien, but it need not institute a civil action by the filing of a complaint. The association may begin the process for foreclosure in NRS 116.31162 or exercise any other remedy it has to enforce the lien.

**ANALYSIS OF THE ISSUES:**

This advisory opinion – provided in accordance with NRS 116.623 – details the Real Estate Division's opinion as to the interpretation of NRS 116.3116(1) and (2). The Division hopes to help association boards understand the meaning of the statute so they are better equipped to represent the interests of their members. Associations are encouraged to look at the entirety of a situation surrounding a particular deficiency and evaluate the association's best option for collection. The first step in that analysis is to understand what constitutes the association's lien, what is not part of the lien, and the status of the lien compared to other liens recorded against the unit.

Subsection (1) of NRS 116.3116 describes what constitutes the association's lien; and subsection (2) states the lien's priority compared to other liens recorded against a unit. NRS 116.3116 comes from the Uniform Common Interest Ownership Act (1982) (the "Uniform Act"), which Nevada adopted in 1991. So, in addition to looking at the language of the relevant Nevada statute, this analysis includes references to the Uniform Act's equivalent provision (§ 3-116) and its comments.

1. **NRS 116.3116(1) DEFINES WHAT THE ASSOCIATION'S LIEN CONSISTS OF.**

NRS 116.3116(1) provides generally for the lien associations have against units within common-interest communities. NRS 116.3116(1) states as follows:

**The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.**

(emphasis added).

Based on this provision, the association's lien includes assessments, construction penalties, and fines imposed against a unit when they become due. In addition – unless the declaration otherwise provides – penalties, fees, charges, late charges, fines, and interest charged pursuant to NRS 116.3102(1)(j) through (n) are also part of the association's lien in that such items are enforceable as if they were assessments. Assessments can be foreclosed pursuant to NRS 116.31162, but liens for fines and penalties may not be foreclosed unless they satisfy the requirements of NRS 116.31162(4). Therefore, it is important to accurately categorize what comprises each portion of the association's lien to evaluate enforcement options.

**A. "COSTS OF COLLECTING" (DEFINED BY NRS 116.310313) ARE NOT PART OF THE ASSOCIATION'S LIEN**

NRS 116.3116(1) does not specifically make costs of collecting part of the association's lien, so the determination must be whether such costs can be included under the incorporated provisions of NRS 116.3102. NRS 116.3102(1)(j) through (n) identifies five very specific categories of penalties, fees, charges, late charges, fines, and interest associations may impose. This language encompasses all penalties, fees,



charges, late charges, fines, and interest that are part of the lien described in NRS 116.3116(1).

NRS 116.3102(1)(j) through (n) states:

1. Except as otherwise provided in this section, and subject to the provisions of the declaration, the association may do any or all of the following: ...

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

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

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

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

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

(emphasis added).

Whatever charges the association is permitted to impose by virtue of these provisions are part of the association's lien. Subsection (k) – emphasized above – has been used – the Division believes improperly – to support the conclusion that associations may include costs of collecting past due obligations as part of the association's lien. The Commission for Common Interest Communities and Condominium Hotels issued Advisory Opinion No. 2010-01 in December of 2010. The Commission's advisory concludes as follows:

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

Analysis of what constitutes the *super priority lien* portion of the association's lien is discussed in Section III, but the Division agrees that the association's lien does include items noted as (a), (b) and (c) of the Commission's advisory opinion above. To support item (d), the Commission relies on NRS 116.3102(1)(k) which gives associations the power to: "Impose charges for late payment of assessments pursuant to NRS 116.3115." This language would include interest authorized by statute and late fees if authorized by the association's declaration.

"Costs of collecting" defined by NRS 116.310313 is too broad to fall within the parameters of charges for late payment of assessments.<sup>1</sup> By definition, "costs of collecting" relate to the collection of past due "obligations." "Obligations" are defined as "any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner."<sup>2</sup> In other words, costs of collecting includes more than "charges for late payment of assessments."<sup>3</sup> Therefore, the plain language of NRS 116.3116(1) does not incorporate costs of collecting into the association's lien. Further review of the relevant statutes and legislative action supports this conclusion.

**B. PRIOR LEGISLATIVE ACTION SUPPORTS THE POSITION THAT COSTS OF COLLECTING ARE NOT PART OF THE ASSOCIATION'S LIEN DESCRIBED BY NRS 116.3116(1).**

The language of NRS 116.3116(1) allows for "charges for late payment of assessments" to be part of the association's lien.<sup>4</sup> "Charges for late payments" is not the same as "costs of collecting." "Costs of collecting" was first defined in NRS 116 by the adoption of NRS 116.310313 in 2009. NRS 116.310313(1) provides for the association's

<sup>1</sup> Charges for late payment of assessments comes from NRS 116.3102(1)(k) and is incorporated into NRS 116.3116(1).

<sup>2</sup> NRS 116.310313.

<sup>3</sup> "Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court. NRS 116.310313(3)(a).

<sup>4</sup> NRS 116.3102(1)(k) (incorporated into NRS 116.3116(1)).

right to charge a unit owner "reasonable fees to cover the costs of collecting any past due obligation." NRS 116.310313 is not referenced in NRS 116.3116 or NRS 116.3102, nor does NRS 116.310313 specifically provide for the association's right to lien the unit for such costs.

In contrast, NRS 116.310312, also adopted in 2009, allows an association to enter the grounds of a unit to maintain the property or abate a nuisance existing on the exterior of the unit. NRS 116.310312 specifically provides for the association's expenses to be a lien on the unit and provides that the lien is prior to the first security interest.<sup>5</sup> NRS 116.3102(1)(j) was amended to allow these expenses to be part of the lien described in NRS 116.3116(1). And NRS 116.3116(2) was amended to allow these expenses to be included in the association's super priority lien.

The Commission's advisory opinion from December 2010 also relies on changes to the Uniform Act from 2008 to support the notion that collection costs should be part of the association's super priority lien. Nevada has not adopted those changes to the Uniform Act. Since the Commission's advisory opinion, the Nevada Legislature had an opportunity to clarify the law in this regard.

In 2011, the Nevada Legislature considered Senate Bill 174, which proposed changes to NRS 116.3116. S.B. 174 originally included changes to NRS 116.3116(1) such that the association's lien would specifically include "costs of collecting" as defined in NRS 116.310313. S.B. 174 proposed changes to NRS 116.3116 (1) and (2) to bring the statute in line with the changes to the same provision in the Uniform Act amended in 2008.

The Uniform Act's amendments were removed from S.B. 174 by the first reprint. As amended, S.B. 174 proposed changes to NRS 116.3116(2) expanding the super priority lien amount to include costs of collecting not to exceed \$1,950, in addition to 9 months

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<sup>5</sup> See NRS 116.310312(4) and (6).

of assessments. S.B. 174 was discussed in great detail and ultimately died in committee.<sup>6</sup>

Also in 2011, Senate Bill 204 – as originally introduced – included changes to NRS 116.3116(1) to expand the association's lien to include attorney's fees and costs and "any other sums due to the association."<sup>7</sup> The bill's language was taken from the Uniform Act amendments in 2008. All changes to NRS 116.3116(1) were removed from the bill prior to approval.

The Nevada Legislature's actions in the 2009 and 2011 sessions are indicative of its intent not to make costs of collecting part of the lien. The Nevada Legislature could have made the costs of collecting part of the association's lien, like it did for costs under NRS 116.310312. It did not do so. In order for the association to have a right to lien a unit under NRS 116.3116(1), the charge or expense must fall within a category listed in the plain language of the statute. Costs of collecting do not fall within that language. Based on the foregoing, the Division concludes that the association's lien does not include "costs of collecting" as defined by NRS 116.310313.

A possible concern regarding this outcome could be that an association may not be able to recover their collection costs relating to a foreclosure of an assessment lien. While that may seem like an unreasonable outcome, a look at the bigger picture must be considered to put it in perspective. NRS 116.31162 through NRS 116.31168, inclusive, outlines the association's ability to enforce its lien through foreclosure. Associations have a lien for assessments that is enforced through foreclosure. The association's expenses are reimbursed to the association from the proceeds of the sale. NRS 116.31164(3)(c) allows the proceeds of the foreclosure sale to be distributed in the following order:

- (1) The reasonable expenses of sale;

<sup>6</sup> See <http://leg.state.nv.us/Session/76th2011/Reports/history.cfm?ID=423>.

<sup>7</sup> Senate Bill No. 204 – Senator Copening, Sec. 49, ln. 1-16, February 28, 2011.

- (2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;
- (3) Satisfaction of the association's lien;
- (4) Satisfaction in the order of priority of any subordinate claim of record; and
- (5) Remittance of any excess to the unit's owner.

Subsections (1) and (2) allow the association to receive its expenses to enforce its lien through foreclosure *before* the association's lien is satisfied. Obviously, if there are no proceeds from a sale or a sale never takes place, the association has no way to collect its expenses other than through a civil action against the unit owner. Associations must consider this consequence when making decisions regarding collection policies understanding that every delinquent assessment may not be treated the same.

## **II. NRS 116.3116(2) ESTABLISHES THE PRIORITY OF THE ASSOCIATION'S LIEN.**

Having established that the association has a lien on the unit as described in subsection (1) of NRS 116.3116, we now turn to subsection (2) to determine the lien's priority in relation to other liens recorded against the unit. The lien described by NRS 116.3116(1) is what is referred to in subsection (2). Understanding the priority of the lien is an important consideration for any board of directors looking to enforce the lien through foreclosure or to preserve the lien in the event of foreclosure by a first security interest.

NRS 116.3116(2) provides that the association's lien is prior to all other liens recorded against the unit except: liens recorded against the unit before the declaration; first security interests (first deeds of trust); and real estate taxes or other governmental assessments. There is one exception to the exceptions, so to speak, when it comes to priority of the association's lien. This exception makes a portion of an association's lien prior to the first security interest. The portion of the association's lien given priority status to a first security interest is what is referred to as the "super priority lien" to

distinguish it from the other portion of the association's lien that is subordinate to a first security interest.

The ramifications of the super priority lien are significant in light of the fact that superior liens, when foreclosed, remove all junior liens. An association can foreclose its super priority lien and the first security interest holder will either pay the super priority lien amount or lose its security. NRS 116.3116 is found in the Uniform Act at § 3-116. Nevada adopted the original language from § 3-116 of the Uniform Act in 1991. From its inception, the concept of a super priority lien was a novel approach. The Uniform Act comments to § 3-116 state:

[A]s to prior first security interests the association's lien does have priority for 6 months' assessments based on the periodic budget. A significant departure from existing practice, the 6 months' priority for the assessment lien strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders. As a practical matter, secured lenders will most likely pay the 6 months' assessments demanded by the association rather than having the association foreclose on the unit. If the lender wishes, an escrow for assessments can be required.

This comment on § 3-116 illustrates the intent to allow for 6 months of assessments to be prior to a first security interest. The reason this was done was to accommodate the association's need to enforce collection of unpaid assessments. The controversy surrounding the super priority lien is in defining its limit. This is an important consideration for an association looking to enforce its lien. There is little benefit to an association if it incurs expenses pursuing unpaid assessments that will be eliminated by an imminent foreclosure of the first security interest. As stated in the comment, it is also likely that the holder of the first security interest will pay the super priority lien amount to avoid foreclosure by the association.

III. THE AMOUNT OF THE SUPER PRIORITY LIEN IS LIMITED BY THE PLAIN LANGUAGE OF NRS 116.3116(2).

NRS 116.3116(2) states:

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

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

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

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

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

(emphasis added)

Having found previously that costs of collecting are not part of the lien means they are not part of the super priority lien. The question then becomes what can be included as part of the super priority lien. Prior to 2009, the super priority lien was limited to 6 months of assessments. In 2009, the Nevada legislature changed the 6 months of

assessments to 9 months and added expenses for abatement under NRS 116.310312 to the super priority lien amount. But to the extent federal law applicable to the first security interest limits the super priority lien, the super priority lien is limited to 6 months of assessments.

The emphasized language in the portion of the statute above identifies the portion of the association's lien that is prior to the first security interest, i.e. what comprises the super priority lien. This language states that there are two components to the super priority lien. The first is "to the extent of any charges" incurred by the association pursuant to NRS 116.310312. NRS 116.310312(4) makes clear that the charges assessed against the unit pursuant to this section are a lien on the unit and subsection (6) makes it clear that such lien is prior to first security interests. These costs are also specifically part of the lien described in NRS 116.3116(1) incorporated through NRS 116.3102(1)(j). This portion of the super priority lien is specific to charges incurred pursuant to NRS 116.310312. Payment of those charges relieves their super priority lien status. There does not seem to be any confusion as to what this part of the super priority lien is. Analysis of the super priority lien will focus on the second portion.

**A. THE SUPER PRIORITY LIEN ATTRIBUTABLE TO ASSESSMENTS IS LIMITED TO 9 MONTHS OF ASSESSMENTS AND CONSISTS ONLY OF ASSESSMENTS.**

The second portion of the super priority lien is "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."

The statute uses the language "to the extent of the assessments" to illustrate that there is a limit on the amount of the super priority lien, just like the language concerning expenses pursuant to NRS 116.310312, but this portion concerns assessments. The limit on the super priority lien is based on the assessments for



common expenses reflected in a budget adopted pursuant to NRS 116.3115 which would have become due in 9 months. The assessment portion of the super priority lien is no different than the portion derived from NRS 116.310312. Each portion of the super priority lien is limited to the specific charge stated and nothing else.

Therefore, while the association's *lien* may include any penalties, fees, charges, late charges, fines and interest charged pursuant to NRS 116.3102 (1) (j) to (n), inclusive, the total amount of the *super priority lien* attributed to assessments is no more than 9 months of the monthly assessment reflected in the association's budget. Association budgets do not reflect late charges or interest attributed to an anticipated delinquent owner, so there is no basis to conclude that such charges could be included in the super priority lien or in addition to the assessments. Such extraneous charges are not included in the association's super priority lien.

NRS 116.3116 originally provided for 6 months of assessments as the super priority lien. Comments to the Uniform Act quoted previously support the conclusion that the original intent was for 6 months of the assessments alone to comprise the super priority lien amount and not the penalties, charges, or interest. It is possible that an argument could be made that the language is so clear in this regard one should not look to legislative intent. But considering the controversy surrounding the meaning of this statute, the better argument is that legislative intent should be used to determine the meaning.

The Commission's advisory opinion of December 2010 concluded that assessments and additional costs are part of the super priority lien. The Commission's advisory opinion relies in part on a Wake Forest Law Review<sup>8</sup> article from 1992 discussing the Uniform Act. This article actually concludes that the Uniform Act language limits the

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<sup>8</sup> See James Winokur, *Meaner Lienor Community Associations: The "Super Priority" Lien and Related Reforms Under the Uniform Common Interest Ownership Act*, 27 WAKE FOREST L. REV. 353, 366-69 (1992).

amount of the super priority lien to 6 months of assessments, but that the super priority lien does not necessarily consist of only delinquent assessments.<sup>9</sup> It can include fines, interest, and late charges.<sup>10</sup> The concept here is that all parts of the lien are prior to a first security interest and that reference to assessments for the super priority lien is only to define a specific dollar amount.

The Division disagrees with this interpretation because of the unreasonable consequences it leaves open. For example, a unit owner may pay the delinquent assessment amount leaving late charges and interest as part of the super priority lien. If the super priority lien can encompass more than just delinquent assessments in this situation, it would give the association the right to foreclose its lien consisting only of late charges and interest prior to the first security interest. It is also unreasonable to expect that fines (which cannot be foreclosed generally) survive a foreclosure of the first security interest. Either the lender or the new buyer would be forced to pay the prior owner's fines. The Division does not find that these consequences are reasonable or intended by the drafters of the Uniform Act or by the Nevada Legislature. Even the 2008 revisions to the Uniform Act do not allow for anything other than assessments and costs incurred to foreclose the lien to be included in the super priority lien. Fines, interest, and late charges are not costs the association incurs.

In 2009, the Nevada Legislature revised NRS 116.3116 to expand the association's super priority lien. Assembly Bill 204 sought to extend the super priority lien of 6 months of assessments to 2 years of assessments.<sup>11</sup> The Commission's chairman, Michael Buckley, testified on March 6, 2009 before the Assembly Committee on Judiciary on A.B. 204 that the law was unclear as to whether the 6 month priority can

<sup>9</sup> See *id.* at 367 (referring to the super priority lien as the "six months assessment ceiling" being computed from the periodic budget).

<sup>10</sup> See *id.*

<sup>11</sup> See <http://leg.state.nv.us/Session/75th2009/Reports/history.cfm?ID=416>.

include the association's costs and attorneys' fees.<sup>12</sup> Mr. Buckley explained that the Uniform Act amendments in 2008 allowed for the collection of attorneys' fees and costs incurred by the association in foreclosing the assessment lien as part of the super priority lien. Mr. Buckley requested that the 2008 change to the Uniform Act be included in A.B. 204. Mr. Buckley's requested change to A.B. 204 to expand the super priority lien never made it into A.B. 204. Ultimately, A.B. 204 was adopted to change 6 months to 9 months, but commenting on the intent of the bill, Assemblywoman Ellen Spiegel stated:

Assessments covered under A.B. 204 are the regular monthly or quarterly dues for their home. *I carefully put this bill together to make sure it did not include any assessments for penalties, fines or late fees. The bill covers the basic monies the association uses to build its regular budgets.*

(emphasis added).<sup>13</sup>

It is significant that the legislative intent in changing 6 months to 9 months was with the understanding that no portion of that amount would be for penalties, fines, or late fees and that it only covers the basic monies associations use to build their regular budgets. It does make sense that a lien superior to a first security interest would not include penalties, fines, and interest. To say that the super priority lien includes more than just 9 months of assessments allows several undesirable and unreasonable consequences.

**B. NEVADA HAS NOT ADOPTED AMENDMENTS TO THE UNIFORM ACT TO ALTER THE ORIGINAL INTENT OF THE SUPER PRIORITY LIEN.**

The changes to the Uniform Act support the contention that only what is referenced as the super priority lien in NRS 116.3116(2) is what comprises the super priority lien. In 2008, § 3-116 of the Uniform Act was revised as follows:

<sup>12</sup> See Minutes of the Meeting of the Assembly Committee on Judiciary, Seventy-fifth Session, March 6, 2009 at 44-45.

<sup>13</sup> See Minutes of the Senate Committee on Judiciary, Seventy-fifth Session, May 8, 2009 at 27.

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

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

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

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

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

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

(c) A The lien under this section is also prior to all security interests described in subsection (b)(2) ~~clause (ii) above~~ to the extent of both the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien. This subsection Subsection (b) and this subsection does do not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. [The A lien under this section is not subject to the provisions of [insert appropriate reference to state homestead, dower and curtesy, or other exemptions].]

Explaining the reason for the changes to these sections, the Uniform Act includes the following comments:

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

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

The Uniform Act's amendment in 2008 is very telling about § 3-116's original intent. The comments state reasonable attorneys' fees and court costs are *added* to the super priority lien stating that it is currently 6 months of regular common assessments. The Uniform Act adds attorneys' fees and costs to subsection (a) which defines the association's lien. Those attorneys' fees and costs attributable to foreclosure efforts are also added to subsection (c) which defines the super priority lien amount.

If the association's lien ever included attorneys' fees and court costs as "charges for late payment of assessments" or if such sum was part of the super priority lien, there would be no reason to add this language to subsection (a) and (c). Or at a minimum, the comments would assert the amendment was simply to make the language more clear. It is also clear by the language that only what is specified as part of the super priority lien can comprise the super priority lien. The additional language defining the super priority lien provides for costs that are *incurred* by the association foreclosing the lien. This is further evidence that the super priority lien does not and never did consist of interest, fines, penalties or late charges. These charges are not incurred by the association and they should not be part of any super priority lien.

The Nevada Legislature had the opportunity to change NRS 116.3116 in 2009 and 2011 to conform to the Uniform Act. It chose not to. While the revisions under the

Uniform Act may make sense to some and they may be adopted in other jurisdictions, the fact of the matter is, Nevada has not adopted those changes. The changes to the Uniform Act cannot be insinuated into the language of NRS 116.3116. Based on the plain language of NRS 116.3116, legislative intent, and the comments to the Uniform Act, the Division concludes that the super priority lien is limited to expenses stemming from NRS 116.310312 and assessments as reflected in the association's budget for the immediately preceding 9 months from institution of an action to enforce the association's lien.

**IV. "ACTION" AS USED IN NRS 116.3116 DOES NOT REQUIRE A CIVIL ACTION ON THE PART OF THE ASSOCIATION.**

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NRS 116.3116(2) provides that the super priority lien pertaining to assessments consists of those assessments "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 requires that the association take action to enforce its lien in order to determine the immediately preceding 9 months of assessments. The question presented is whether this action must be a civil action.

During the Senate Committee on Judiciary hearing on May 8, 2009, the Chair of the Committee, Terry Care, stated with reference to AB 204:

One thing that bothers me about section 2 is the duty of the association to enforce the liens, but I understand the argument with the economy and the high rate of delinquencies not only to mortgage payments but monthly assessments. Bill Uffelman, speaking for the Nevada Bankers Association, broke it down to a 210-day scheme that went into the current law of six months. Even though you asked for two years, I looked at nine months, thinking the association has a duty to move on these delinquencies.

NRS 116 does not require an association to take any particular action to enforce its lien, but that it institutes "an action." NRS 116.31162 provides the first steps to foreclose the association's lien. This process is started by the mailing of a notice of delinquent

assessment as provided in NRS 116.3116(1)(a). At that point, the immediately preceding 9 months of assessments based on the association's budget determine the amount of the super priority lien. The Division concludes that this action by the association to begin the foreclosure of its lien is "action to enforce the lien" as provided in NRS 116.3116(2). The association is not required to institute a civil action in court to trigger the 9 month look back provided in NRS 116.3116(2). Associations should make the delinquent assessment known to the first security holder in an effort to receive the super priority lien amount from them as timely as possible.

#### ADVISORY CONCLUSION:

An association's lien consists of assessments, construction penalties, and fines. Unless the association's declaration provides otherwise, the association's lien also includes all penalties, fees, charges, late charges, fines and interest pursuant to NRS 116.3102(1)(j) through (n). While charges for late payment of assessments are part of the association's lien, "costs of collecting" as defined by NRS 116.310313, are not. "Costs of collecting" defined by NRS 116.310313 includes costs of collecting any *obligation*, not just assessments. Costs of collecting are not merely a charge for a late payment of assessments. Since costs of collecting are not part of the association's lien in NRS 116.3116(1), they cannot be part of the super priority lien detailed in subsection (2).

The super priority lien consists of two components. By virtue of the detail provided by the statute, the super priority lien applies to the charges incurred under NRS 116.310312 and up to 9 months of assessments as reflected in the association's regular budget. The Nevada Legislature has not adopted changes to NRS 116.3116 that were made to the Uniform Act in 2008 despite multiple opportunities to do so. In fact, the Legislative intent seems rather clear with Assemblywoman Spiegel's comments to A.B. 204 that changed 6 months of assessments to 9 months. Assemblywoman Spiegel stated that she "carefully put this bill together to make sure it did not include any

assessments for penalties, fines or late fees.” This is consistent with the comments to the Uniform Act stating the priority is for assessments based on the periodic budget. In other words, when the super priority lien language refers to 9 months of assessments, assessments are the only component. Just as when the language refers to charges pursuant to NRS 116.310312, those charges are the only component. Not in either case can you substitute other portions of the entire lien and make it superior to a first security interest.

Associations need to evaluate their collection policies in a manner that makes sense for the recovery of unpaid assessments. Associations need to consider the foreclosure of the first security interest and the chances that they may not be paid back for the costs of collection. Associations may recover costs of collecting unpaid assessments if there are proceeds from the association’s foreclosure.<sup>14</sup> But costs of collecting are not a lien under NRS 116.310313 or NRS 116.3116(1); they are the personal liability of the unit owner.

Perhaps an effective approach for an association is to start with foreclosure of the assessment lien after a nine month assessment delinquency or sooner if the association receives a foreclosure notice from the first security interest holder. The association will always want to enforce its lien for assessments to trigger the super priority lien. This can be accomplished by starting the foreclosure process. The association can use the super priority lien to force the first security interest holder to pay that amount. The association should incur only the expense it believes is necessary to receive payment of assessments. If the first security interest holder does not foreclose, the association will maintain its assessment lien consisting of assessments, late charges, and interest. If a loan modification or short sale is worked out with the owner’s lender, the association is better off limiting its expenses and more likely to recover the assessments. Adding unnecessary costs of collection – especially after a short period of delinquency – can

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<sup>14</sup>NRS 116.31164.



make it all the more impossible for the owner to come current or for a short sale to close.

This situation does not benefit the association or its members.

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The statements in this advisory opinion represent the views of the Division and its general interpretation of the provisions addressed. It is issued to assist those involved with common interest communities with questions that arise frequently. It is not a rule, regulation, or final legal determination. The facts in a specific case could cause a different outcome.

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# EXHIBIT “T”

IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF AMERICA, N.A.; AND  
RECONTRUST COMPANY, N.A.,  
Appellants,  
vs.  
FERRELL STREET TRUST,  
Respondent.

No. 70299

FILED

APR 27 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY / DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING*

Appeal from a district court order granting summary judgment to the buyer in a quiet title action following an HOA lien foreclosure sale. Eighth Judicial District Court, Clark County; James Crockett, Judge. We affirm in part, reverse in part, and remand for proceedings consistent with this order.

The grant or denial of summary judgment is reviewed de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate if the pleadings and other evidence on file, viewed in the light most favorable to the nonmoving party, demonstrate that no genuine issue of material fact remains in dispute and that the moving party is entitled to judgment as a matter of law. *Id.* A genuine issue of material fact exists if, based on the evidence presented, a reasonable jury could return a verdict for the nonmoving party. *Butler ex rel. Biller v. Bayer*, 123 Nev. 450, 457–58, 168 P.3d 1055, 1061 (2007).

A tender of payment operates to discharge a lien. *Power Transmission Equip. Corp. v. Beloit Corp.*, 201 N.W.2d 13, 16 (Wis. 1972) (“Common-law and statutory liens continue in existence until they are

satisfied or terminated by some manner recognized by law. A lien may be lost by . . . tender of the proper amount of the debt secured by the lien.”). To sufficiently satisfy the lien, the tender must be valid, an unconditional offer of payment in full or with conditions for which the tendering party has a right to insist. See *Heath v. L.E. Schwartz & Sons, Inc.*, 416 S.E.2d 113, 114-15 (Ga. App. 1992) (“The only legal conditions which may be attached to a valid tender are either a receipt for full payment or a surrender of the obligation.”); see also 74 Am. Jur. 2d *Tender* § 22 (2017). When rejection of a valid tender is unjustified, the tender effectively discharges the lien. See e.g., *Hohn v. Morrison*, 870 P.2d 513, 516–17 (Colo. App. 1993); *Lanier v. Mandeville Mills*, 189 S.E. 532, 534–35 (Ga. 1937); see also 59 C.J.S. *Mortgages* § 582 (2016).

To satisfy the superpriority portion of an HOA lien, the tendering party is not required to keep a rejected tender good by paying the amount into court. See Restatement (Third) of Prop.: Mortgages § 6.4 (while depositing funds in an escrow account is a “proper method” of keeping tender good, “it is not the only method of doing so”); 93 A.L.R. 12 (“[T]he necessity of keeping a tender good and of paying the money into court has no application to a tender made for the purpose of discharging a mortgage lien.”). To hold otherwise would create the practical effect where a valid tender does not truly discharge a lien, as discharge would require the tendering party to bring an action showing that the tender is valid and paid into the court. With such conditions, the tendering party would be equally benefited by bringing an action in equity to redeem or to compel the HOA to release the superpriority portion of the lien. Such an involved process negates the purpose behind the unconventional HOA split-lien scheme, prompt and efficient payment of the HOA’s assessment fees on defaulted

properties. See The Uniform Common Interest Ownership Act (UCIOA) § 3-116 (amended 2008), 7 pt. 2 U.L.A. 124 (2009) (the superior priority lien “strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders”). Therefore, Bank of America was not required to pay its tender into the court or keep the tender good by any other means than being willing to pay upon demand.

A valid tender of a mortgage lien invalidates a foreclosure sale on that lien, because the sale purports to extinguish the tenderer’s interest in the property. See 1 Grant S. Nelson, Dale A. Whitman, Ann M. Burkhardt & R. Wilson Freyermuth, Real Estate Finance Law § 7:21 (6th ed. 2014) (“The most common defect that renders a sale void is that the mortgagee had no right to foreclose.”); see also *Henke v. First S. Props., Inc.*, 586 S.W.2d 617, 620 (Tex. App. 1979) (payment of past-due installments cured loan’s default such that subsequent foreclosure on the property was void). Thus, when a valid tender satisfies the superpriority portion of the HOA’s assessment lien, a foreclosure sale for the entire lien results in a void sale, as only part of the lien remains in default. See Baxter Dunaway, The Law of Distressed Real Estate § 17:20 (2017) (“A foreclosure sale can be set aside by a court of equity by showing a lack of a default”).

A genuine issue of material fact exists regarding whether Bank of America’s tender satisfied the superpriority portion of the lien such that the foreclosure sale is void. While Bank of America’s tender appears valid, an unconditional offer to pay the superpriority portion of the lien in full, the record indicates that the HOA placed two liens on the property, recording the second one approximately two months after Bank of America tendered payment. It is unclear why the HOA released the notice of default for which

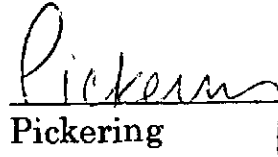
Bank of America gave perfect tender and foreclosed on the second notice of default, if the second notice addressed an entirely new set of defaults, or was intended as a recurring notice for the original default, and the district court made no findings on the issue. *See Prop. Plus Invs., LLC v. Mortg. Elec. Registration Sys., Inc.*, 133 Nev., Adv. Op. 62, 401 P.3d 728, 731 (2017) (“when an HOA rescinds a superpriority lien on a property, the HOA may subsequently assert a separate superpriority lien on the same property.”). Accordingly, the effect of Bank of America’s tender on the HOA’s notices of default is unclear, and summary judgment on the issue was improper.

Although Ferrell claims it is protected as a bona fide purchaser, it offered no evidence either at the district court or on appeal to support this assertion and the district court did not rule on the issue. *See Bailey v. Butner*, 64 Nev. 1, 7, 176 P.2d 226, 229 (1947) (“[T]he right to protection as a bona fide purchaser is ordinarily regarded as an affirmative defense, and it is held that a defendant who would avail himself of such defense must put it in issue by his pleadings.”). Additionally, it does not appear that either party raised the subrogation issue at the district court. *See Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 436, 245 P.3d 542, 544 (2010) (“a de novo standard of review does not trump the general rule that ‘[a] point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal’”). We therefore decline to address these issues on appeal but note they may warrant the district court’s consideration in light of whether Bank of America sufficiently tendered the superpriority portion of the HOA’s lien.


As to Bank of America’s remaining claims, *Saticoy Bay LLC v. Wells Fargo Home Mortgage* held that due process is not implicated in NRS Chapter 116’s HOA’s nonjudicial foreclosure scheme, thus Bank of

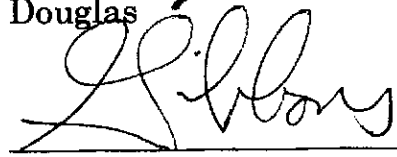
America's claim of whether NRS 116.31168 is facially unconstitutional for violating due process is moot. 133 Nev., Adv. Op. 5, 388 P.3d 970, 975 (2017). And because we reverse in part and remand, we reopen the district court's determination with respect to the commercial reasonableness of the sale. Such issue, should it remain, should be revisited in light of this court's decision in *Nationstar Mortgage, LLC v. Saticoy Bay LLC*, 133 Nev., Adv. Op. 91, 405 P.3d 641 (2017).

We therefore, ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

 J.  
Pickering

We concur:

 C. J.  
Douglas

 J.  
Gibbons

cc: Hon. James Crockett, District Judge  
Akerman LLP/Las Vegas  
Law Offices of Michael F. Bohn, Ltd.  
Lipson Neilson Cole Seltzer & Garin, P.C.  
Eighth District Court Clerk

# EXHIBIT “U”



IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF AMERICA, N.A. and  
RECONTRUST COMPANY, NA,

Appellants,

vs.

FERRELL STREET TRUST,

Respondent.

Case No. 70299

Electronically Filed  
Sep 01 2016 10:48 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Department XXIV  
The Honorable Jim Crockett, District Judge  
District Court Case No. A-12-669707-C

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APPELLANT'S APPENDIX VOLUME II

---

AKERMAN, LLP  
1160 Town Center Drive, Suite 330  
Las Vegas, Nevada 89144  
Telephone: (702) 634-5000

*Attorneys for Appellants  
Bank of America, N.A. and ReconTrust Company, N.A.*

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DATED this 31st day of August, 2016.

AKERMAN LLP

/s/ William S. Habdas

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

WILLIAM S. HABDAS, ESQ.

Nevada Bar No. 13138

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

*Attorneys for Bank of America, N.A. and  
ReconTrust Company, N.A.*

### MILES BAUER AFFIDAVIT

State of California    }  
                              } ss.  
Orange County         }

Affiant being first duly sworn, deposes and says:

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

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

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

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

Loan Number: **REDACTED**

Borrower(s): Jennifer Longman

Property Address: 994 River Walk Court, Henderson, Nevada 89015.

[30327320;1]  
Page 1 of 3

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

6. Based on Miles Bauer's business records, attached as Exhibit 1 is a copy of the Microsoft Word version of a letter from Rock K. Jung, Esq., an attorney with Miles Bauer, to Foxfield, care of The Alessi & Koenig, LLC. Although the attached letter is incorrectly dated February 4, 2015, due to the "Automatic Date Change" function in Microsoft Word and date of reprinting of that letter, Miles Bauer's case management system includes a note evidencing the letter was sent to the Foxfield, care of The Alessi & Koenig, LLC, on or about February 8, 2010. A copy of a screenshot of the relevant case management note[s] confirming the letter was sent is attached as Exhibit 2.

7. Based on Miles Bauer's business records, attached as Exhibit 3 is a copy of a Statement of Account from Alessi & Koenig, LLC, dated April 14, 2010, received by Miles Bauer in response to the February 8, 2010 letter identified above.

8. Based on Miles Bauer's business records, attached as Exhibit 4 is a copy of a May 13, 2010 letter from Mr. Jung, an attorney with Miles Bauer, to Alessi & Koenig, LLC, enclosing a check for \$150.00.

///

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///

///

///

9. Based on Miles Bauer's business records, Alessi & Koenig, LLC, rejected the \$150.00 check. A copy of a screenshot containing the relevant case management note confirming the check was returned is attached as Exhibit 2.

FURTHER DECLARANT SAYETH NOT.

Date: 1/24/15

HL KL

Declarant Adam Kendis

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

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this 24<sup>th</sup> day of February, 2015,

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

the person who appeared before me.

Signature Paul M. Mch (Seal)  
(Signature of Notary Public)

# EXHIBIT 1

DOUGLAS E. MILES \*  
 Also Admitted in Nevada and Illinois  
 RICHARD J. BAUER, JR. \*  
 JEREMY T. BERGSTROM  
 Also Admitted in Arizona  
 FRED TIMOTHY WINTERS \*  
 KAREN E. McCLANAHAN \*  
 MARK T. DUMMEYER \*  
 Also Admitted in District of  
 Columbia & Virginia  
 TAMI S. CHOSY \*  
 MATTHEW D. TOKARZ \*  
 L. BRYANT JACQUEZ \*  
 DANIEL L. CARTER \*  
 BRIAN M. TRANK \*  
 RYAN W. STORING \*  
 GINA AL COBRENA  
 RODIN L. LEWIS  
 Also Admitted in California  
 WAYNE A. KASH \*  
 ROCK K. JUNG  
 VY T. PHAM \*  
 SCOTT B. OLMPANT  
 Also Admitted in California



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

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

\* CALIFORNIA OFFICE  
 1665 SCENIC AVENUE  
 SUITE 200  
 COSTA MESA, CA 92626  
 PHONE (714) 481-9100  
 FACSIMILE (714) 481-9141

Of Counsel  
 JOHN W. TISHI  
 Admitted in Utah

February 4, 2015

Foxfield  
 c/o THE ALESSI & KOENIG, LLC  
 9500 West Flamingo Rd., Ste 100  
 Las Vegas, NV 89147

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 994 River Walk Ct., Henderson, NV 89015*  
*MBBW File No. REDACTED*

Dear Sirs:

This letter is in response to your Notice of Default with regard to the HOA assessments purportedly owed on the above described real property. This firm represents the interests of MERS as nominee for BAC Home Loans Servicing, LP aka Countrywide Home Loans, Inc. (hereinafter "BAC") with regard to these issues. BAC is the beneficiary/servicer of the first and second deed of trust loans secured by the property.

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

The association has a lien on a unit for:

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

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

2. A lien under this section is prior to all other liens and encumbrances on a unit except:  
 (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...  
The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses, which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

994 River Walk Ct., Henderson, NV 89015

Page two of two

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

Based on Section 2(b), a portion of your HOA lien is arguably senior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated November 24, 2009. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BAC should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

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

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

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*

Rock K. Jung, Esq.



# EXHIBIT 2



# EXHIBIT 3

Apr. 14. 2010 2:38PM

No. 0660 P. 12

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

\* Admitted to the California Bar

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

\*\*\* Admitted to the Nevada Bar

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



*A Multi-Jurisdictional Law Firm*

9500 W. Flamingo Road, Suite 100  
Las Vegas, Nevada 89147  
Telephone: 702-222-4033  
Facsimile: 702-222-4043  
www.alessiandkoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA  
PHONE: 818-733-9600

IRVINE, NV  
PHONE: 714-626-2321

&  
DIAMOND BAR, CA  
PHONE: 909-243-6390

Nevada Licensed Qualified Collection  
Manager

AMANDA LOWMYER

**FACSIMILE COVER LETTER**

To:	Miles, Bauer, Bergstrom	Re:	894 River Walk Ct./HO #18344
From:	Aileen Ruiz	Date:	Wednesday, April 14, 2010
Fax No.:		Pages:	1, including cover
		HO #:	REDACTED

Dear Miles, Bauer, Bergstrom:

This cover will serve as an amended demand on behalf of Foxfield for the above referenced escrow; property located at 894 River Walk Ct., Henderson, NV. The total amount due through May, 14, 2010 is \$1,635.00. The breakdown of fees, interest and costs is as follows:

Notice of Delinquent Assessment Lien -- Nevada	\$295.00
11/24/2009 Notice of Default	\$395.00
4/14/2010 P.U.D. 1 Demand	\$75.00
<b>Total</b>	<b>\$765.00</b>
1. Attorney and/or Trustees fees:	\$765.00
2. Costs (Notary, Recording, Copies, Mailings, Publication and Posting)	\$200.00
3. Interest Through April, 14, 2010	\$0.00
4. Title Research (10-Day Mailings per NRS 116.31163)	\$210.00
5. Management Company Audit Fee	\$25.00
6. Management Document Processing & Transfer Fee	\$0.00
7. Late Fees Through April, 14, 2010	\$0.88
8. Fines Through April, 14, 2010	\$0.00
9. Assessments Through May, 14, 2010 @ \$50.00 per quarter	\$349.12
10. Progress Payments:	\$0.00
12. RPIR-GI Report	\$85.00
<b>Sub-Total:</b>	<b>\$1,635.00</b>
<b>Less Payments Received:</b>	<b>\$0.00</b>
<b>Total Amount Due:</b>	<b>\$1,635.00</b>

Please have a check in the amount of \$1,635.00 made payable to the Alessi & Koenig, LLC and mailed to the below listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

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

Apr. 14, 2010 2:38PM

No. 0660 P. 13

### Resident Transaction Detail

Active Flag Yes

Void Flag No

#### FOXFIELD COMMUNITY ASSOCIATION

LF	11/30/2009	0.00	235.82	Late Fee Processed
LF	12/30/2009	0.00	236.48	Late Fee Processed
MA	1/1/2010	50.00	286.48	QA
Late Fee	1/15/2010	10.00	296.48	Late Fee Processed
Late Fee	1/30/2010	0.00	297.30	Late Fee Processed
Late Fee	2/28/2010	0.88	298.24	Late Fee Processed
Late Fee	3/30/2010	0.88	299.12	Late Fee Processed
Assessment	4/1/2010	60.00	349.12	Assessment

Count: 1

Total Units: 163

4/12/2010 4:58:38 PM

Page 2 of 2

# Resident Transaction Detail

Active Flag Yes

Void Flag No

## FOXFIELD COMMUNITY ASSOCIATION

Account # **REDM** Property Address: 994 RIVER WALK CT

Code	Date	Amount	Balance	Check#	Memo
MA	10/1/2006	50.00	50.00		
PMT TXFR	0/18/2006	-50.00	0.00		BEG BAL 9/18/06
MA	1/1/2007	50.00	50.00		
LF	1/15/2007	10.00	60.00		
MA	4/1/2007	50.00	110.00		
LF	4/15/2007	10.00	120.00		
LF	4/30/2007	1.50	121.50		
LF	5/30/2007	1.50	123.00		
Intent	6/10/2007	50.00	173.00		INTENT TO LIEN
MA	7/1/2007	50.00	223.00		
LF	8/30/2007	1.50	224.50		
LF	7/15/2007	10.00	234.50		
PMT	7/25/2007	-234.50	0.00	ACH	0725071044.ach
MA	10/1/2007	50.00	50.00		
LF	10/15/2007	10.00	60.00		
MA	1/1/2008	50.00	110.00		QA
LF	1/15/2008	10.00	120.00		Late Fee Processed
LF	1/30/2008	1.50	121.50		Late Fee Processed
Intent	2/6/2008	50.00	171.50		INTENT TO LIEN
PMT	2/20/2008	-171.50	0.00	ACH	0220080845.ach
MA	4/1/2008	50.00	50.00		QA
LF	4/15/2008	10.00	60.00		Late Fee Processed
PMT	4/21/2008	-60.00	0.00	1230	042108.usb
PMT	5/30/2008	-60.00	-60.00	1275	063008.usb
MA	7/1/2008	50.00	0.00		QA
MA	10/1/2008	50.00	50.00		QA
LF	10/15/2008	10.00	60.00		Late Fee Processed
PMT	12/22/2008	-110.00	-60.00	1397	122208.usb
MA	1/1/2009	50.00	0.00		QA
MA	4/1/2009	50.00	50.00		QA
LF	4/15/2009	10.00	60.00		Late Fee Processed
MA	7/1/2009	50.00	110.00		QA
LF	7/15/2009	10.00	120.00		Late Fee Processed
LF	7/30/2009	1.50	121.50		Late Fee Processed
Intent	8/17/2009	50.00	171.50		INTENT TO LIEN
LF	8/30/2009	1.50	173.00		Late Fee Processed
LF	9/30/2009	1.50	174.50		Late Fee Processed
MA	10/1/2009	50.00	224.50		QA
LF	10/15/2009	10.00	234.50		Late Fee Processed
LF	10/30/2009	0.50	235.00		Late Fee Processed

# EXHIBIT 4

DOUGLAS E. MILES\*  
 Also Admitted in Nevada and District  
 RICHARD J. BAUER, JR.\*  
 JEREMY T. BERGSTROM  
 Also Admitted in Arizona  
 FRED TIMOTHY WINTERS\*  
 KEENAN E. MCCLENNAN\*  
 MARK T. DOMINER\*  
 Also Admitted in District of  
 Columbia & Virginia  
 JAMES CROSBY\*  
 J. DUYANT JAQUEZ\*  
 DANIEL L. CARTER\*  
 GINA M. COBENA  
 WAYNE A. RASLI\*  
 ROCK K. TUNG  
 VY T. PHAM\*  
 KRISTA J. NIELSON  
 MARKE BLAUM  
 Also Admitted in Iowa & Missouri  
 RADI H. SYED-ALI\*  
 ROSMARTY NGUYEN\*  
 JORY C. GABABERIAN  
 THOMAS M. MORLAN  
 Admitted to California



\* CALIFORNIA OFFICE  
 1231 N. DYER ROAD  
 SUITE 100  
 SANTA ANA, CA 92705  
 PHONE (714) 481-9100  
 FACSIMILE (714) 481-9141

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

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

May 13, 2010

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

Re: Property Address: 994 River Walk Ct.  
 HO #: REDACTED  
 LOAN #: REDACTED 2  
 MBBW File No. J REDACTED 9

Dear Sir/Madam:

As you may recall, this firm represents the interests of BAC Home Loans Servicing, LP fka Countrywide Home Loans, Inc. (hereinafter "BAC") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by in regards to the above-referenced address shows a full payoff amount of \$1,635.00. BAC is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

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

The association has a lien on a unit for:

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

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

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



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

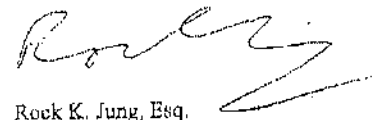
Based on Section 2(b), a portion of your HOA lien is arguably prior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that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

Our client has authorized us to make payment to you in the amount of \$150.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$150.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BAC's financial obligations towards the HOA in regards to the real property located at 994 River Walk Ct. have now been "paid in full".

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

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Rock K. Jung, Esq.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct  
 Payee: Alessi & Koenig, LLC  
 10-H0189  
 Date: 5/11/2010  
 Initials: TLC  
 Amount: 150.00  
 Check #: 3484

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
5/11/2010	ET-4	To Cure HOA Delinquency	150.00			

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

Bank of America  
 1700 N. Green Valley Parkway  
 Henderson, NV 89074  
 16-881228  
 1520  
 10-H0189  
 Loan # **REDACTED** 2

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

3484  
 Date: 5/11/2010  
 Amount \$\*\*\*\* 150.00  
 Check Void After 90 Days

**REDACTED** 1:12 **REDACTED** **REDACTED**

# EXHIBIT “V”

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

U.S. BANK, N.A., SUCCESSOR  
TRUSTEE TO WACHOVIA BANK, N.A.,  
AS TRUSTEE FOR THE CERTIFICATE  
HOLDERS OF BANC OF  
AMERICA FUNDING CORPORATION,  
MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2004-C,

Plaintiff,

v.

EMERALD RIDGE LANDSCAPE  
MAINTENANCE ASSOCIATION; SFR  
INVESTMENTS POOL I, LLC; DOE  
INDIVIDUALS I-X, inclusive, and ROE  
CORPORATIONS I-X, inclusive,

Defendants.

Case No. 2:15-cv-00117-MMD-PAL

ORDER

(Pl's Motion for Summary Judgment – ECF  
No. 40; Def's Motion for Summary  
Judgment – ECF No. 38; Def's Motion for  
Summary Judgment – ECF No. 39)

**I. SUMMARY**

Before the Court are three motions for summary judgment from the parties in this dispute over title to real property located at 694 Sole Addiction Ave, Las Vegas, Nevada. Plaintiff U.S. Bank, N.A. ("U.S. Bank") moves for summary judgment on its claims for quiet title and unjust enrichment and against Defendant SFR Investment Pool I, LLC's ("SFR") counterclaim for quiet title. (ECF No. 40.) SFR moves for summary judgment in favor of its counterclaim and against U.S. Bank's claims. (ECF No. 38.) Defendant Emerald Ridge Landscape Maintenance Association ("Emerald Ridge") also moves for summary judgment on U.S. Bank's claim. (ECF No. 39.) The Court has reviewed the parties' respective responses (ECF Nos. 43, 44, 45, 49) and replies (ECF Nos. 50, 51, 52.)

1 For the reasons discussed below, U.S. Bank's Motion is granted in part and  
2 denied in part. SFR and Emerald Ridge's Motions are denied.

## 3 **II. BACKGROUND**

4 The relevant facts in this case are, for the most part, undisputed. Ernie Alcaraz  
5 ("Borrower") obtained a loan ("the Loan") secured by a first deed of trust ("First DOT") on  
6 his property ("the Property"). (ECF No. 1 at 4.) The First DOT was subsequently  
7 assigned to U.S. Bank. (*Id.*) The Borrower defaulted on the Loan and U.S. Bank began  
8 the process of foreclosure and intends to foreclose under the First DOT. (*Id.*) In the  
9 meantime, Borrower failed to pay HOA's fees due to it. (*Id.*) On February 4, 2011, HOA  
10 recorded a notice of delinquent assessment, followed by a notice of default and election  
11 to sale, and a notice of trustee's sale. (*Id.*) The various notices state the amount due to  
12 HOA, including fees, interests and costs, but not the amount of the purported  
13 superpriority lien amount. (*Id.* at 4-5.) On March 25, 2011, Bank of America, N.A.  
14 ("Servicer"), the service of the Loan, attempted to obtain the superpriority lien amount  
15 and tendered what it calculated to be the superpriority lien amount to the HOA, who  
16 refused Servicer's tender. (*Id.* at 5-6.)

17 HOA foreclosed on the Property on August 21, 2014. (*Id.*) SFR purchased the  
18 Property. (*Id.*)

## 19 **III. LEGAL STANDARD**

20 "The purpose of summary judgment is to avoid unnecessary trials when there is  
21 no dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*,  
22 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the  
23 pleadings, the discovery and disclosure materials on file, and any affidavits "show there  
24 is no genuine issue as to any material fact and that the movant is entitled to judgment as  
25 a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). An issue is  
26 "genuine" if there is a sufficient evidentiary basis on which a reasonable fact-finder could  
27 find for the nonmoving party and a dispute is "material" if it could affect the outcome of  
28 the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49

(1986). Where reasonable minds could differ on the material facts at issue, however, summary judgment is not appropriate. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995). “The amount of evidence necessary to raise a genuine issue of material fact is enough ‘to require a jury or judge to resolve the parties’ differing versions of the truth at trial.’” *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat’l Bank v. Cities Service Co.*, 391 U.S. 253, 288-89 (1968)). In evaluating a summary judgment motion, a court views all facts and draws all inferences in the light most favorable to the nonmoving party. *Kaiser Cement Corp.*, 793 F.2d at 1103.

The moving party bears the burden of showing that there are no genuine issues of material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). “In order to carry its burden of production, the moving party must either produce evidence negating an essential element of the nonmoving party’s claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). Once the moving party satisfies Rule 56’s requirements, the burden shifts to the party resisting the motion to “set forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256.

The nonmoving party “may not rely on denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery material, to show that the dispute exists,” *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Orr v. Bank of Am.*, 285 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted). “The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient.” *Anderson*, 477 U.S. at 252.

#### **IV. DISCUSSION**

##### **A. Nevada HOA Law**

Under NRS § 116.3116, a homeowner’s association can establish a “lien on a unit for . . . any assessment levied against that unit or any fines imposed against the unit’s

owner from the time . . . the assessment or fine becomes due.” NRS § 116.3116(1). Section 116.3116 further provides that such a lien “is prior to all other liens and encumbrances on a unit except,” among other categories of liens, “[a] first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent.” NRS § 116.3116(2)(b). The statute, however, contains an exception to this exception, allowing a homeowner’s association to establish a lien that takes priority over a first security interest for unpaid assessments over a nine-month period preceding the enforcement of the lien. NRS § 116.3116.<sup>1</sup> The statute also sets out the procedures a homeowner’s association must follow in a non-judicial foreclosure of its lien. The parties disagree about whether the statute, at the time in question, required an association to give notice to junior lienholders, or whether junior lienholders must “opt-in” to a notice system. Recent amendments to the statute require individual notice default and notice of sale to all lienors of record via certified mail. S.B. 306 § 3-4, 9(1) 2015 Leg., 78<sup>th</sup> Sess. (Nev. 2015).

In 2014, the Nevada Supreme Court ruled that NRS § 116.3116 creates a “true superpriority lien” for 9 months of unpaid homeowner’s association assessments and certain charges. *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 419 (Nev. 2014) (en banc). Accordingly, the court further held, a non-judicial foreclosure of an HOA lien under NRS § 116.3116 would extinguish any first deed of trust, so long as certain statutory notice requirements are followed. See *id.* at 411-17. Before *SFR Invs.*, courts across Nevada had interpreted this portion of the statute inconsistently.

After the parties filed their motions, the Nevada Supreme Court issued two decisions further clarifying the HOA foreclosure process that has been the center of

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<sup>1</sup>Section 116.3116 was amended and reorganized in 2015. See 2015 Nev. Stat. 1331, 1334. The statute retains the exceptions described above, but creates a separate subsection (NRS § 116.3116(3)), which states that a homeowner’s association lien may take priority over a first deed of trust for “[t]he unpaid amount of assessments . . . which would have become due in the absence of acceleration during the 9 months immediately preceding the date on which the notice of default and election to sell is recorded,” in addition to certain charges and costs. NRS § 116.3116(3). To avoid confusion over the recently reorganized subsections, the Court will cite to NRS § 116.3116 generally in discussing the provisions that give a homeowner’s association a first priority lien.

much recent litigation. In *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 366 P.3d 1105 (Nev. 2016), the court held that the legislature, through NRS § 116.3116's enactment, did not eliminate the equitable authority of the courts to consider quiet title actions when an HOA's foreclosure deed contains conclusive recitals. A few months later in *Horizons at Seven Hills v. Ikon Holdings*, 373 P.3d 66 (Nev. 2016), the court held that a superpriority lien pursuant to NRS § 116.3116(2) is limited to an amount equal to nine months of common expense assessments and does not include collection fees and foreclosure costs that an HOA incurs preceding a foreclosure sale.

#### **B. Tender of the Superpriority Lien Amount**

U.S. Bank argues that its predecessor's tender of the superpriority amount preserved the First DOT, even though the tender was rejected. (ECF No. 40 at 4-5.) U.S. Bank has attached a declaration from Douglas Miles, a managing partner at the law firm Miles, Bergstrom & Winters LLP, which indicates that his firm tendered a check for \$153 to Red Rock Financial Services, and that the check was not accepted.<sup>2</sup> (ECF No. 40-8 at 9-10) U.S. Bank has also produced the letter that accompanied the check, which contains the following language:

[E]nclosed you will find a cashier's check made out to Red Rock Financial Services in the sum of \$153.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BAC's financial obligations towards the HOA in regards to the real property located at 694 Sole Addiction Avenue have now been "paid in full."

(ECF No. 40-8 at 30.)

SFR and Emerald Ridge argue that tender was ineffective because it was conditional. (ECF No. 43 at 5-6; ECF No. 49 at 6-7.) U.S. Bank responds that the tender was proper, and a party may include a conditions upon which it has a right to insist.

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<sup>2</sup>The amount of \$153 was calculated by adding the previous ninth months of assessments pursuant to N.R.S. § 116.3116. (See ECF No 40-8 at 29-30.)



(ECF No. 52 at 2-3 (citing *Fresk v. Kraemer*, 99 P.3d 282, 286-87 (Or. 2004) and 74 Am.Jur.2d Tender § 22 (2014).)

A beneficiary of a deed of trust can preserve its interest by “[d]etermining the precise super-priority amount” and tendering it “in advance of the sale.” *SFR Invs.*, 334 P.3d at 418. Tender is proper when the tenderer is “at all times ready, willing, and able to pay” the amounts owed, even if that amount is improperly rejected. *Ebert v. W. States Refining Co.*, 337 P.2d 1075, 1077 (Nev. 1959).

Though, as SFR concedes, Nevada has not clearly defined what it considers proper tender, a number of other jurisdictions have. Nevada courts often look to California law where Nevada law is silent. *See Commercial Standard Ins. Co. v. Tab Constr., Inc.*, 583 P.2d 449, 451 (Nev.1978). California courts have repeatedly applied the rule, which appears to be the general rule, that a tender must be unconditional to be valid.<sup>3</sup> *See Intengan v. BAC Home Loans Servicing LP*, 154 Cal. Rptr. 3d 727, 731 (Ct. App. 2013); *Gaffney v. Downey Sav. & Loan Assn.*, 246 Cal. Rptr. 421, 429 (Ct. App. 1988). However, some California courts have suggested that a condition which a party would have a right to assert regardless of tendering payment may not affect a valid tender. *See Wiener v. Van Winkle*, 78 Cal. Rptr. 761, 766 (Ct. App. 1969) (“It is well established that a tender must be unconditional, and an *unwarranted* condition annexed to an offer to pay is in effect a refusal to perform) (emphasis added); *Schiffner v. Pappas*, 35 Cal. Rptr. 817, 820 (Ct. App. 1963) (tender was unconditional when it relied on a party to reinstate a contract, which they were under no obligation to do).

Whichever standard applies, the tender in this case was proper. The language SFR and Emerald Ridge refer to does not impose “an unwarranted condition.” It does not impose any condition. *See Unconditional*, Black's Law Dictionary (10th ed. 2014) (“Not

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<sup>3</sup>Black's Law Dictionary defines tender thusly: “A valid and sufficient offer of performance; specif., an unconditional offer of money or performance to satisfy a debt or obligation <a tender of delivery>. The tender may save the tendering party from a penalty for nonpayment or nonperformance or may, if the other party unjustifiably refuses the tender, place the other party in default.” Black's Law Dictionary (10th ed. 2014).

1 limited by a condition; not depending on an uncertain event or contingency; absolute.”).

2 The language Miles Bauer included with their cashier’s check states that Miles Bauer,

3 and presumably their client, will understand endorsement of the check to mean they

4 have fulfilled their obligations. It simply delineates how the tenderer will interpret the

5 actions of the recipient (which also turned out to be the correct interpretation of the law).

6 It does not require Red Rock to take any actions or waive any rights. And it does not

7 depend on an uncertain event or contingency. *Cf. US Bank, N.A. v. SFR Investments*

8 *Pool 1, LLC*, No. 3:15-cv-00241-RCJ-WGC, 2016 WL 4473427, at \*6 (D. Nev. Aug. 24,

9 2016) (no reasonable juror could interpret a similar tender made by Miles Bauer on

10 behalf of U.S. Bank as conditional).

11 Therefore, the Court finds that U.S. Bank tendered 9 months of HOA dues in

12 accordance with the superpriority lien provisions of NRS § 116.3116 and preserved the

13 First DOT. The portion of U.S. Bank’s Motion seeking a declaration establishing the

14 superpriority lien is eliminated as a result of U.S. Bank’s attempted payment (the fifth

15 prayer for relief in U.S. Bank’s Complaint (ECF No. 1 at 9)) is granted. For reasons

16 discussed below, the Court will defer ruling on the remainder of U.S. Bank’s requests for

17 declaratory and injunctive relief. Because the Court finds there are no material issues of

18 fact preventing summary judgment in favor of U.S. Bank, Emerald Ridge’s Motion is

19 denied.

### 20 **C. Commercial Reasonableness**

21 The Court need not address the parties’ arguments about the commercial

22 reasonableness of the HOA foreclosure sale, because the argument is an alternative

23 equitable ground to quiet title, and the Court has already established a sufficient ground

24 — that U.S. Bank preserved its First DOT by paying the superpriority portion of the lien.

### 25 **D. Whether SFR is a bona fide purchaser for value**

26 Finally, SFR argues that even if there was a problem with the HOA foreclosure, its

27 interest in the Property is not affected because of the conclusive recitations in the

28 foreclosure deed and because it is a bona fide purchaser for value. (ECF No. 38 at 6-8.)

1 SFR's first argument, that the conclusive recitations in the deed protect it, is foreclosed  
 2 by *Shadow Wood*, 366 P.3d at 1111. To show that it is a bona fide purchaser SFR must  
 3 show that it purchased the Property in good faith, for value, and without notice of a  
 4 competing or superior interest in the same property. *Berge v. Fredericks*, 591 P.2d 246,  
 5 247 (Nev. 1979).

6 U.S Bank argues that SFR cannot show that it purchased the Property without  
 7 notice of a competing interest because it was aware of the First DOT. (ECF No. 44 at  
 8 13.) SFR responds that pursuant to *SFR Invs.*, 334 P.3d 408, a first deed of trust is  
 9 extinguished in an HOA foreclosure sale that complies with NRS 116, and therefore  
 10 there was not competing or superior interest when it purchased the Property. (ECF No.  
 11 50 at 11-12.) U.S. Bank replies that SFR purchased the Property before *SFR Invs.* was  
 12 decided, and, in any event, NRS 116 is facially unconstitutional under the due process  
 13 clause. (ECF No. 44 at 13.)

14 The parties' dispute thus turns on a question that the Ninth Circuit recently  
 15 decided and may reconsider *en banc*. On August 12, 2016, the Ninth Circuit Court of  
 16 Appeals, in a 2-1 panel decision, found that NRS Chapter 116's notice provisions as  
 17 applied to non-judicial foreclosure of an HOA lien before the 2015 amendment to be  
 18 facially unconstitutional. *Bourne Valley Court Trust v. Wells Fargo Bank, NA*, No. 15-  
 19 15233, 2016 WL 4254983 (9th Cir. Aug. 12, 2016). The *Bourne Valley* decision has an  
 20 impact on this case.

21 Accordingly, the Court finds that it is appropriate to defer ruling on the remaining  
 22 issues by denying the remainder of the U.S. Bank and SRF's motions without prejudice  
 23 and *sua sponte* imposing a temporary stay until the mandate is issued in *Bourne Valley*.<sup>4</sup>

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24 <sup>4</sup>A district court has discretionary power to stay proceedings in its own court.  
 25 *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936); *see also Lockyer v. Mirant Corp.*,  
 26 398 F.3d 1098, 1109 (9th Cir. 2005). "A trial court may, with propriety, find it is efficient  
 27 for its own docket and the fairest course for the parties to enter a stay of an action before  
 28 it, pending resolution of independent proceedings which bear upon the case." *Leyva v.*  
*Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). "When considering a  
 motion to stay, the district court should consider three factors: (1) potential prejudice to  
 the non-moving party; (2) hardship and inequity to the moving party if the action is not  
 stayed; and (3) the judicial resources that would be saved by avoiding duplicative  
 (fn. cont...)

**V. CONCLUSION**

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the parties' motions.


It is hereby ordered that Plaintiff's Motion for Summary Judgment (ECF No. 40) is granted insofar as it requests a declaration that U.S. Bank paid the 9 month superpriority portion of the HOA lien on the Property (Plaintiff's fifth prayer for relief). The Motion is denied without prejudice in all other respects.

It is further ordered that Defendant SFR's Motion for Summary Judgment (ECF No. 38) is denied. The denial is without prejudice as to the issues that may be affected by *Bourne Valley*.

It is further ordered that Defendant Emerald Ridge's Motion for Summary Judgment (ECF No. 39) is denied. Because Emerald Ridge seeks summary judgement only in relation to U.S Bank's request for declaratory relief, which the Court granted, its Motion is not affected by *Bourne Valley*.

It is further ordered that this action is temporarily stayed. Upon the Ninth Circuit's issuance of the mandate in *Bourne Valley*, any party may move to lift the stay. Until that time, all proceedings in this action are stayed.

DATED THIS 30<sup>th</sup> day of September 2016.



MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE

(...fn. cont.)

litigation if the cases are in fact consolidated." *Pate v. Depuy Orthopaedics, Inc.*, No. 2:12-cv-01168-MMD-CWH, 2012 WL 3532780, at \*2 (D. Nev. Aug. 14, 2012) (quoting *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997)) (internal quotation marks omitted). See also *Dependable Highway Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1067 (9th Cir. 2007).

# EXHIBIT “W”

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC,  
  
Plaintiff,  
  
vs.

STACY MOORE, an individual, MAGNOLIA  
GOTERAM an individual; KRISTIN  
JORDAL, AS TRUSTEE FOR THE JBWNO  
REVOCABLE LIVING TRUST, a trust; U.S.  
BANK, N.A., a national banking association,  
NATIONSTAR MORTGAGE, LLC, a foreign  
limited liability company, REPUBLIC  
SILVER STATE DISPOSAL, INC., DBA  
REPUBLIC SERVICES, a domestic  
government entity; DOE INDIVIDUALS I  
through X, inclusive; and ROE CORPORATIONS  
XI through XX inclusive.

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Counter-Defendant.

U.S. BANK, N.A.,

Third Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company;

Case No.: A-14-705563-C  
Dept. No.: XVII

**SFR INVESTMENTS POOL 1, LLC'S  
OBJECTIONS AND ANSWERS TO  
NATIONSTAR MORTGAGE, LLC'S  
FIRST SET OF INTERROGATORIES TO  
SFR INVESTMENTS POOL 1, LLC**

INDIVIDUAL DOES I through X, inclusive;  
and ROE CORPORATIONS I through X,  
inclusive.

Third Party Defendants.

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company,

Third-Party Counterclaimant/ Cross-Claimant,  
vs.

U.S. BANK, N.A.; NATIONSTAR  
MORTGAGE, LLC, a foreign limited liability  
company; KRISTIN JORDAL, AS TRUSTEE  
FOR THE JBWNO REVOCABLE LIVING  
TRUST, a trust; STACY MOORE, an  
individual; and MAGNOLIA GOTERA, an  
individual,

Counter-Defendant/Cross Defendants.

SFR INVESTMENTS POOL 1, LLC (“SFR”), by and through its counsel, the law firm  
of Kim Gilbert Ebron, hereby answers to NATIONSTAR MORTGAGE, LLC’s (the “Bank”) first set of interrogatories as follows:

**PRELIMINARY STATEMENT**

These responses are based solely on information presently known to SFR. Further discovery may lead to additions to, changes in, or modifications of these responses. Accordingly, these responses are being given without prejudice to SFR’s right to produce subsequent discovery evidence and to introduce the same at trial.

**REQUESTS FOR ADMISSION**

**INTERROGATORY NO. 1:**

Identify any person providing substantive information to respond to SFR INVESTMENTS POOL 1, LLC’s First Set of Requests for Production and/or these Interrogatories, including name, address, phone number, and identification of the requests with which the person assisted.

**ANSWER TO INTERROGATORY NO. 1:**

Christopher Hardin, manager of SFR Investments Pool 1, LLC with an address of 5030 Paradise Road, #B-214, Las Vegas, NV 89119 and a telephone number of (702) 998-9918.

**INTERROGATORY NO. 2:**

Provide a summary of Your business purposes, if any. Your response should identify, *inter alia*, what Your business does to generate revenue, income, and profit; how Your business does it; and whether You perform any services other than purchasing real estate.

**ANSWER TO INTERROGATORY NO. 2:**

Objection, this information is not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible evidence. Further, this interrogatory seeks confidential and proprietary business information. Subject to and without waiving said objections, SFR answers: SFR purchases real property and leases and manages said property.

**INTERROGATORY NO. 3:**

Identify Your managers, officers, directors, owners, members, trustees, beneficiaries, and/or employees, if any, and what their role is with You.

**ANSWER TO INTERROGATORY NO. 3:**

Objection, this interrogatory is not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible evidence. Further, this interrogatory seeks confidential and proprietary business information. Subject to and without waiving said objections, SFR answers: SFR Investments, LLC is the sole member of SFR Investments Pool 1, LLC. Christopher Hardin is the manager of SFR Investments Pool 1, LLC. His role is operating SFR Investments Pool 1, LLC.

**INTERROGATORY NO. 4:**

Identify the sources of your capital from 2010 to present. If you borrow money to operate your business, identify the lenders/persons that you borrow from, and the terms of the loan/investment.

**ANSWER TO INTERROGATORY NO. 4:**

Objection, this interrogatory is not relevant to the subject matter in the pending action nor is it reasonably calculation to lead to the discovery of admissible evidence. Additionally, this interrogatory seeks confidential and proprietary business information.



**INTERROGATORY NO. 5:**

State in details all Facts that support Your contention that U.S. Bank's security interest in the Property was extinguished by the HOA foreclosure sale.

**ANSWER TO INTERROGATORY NO. 5:**

Objection, this interrogatory seeks a contention relating to and/or regarding a fact or application of law to fact and cannot be adequately answered until discovery has been completed. It has long been established that answers to contention interrogatories should be deferred until discovery has been completed. *See In re Convergent Technologies Sec. Litig.*, 108 F.R.D. 328 (N.D. Cal. 1985); *Mid-America Facilities, Inc. v. Argonaut Ins. Co.*, 78 F.R.D. 497 (E.D. Wis. 1978). Subject to and without waiving said objection, SFR answers: NRS 116, and as clarified by *SFR Investments Pool 1, LLC v. U.S. Bank*, 334 P.3d 408 (Nev. 2014), an association foreclosure sale on unpaid assessments, which contains super-priority amounts extinguishes a first deed of trust. *See also* the notices relating to the HOA Foreclosure Sale and the Trustee's Deed Upon Sale.

**INTERROGATORY NO. 6:**

State in detail all Facts that support Your contention that the HOA Foreclosure Sale was properly noticed.

**ANSWER TO INTERROGATORY NO. 6:**

Objection, this interrogatory seeks a contention relating to and/or regarding a fact or application of law to fact and cannot be adequately answered until discovery has been completed. It has long been established that answers to contention interrogatories should be deferred until discovery has been completed. *See In re Convergent Technologies Sec. Litig.*, 108 F.R.D. 328 (N.D. Cal. 1985); *Mid-America Facilities, Inc. v. Argonaut Ins. Co.*, 78 F.R.D. 497 (E.D. Wis. 1978). This interrogatory calls for a legal conclusion. Additionally, this interrogatory is vague and ambiguous as to the phrase "properly noticed" making a response impossible without speculation. This interrogatory also seeks information outside of SFR's possession or control. Subject to and without waiving said objections, SFR answers: Prior to the sale, SFR had no knowledge or control regarding correspondence between the HOA, the HOA Trustee, and

1 the Bank, but it is recited in the Trustee's Deed Upon Sale that all requirements of law regarding  
2 the mailing of copies of notices and the posting and publication of copies of the Notice of Sale  
3 have been complied with. Also, these notices were recorded.

4 **INTERROGATORY NO. 7:**

5 State in detail all Facts that support Your contention that the HOA Foreclosure Sale was  
6 properly conducted.

7 **ANSWER TO INTERROGATORY NO. 7:**

8 Objection, this interrogatory seeks a contention relating to and/or regarding a fact or  
9 application of law to fact and cannot be adequately answered until discovery has been  
10 completed. It has long been established that answers to contention interrogatories should be  
11 deferred until discovery has been completed. *See In re Convergent Technologies Sec. Litig.*, 108  
12 F.R.D. 328 (N.D. Cal. 1985); *Mid-America Facilities, Inc. v. Argonaut Ins. Co.*, 78 F.R.D. 497  
13 (E.D. Wis. 1978). This interrogatory calls for a legal conclusion. Additionally, this interrogatory  
14 is vague and ambiguous as to the phrase "properly conducted" making a response impossible  
15 without speculation. This interrogatory also seeks information outside of SFR's possession or  
16 control. Subject to and without waiving said objections, SFR answers: Prior to the sale, SFR  
17 had no knowledge or control regarding correspondence between the HOA, the HOA Trustee, and  
18 the Bank, but it is recited in the Trustee's Deed Upon Sale that all requirements of law regarding  
19 the mailing of copies of notices and the posting and publication of copies of the Notice of Sale  
20 have been complied with. Also, these notices were recorded.

21 **INTERROGATORY NO. 8:**

22 State in detail all Facts that relate to any offer of tender made by Nationstar, U.S. Bank  
23 or by any other entity in connection with the Property.

24 **ANSWER TO INTERROGATORY NO. 8:**

25 Objection, this request is overly broad and unduly burdensome in that it seeks  
26 information outside of SFR's possession and control. Additionally, this request is vague and  
27 ambiguous as to the terms "relate to" and "tender" making a response impossible without  
28 speculation. This interrogatory also calls for a legal conclusion as to the term tender. Subject to

1 and without waiving said objections, SFR answers: SFR does not have any information in its  
2 possession responsive to this request.

3 **INTERROGATORY NO. 9:**

4 Provide a summary of the funds or resources You have expended in regard to the  
5 Property, including listing the date of each expenditure, the amount, and the reason for your  
6 expenditure.

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

8 Objection, this interrogatory is vague and ambiguous as to the meaning of the term  
9 “resources” making a response impossible without speculation. This interrogatory is also  
10 compound. Further, to the extent this interrogatory seeks post-sale information, this interrogatory  
11 seeks information that is neither relevant nor likely to lead to the discovery of admissible  
12 evidence.

13 **INTERROGATORY NO. 10:**

14 Provide a summary of any rent or other income received by You related to the Property,  
15 including the date any income was received, the amount of the income, and the source of the  
16 income.

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

18 Objection, this interrogatory is vague and ambiguous as to the meaning of the term “other  
19 income” making a response impossible without speculation. This interrogatory is also  
20 compound. Further, to the extent this interrogatory seeks post-sale information, this interrogatory  
21 seeks information that is neither relevant nor likely to lead to the discovery of admissible  
22 evidence. Additionally, this interrogatory seeks confidential and proprietary business  
23 information.

24 **INTERROGATORY NO. 11:**

25 State whether the Property has been inhabited, and if so, Identify the following  
26 information:

27 (a) by whom the Property is inhabited,

28 (b) the terms of any rental agreement or lease by any inhabitant, including

- (i) the date the agreement or lease began,
- (ii) when it expires,
- (iii) the amount of rent paid, and
- (iv) how often the rent is paid.

**ANSWER TO INTERROGATORY NO. 11:**

Objection, to the extent this interrogatory seeks post-sale information, this interrogatory is not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible evidence. This interrogatory is also compound. Further, this interrogatory seeks confidential and proprietary business information.

**INTERROGATORY NO. 12:**

State and/or Identify the following with regard to the value of the Property at the time of the HOA Foreclosure Sale:

- (a) State in detail Your understanding of the fair market value of the Property;
- (b) Identify the principal and material documents You relied on to support Your fair market value calculation;
- (c) State in detail whether You, or anyone acting on Your behalf, made a fair market value calculation in connection with the HOA foreclosure sale; and
- (d) Identify the Person(s) with personal knowledge of Your responses to 14 (a)-(c).

**ANSWER TO INTERROGATORY NO. 12:**

Objection, this interrogatory is vague and ambiguous as to the term "fair market value" making a response impossible without speculation. Additionally, the term "fair market value" requires expert analysis and opinion. This interrogatory is also compound. Moreover, this interrogatory also seeks information that is not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 13:**

If You contend that Nationstar or U.S. Bank had actual and constructive knowledge of any assessments or costs allegedly owed to the HOA related to the Property prior to the HOA Foreclosure Sale, state all Facts that support such contention.

**ANSWER TO INTERROGATORY NO. 13:**

Objection, this interrogatory seeks a contention relating to and/or regarding a fact or application of law to fact and cannot be adequately answered until discovery has been completed. It has long been established that answers to contention interrogatories should be deferred until discovery has been completed. *See In re Convergent Technologies Sec. Litig.*, 108 F.R.D. 328 (N.D. Cal. 1985); *Mid-America Facilities, Inc. v. Argonaut Ins. Co.*, 78 F.R.D. 497 (E.D. Wis. 1978). This interrogatory also seeks information outside of SFR's possession or control. Subject to and without waiving said objections, SFR answers: Prior to the sale, SFR had no knowledge or control regarding correspondence between the HOA, the HOA Trustee, and the Bank, but it is recited in the recorded Trustee's Deed Upon Sale that all requirements of law regarding the mailing of copies of notices and the posting and publication of copies of the Notice of Sale have been complied with. Also, the notices were recorded.

**INTERROGATORY NO. 14:**

Identify all communications between You and the HOA concerning the Property, whether verbal or in writing, including the date of the communication, the parties to the communication, and the substance of the communication.

**ANSWER TO INTERROGATORY NO. 14:**

Objection, this interrogatory is overly broad and unduly burdensome as it is not reasonably limited in time or scope. This interrogatory also is compound. To the extent this interrogatory seeks post-sale communications, those communications are not relevant or reasonably likely to lead to the discovery of admissible evidence. Subject to and without waiving said objection SFR answers: SFR does not recall any pre-sale communications responsive to this request.

**INTERROGATORY NO. 15:**

Identify all communications between You and the HOA Trustee concerning the Property, whether verbal or in writing, including the date of the communication, the parties to the communication, and the substance of the communication.

**ANSWER TO INTERROGATORY NO. 15:**

Objection, this interrogatory is overly broad and unduly burdensome as it is not reasonably limited in time or scope. This interrogatory also is compound. To the extent this interrogatory seeks post-sale communications, those communications are not relevant or reasonably likely to lead to the discovery of admissible evidence. Subject to and without waiving said objection SFR answers: January 7, 2014, E-mail from George Bates to Chris Hardin (Alessi to SFR), with a list of properties going to sale on January 8, 2014.

**INTERROGATORY NO. 16:**

If you contend that You were a bona fide purchaser of the Property, state all Facts that support such a contention.

**ANSWER TO INTERROGATORY NO. 16:**

Objection, this interrogatory seeks a contention relating to and/or regarding a fact or application of law to fact and cannot be adequately answered until discovery has been completed. It has long been established that answers to contention interrogatories should be deferred until discovery has been completed. *See In re Convergent Technologies Sec. Litig.*, 108 F.R.D. 328 (N.D. Cal. 1985); *Mid-America Facilities, Inc. v. Argonaut Ins. Co.*, 78 F.R.D. 497 (E.D. Wis. 1978). Subject to and without waiving said objections, SFR answers: SFR attended a publicly, noticed and advertised foreclosure auction. SFR made the highest bid paying \$59,000.00 for the Property, plus a transfer tax, and a recording fee. Prior to purchasing the Property, no documents were recorded that would indicate that the super priority portion of the Association's lien had been paid or that any disputes existed with regards to the Property or the HOA Foreclosure Sale, including but not limited to, the recordation of a lis pendens against the Property. SFR purchased the Property with no knowledge of any competing superior interest in the Property. After reviewing its file with due diligence, with the exception of the email regarding properties scheduled for sale on a specific date, SFR does not recall having any pre-sale communications with any entity, including but not limited to, the HOA, the HOA Trustee, or the Bank—including the Bank's predecessor(s) in interest—regarding the Property, the HOA Foreclosure Sale, or attempts by any entity to pay the HOA lien, if any such attempts actually

1 occurred. SFR also had no knowledge of any pre-sale disputes between the HOA, the HOA  
2 Trustee, the Bank, including the Bank's predecessor(s) in interest, or any other entity, to the  
3 extent the Bank or any other entity is alleging such disputes took place. SFR had no reason to  
4 doubt the recitals in the Trustee's Deed Upon Sale regarding, among other things, that a default  
5 had occurred and that the proper notices had been provided by the HOA, by and through the  
6 HOA Trustee. Neither SFR nor its manager, has any relationship or interest in the HOA,  
7 outside of attending auctions, bidding, and occasionally, purchasing properties at publicly-held  
8 auctions and owning property within the HOA. Neither SFR nor its manager, has any  
9 relationship or interest in the HOA Trustee, outside of attending auctions, bidding, and  
10 occasionally, purchasing properties at publicly-held auctions. SFR reserves the right to  
11 supplement this response as may be necessary.

12 **INTERROGATORY NO. 17:**

13 Identify any research You performed prior to the HOA Foreclosure Sale to determine the  
14 value of the Property, all steps performed as part of that research, any Documents You created  
15 as a result of that research, and the present location of those Documents.

16 **ANSWER TO INTERROGATORY NO. 17:**

17 Objection, this interrogatory is overly broad and unduly burdensome in that it is not  
18 reasonably limited in time or scope. Additionally, this interrogatory is vague and ambiguous as  
19 to the terms "research" and "value" making a response impossible without speculation. Also,  
20 this interrogatory is compound. SFR further objects that the requested information is not  
21 relevant to the subject matter involved in the pending action and is not reasonably calculated to  
22 lead to the discovery of admissible evidence. Subject to and without waiving said objections,  
23 SFR does not have any information in its possession responsive to your request.

24 **INTERROGATORY NO. 18:**

25 With regard to the HOA Foreclosure Sale, please state the following:

26 (a) Describe how You learned of the HOA Foreclosure Sale;

27 (b) State whether HOA or anyone at Alessi & Koenig, LLC told You of the opening bid  
28 price prior to the HOA Foreclosure Sale:

(c) Identify the opening bid price at the HOA Foreclosure Sale;

(d) Identify the bidders at the HOA Foreclosure Sale;

(e) Identify the amounts bid at the HOA Foreclosure Sale;

(f) Describe the method of calculating the bid price at the HOA Foreclosure Sale; and

**ANSWER TO INTERROGATORY NO. 18:**

Objection, this interrogatory is overbroad and unduly burdensome in that it requests information outside of SFR's possession or control. This interrogatory is also compound. Subject to and without waiving said objection, SFR answers:

(a) Objection, this interrogatory is vague and ambiguous as to the term "learned" making a response impossible without speculation. Subject to and without waving said objection, SFR answers: After reviewing its file with due diligence, SFR cannot specifically recall how it learned about this specific sale, but SFR generally learned about the foreclosure sales through reviewing Nevada Legal News and Foreclosure Radar websites.

(b) No.

(c) SFR does not specifically recall the opening bid price at the HOA Foreclosure Sale.

(d) Other than the fact that SFR has never attended a sale where there was only one qualified bidder in attendance, SFR cannot specifically recall who or how many other bidders were present at the HOA Foreclosure Sale.

(e) SFR cannot specifically recall the amounts bid at the HOA Foreclosure Sale.

(f) Objection, this request is not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible evidence. Further, it requests confidential and proprietary business information.

**INTERROGATORY NO. 19:**

Identify each person or entity that requested notice of the HOA Foreclosure Sale, including the notice of default or notice of sale in connection therewith, including but not limited to pursuant to Nevada Revised Statute 107.090, 116.3116, and/or NRS 116.311635.



**ANSWER TO INTERROGATORY NO. 19:**

Objection, this interrogatory is overly broad and unduly burdensome in that it requests information outside of SFR's possession or control. Further, this interrogatory is overly broad and unduly burdensome as the phrase "each person or entity" is not reasonably limited in scope. Subject to and without waiving said objections, SFR responds: After a review of its file with due diligence, SFR does not have any presale information in its possession responsive to this request.

**INTERROGATORY NO. 20:**

State in details all Facts that relate to any request for notice for the HOA Foreclosure Sale, including the notice of default or notice of sale in connection therewith, including but not limited to pursuant to Nevada Revised Statute 107.090, 116.3116, and/or NRS 116.311635.

**ANSWER TO INTERROGATORY NO. 20:**

Objection, this interrogatory is overly broad and unduly burdensome in that it requests information outside of SFR's possession or control. Further, this interrogatory is overly broad and unduly burdensome as the phrase "each person or entity" is not reasonably limited in scope. Subject to and without waiving said objections, SFR responds: After a review of its file with due diligence, SFR does not have any presale information in its possession responsive to this request.

DATED this 1st day of June, 2018.

**KIM GILBERT EBRON**

/s/ Diana S. Ebron

Diana S. Ebron, Esq.

Nevada Bar No. 10580

Jacqueline A. Gilbert, Esq.

Nevada Bar No. 10593

Karen L. Hanks, Esq.

Nevada Bar No. 9578

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

*Attorneys for SFR Investments Pool 1, LLC*

**VERIFICATION**

I, Christopher Hardin, hereby declare that I have read the foregoing Answers to Interrogatories, and further declare that the responses contained therein are true and correct.

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

DATED this 1st day of June, 2018.

/s/Christopher Hardin

Christopher Hardin, on behalf of  
SFR Investments Pool 1, LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 1st day of June, 2018, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system the foregoing document entitled **SFR INVESTMENTS POOL 1, LLC'S OBJECTIONS AND ANSWERS TO NATIONSTAR MORTGAGE, LLC'S FIRST SET OF INTERROGATORIES TO SFR INVESTMENTS POOL 1, LLC** to the following parties:

Akerman LLP	AkermanLAS@akerman.com
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/s/ Tomas Valerio  
an employee of KIM GILBERT EBRON

# EXHIBIT “X”

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3 ALESSI & KOENIG, LLC, )  
4 )  
5 Plaintiff, )  
6 )  
7 vs. ) Case No. A-14-705563-C  
8 ) Dept. No. XVII  
9 STACY MOORE, an individual; )  
10 MAGNOLIA GOTERA, an )  
11 individual; KRISTIN JORDAL, AS )  
12 TRUSTEE FOR THE JBWNO )  
13 REVOCABLE LIVING TRUST, a )  
14 trust; U.S. BANK, N.A., a )  
15 national banking association; )  
16 NATIONSTAR MORTGAGE, LLC, a )  
17 foreign limited liability )  
18 company; REPUBLIC SILVER STATE )  
19 DISPOSAL, INC., DBA REPUBLIC )  
20 SERVICES, a domestic )  
21 government entity; et al., )  
22 )  
23 Defendants. )  
24 )  
25 )  
AND RELATED COUNTERCLAIM AND )  
THIRD-PARTY CLAIM. )  
)

16 DEPOSITION OF  
17 30(B)(6) REPRESENTATIVE FOR ALESSI & KOENIG, L.L.C.  
18 DAVID ALESSI  
19 HENDERSON, NEVADA  
20 WEDNESDAY, MAY 16, 2018  
21

22 VERITEXT LEGAL SOLUTIONS  
23 (800) 567-8658  
24 REPORTED BY: CYNTHIA K. DuRIVAGE, CCR No. 451  
25 JOB NO.: 2908059

<p style="text-align: right;">Page 2</p> <p>1 DISTRICT COURT  2 CLARK COUNTY, NEVADA  3 ALESSI &amp; KOENIG, LLC, )  4 )  5 Plaintiff, )  6 )  7 vs. ) Case No. A-14-705563-C  8 ) Dept. No. XVII  9 STACY MOORE, an individual; )  10 MAGNOLIA GOTERA, an )  11 individual; KRISTIN JORDAL, AS)  12 TRUSTEE FOR THE JBWNO )  13 REVOCABLE LIVING TRUST, a )  14 trust; U.S. BANK, N.A., a )  15 national banking association; )  16 NATIONSTAR MORTGAGE, LLC, a )  17 foreign limited liability )  18 company; REPUBLIC SILVER STATE)  19 DISPOSAL, INC., DBA REPUBLIC )  20 SERVICES, a domestic )  21 government entity; et al., )  22 )  23 Defendants. )  24 )  25 )</p> <p>14 AND RELATED COUNTERCLAIM AND )  15 THIRD-PARTY CLAIM. )  16 )  17 Deposition of DAVID ALESSI, taken on  18 behalf of Defendant Nationstar Mortgage, LLC, at  19 2450 St. Rose Parkway, Suite 200, Henderson, Nevada,  20 commencing at 3:21 p.m., Wednesday, May 16, 2018,  21 before Cynthia K. DuRivage, CCR No. 451.  22  23  24  25</p>	<p style="text-align: right;">Page 4</p> <p>1 I N D E X  2 WITNESS: DAVID ALESSI  3 EXAMINATION PAGE  4 BY MR. MILNE 7  5 BY MR. MARTINEZ 59  6  7  8 EXHIBITS  9  10 LETTER DESCRIPTION PAGE  11 A Notice Of Subpoena For Deposition 7  12 Of The NRCP 30(B)(6) Witness For  13 Alessi &amp; Koenig, LLC  14  15 B Copper Sands Homeowners 10  16 Association, Inc. Status report  17 for Stacy Moore  18  19 C Deed Of Trust 13  20  21 D Notice Of Delinquent Assessment 14  22 Lien, 4/15/08  23 E Letter to Magnolia Gotera from 16  24 Aileen Ruiz, 4/15/08  25  26 F Trustee's Sale Guarantee 18  27  28 G Notice Of Default And Election 18  29 To Sell Under Homeowners  30 Association Lien, 6/21/08  31  32 H Letter to Alessi &amp; Koenig, LLC 21  33 from First American Title  34 Insurance Company, 5/14/10  35  36 I Letter to Miles, Bauer, 22  37 Bergstrom &amp; Winters from Ryan  38 Kerbow, 9/8/10  39  40  41  42  43  44  45</p>
<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S  2 FOR DEFENDANT NATIONSTAR MORTGAGE, LLC:  3 GARY C. MILNE  4 BY: GERRARD COX LARSEN, ESQ.  5 2450 St. Rose Parkway  6 Suite 200  7 Henderson, Nevada 89074  8 (702) 796-4000  9 gmlne@gerrard-cox.com  10  11 FOR THIRD-PARTY DEFENDANT SFR INVESTMENTS POOL 1,  12 LLC:  13 KIM GILBERT EBON  14 BY: JASON G. MARTINEZ, ESQ.  15 7625 Dean Martin Drive  16 Suite 110  17 Las Vegas, Nevada 89139  18 (702) 485-3300  19 jason@kgelegal.com  20  21  22  23  24  25</p> <p style="text-align: center;">* * * * *</p>	<p style="text-align: right;">Page 5</p> <p>1 I N D E X (CONT'D)  2 EXHIBITS  3 LETTER DESCRIPTION PAGE  4 J Letter to Alessi &amp; Koenig, 24  5 L.L.C. from Rock K. Jung,  6 9/30/10  7 K Letter from Shadow Mountain 27  8 Ranch to Magnolia Gotera  9 reflecting assessments  10 L Authorization To Conclude Non- 29  11 Judicial Foreclosure And  12 Conduct Trustee Sale  13 M Notice Of Trustee's Sale, 32  14 12/16/10  15  16 N Grant Deed, 5/27/11 33  17  18 O Grant Deed, 5/27/11 34  19  20 P Assignment Of Deed Of Trust, 34  21 10/27/11  22 Q Notice Of Delinquent Assessment 35  23 Lien, 8/13/12  24  25 R Letter from Shadow Mountain 37  26 Ranch to Stacy Moore reflecting  27 Assessments  28  29 S Letter to Stacy Moore from 39  30 Alessi &amp; Koenig, 8/13/12  31 T Real Estate Listing Report 40  32 U Notice Of Default And Election 41  33 To Sell Under Homeowners  34 Association Lien, 9/11/12  35 V Notice Of Default And Election 42  36 To Sell Under Homeowners  37 Association Lien, 6/3/13  38  39  40  41  42  43  44  45</p>

<p style="text-align: right;">Page 6</p> <p>1           I N D E X (CONT'D)</p> <p>2 EXHIBITS</p> <p>3 LETTER           DESCRIPTION           PAGE</p> <p>4 W     Assignment Of Deed Of Trust,     45</p> <p>       7/1/13</p> <p>5</p> <p>6     X     Notice Of Trustee's Sale,     46</p> <p>       9/11/2</p> <p>7     Y     Notice Of Trustee's Sale,     48</p> <p>       11/14/13</p> <p>8</p> <p>9     Z     Trustee's Deed Upon Sale,     49</p> <p>       6/13/14</p> <p>10   AA     Email from George Bates to     55</p> <p>       maximumfinancial@aol.com,</p> <p>       1/8/14</p> <p>11</p> <p>12   BB     Alessi &amp; Koenig multiple pages     55</p> <p>       of fees and costs</p> <p>13</p> <p>14   CC     Appraisal Of Real Property     56</p> <p>15</p> <p>16   DD     Affidavit of David Alessi,     58</p> <p>17         9/7/17</p> <p>18 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:</p> <p>19           (NONE)</p> <p>20</p> <p>21</p> <p>22 INFORMATION TO BE SUPPLIED:</p> <p>23           (NONE)</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1           Have you seen this document before?</p> <p>2     A.   Yes, I have, and I am prepared to testify</p> <p>3 on all the matters contained within it.</p> <p>4     Q.   All right. Very good.</p> <p>5           I notice today you're not represented by</p> <p>6 counsel, although I understand you are an attorney,</p> <p>7 correct?</p> <p>8     A.   I'm a California attorney, correct.</p> <p>9     Q.   All right. I believe, if I'm not mistaken,</p> <p>10 Alessi &amp; Koenig, LLC is the named plaintiff in this</p> <p>11 litigation.</p> <p>12          Do you know if they're represented by</p> <p>13 counsel in this matter?</p> <p>14     A.   No. Alessi Koenig filed Chapter 7 in</p> <p>15 December of 2016. So Shelly Krohn is the trustee.</p> <p>16 Janette Pearson is the trustee's attorney.</p> <p>17     Q.   But you're here today as the 30(b)(6)</p> <p>18 designee for Alessi &amp; Koenig, are you not?</p> <p>19     A.   Yes.</p> <p>20     Q.   How much time did you spend preparing for</p> <p>21 this deposition, perhaps reviewing the collection</p> <p>22 file?</p> <p>23     A.   As I do in all my depositions, I contacted</p> <p>24 Jona, J-o-n-a, LePoma, L-e-P-o-m-a, on my way to the</p> <p>25 deposition, and we went over both files, the depo I</p>
<p style="text-align: right;">Page 7</p> <p>1           DAVID ALESSI,</p> <p>2 having first been duly sworn to testify to the truth,</p> <p>3 the whole truth, and nothing but the truth, was</p> <p>4 examined and testified as follows:</p> <p>5</p> <p>6           EXAMINATION</p> <p>7 BY MR. MILNE:</p> <p>8     Q.   David, my name is Gary Milne. I represent</p> <p>9 Nationstar Mortgage in this litigation.</p> <p>10          I know immediately prior to today's</p> <p>11 deposition, your deposition was taken in another</p> <p>12 matter here in this office.</p> <p>13          At that time, were any admonitions</p> <p>14 provided, or you've probably done hundreds, if not</p> <p>15 thousands of these?</p> <p>16     A.   That's correct, I have, and there's no need</p> <p>17 for any admonitions. We can just jump right in.</p> <p>18     Q.   All right. Thank you.</p> <p>19          Let me hand you what we're going to mark as</p> <p>20 Defendant's Exhibit A.</p> <p>21          (Exhibit A was marked for</p> <p>22 identification by the reporter.)</p> <p>23 BY MR. MILNE:</p> <p>24     Q.   David, you have in front of you what we've</p> <p>25 marked as Exhibit A to your deposition.</p>	<p style="text-align: right;">Page 9</p> <p>1 just took and this one.</p> <p>2          It doesn't take me long at this point. I</p> <p>3 probably spent five or ten minutes on it.</p> <p>4     Q.   Did you talk to anyone besides the</p> <p>5 individual identified?</p> <p>6     A.   No.</p> <p>7     Q.   Do you know how it is that Alessi &amp; Koenig</p> <p>8 got involved with this HOA foreclosure sale?</p> <p>9     A.   We would have been hired by the homeowners</p> <p>10 association.</p> <p>11     Q.   I believe, if I'm recalling correctly,</p> <p>12 Shadow Mountain Ranch Community Association?</p> <p>13     A.   Shadow Mountain, yes.</p> <p>14          So generally, there's a retainer between</p> <p>15 our firm and the association or the board by way of a</p> <p>16 motion at a properly quorumed HOA board meeting would</p> <p>17 hire us.</p> <p>18          Our main point of contact, though, is the</p> <p>19 HOA management company. It's usually not the board</p> <p>20 or the HOA itself.</p> <p>21     Q.   Would you happen to know whether is the</p> <p>22 first matter you've handled for Shadow Mountain?</p> <p>23 Were there others? Do you have any idea?</p> <p>24     A.   For Shadow Mountain, I don't know.</p> <p>25     Q.   Do you know who the management company was?</p>

<p style="text-align: right;">Page 10</p> <p>1 A. I don't know.</p> <p>2 Q. But most of your contact in terms of the</p> <p>3 collection process would be through the management</p> <p>4 company on behalf of the HOA, correct?</p> <p>5 A. Usually, yes.</p> <p>6 Q. Do you know anything about the homeowner,</p> <p>7 Magnolia Gotera?</p> <p>8 A. No.</p> <p>9 Q. Any communications through your office with</p> <p>10 her that you saw upon your review of the file?</p> <p>11 A. Not that I know of.</p> <p>12 If I had the status report, which I believe</p> <p>13 was produced in our document production, that would</p> <p>14 help assist me.</p> <p>15 Generally, communication with the homeowner</p> <p>16 would be noted in the status report.</p> <p>17 MR. MILNE: Why don't we go ahead and hand</p> <p>18 you, then.</p> <p>19 Madam Court Reporter, I don't know if</p> <p>20 you've got specific colors for your exhibit stickers</p> <p>21 you're wanting to use.</p> <p>22 (Exhibit B was marked for</p> <p>23 identification by the reporter.)</p> <p>24 BY MR. MILNE:</p> <p>25 Q. David, you have in front of you what we've</p>	<p style="text-align: right;">Page 12</p> <p>1 the homeowner, payments received or payments made.</p> <p>2 Q. Based upon anything here or, again,</p> <p>3 anything you may have seen in reviewing the file, do</p> <p>4 you know whether or not Magnolia Gotera lived in this</p> <p>5 property or whether it was a rental property or any</p> <p>6 understanding one way or the other?</p> <p>7 A. I don't have any understanding one way or</p> <p>8 the other of that.</p> <p>9 Q. At some point, did Alessi &amp; Koenig come to</p> <p>10 understand that she didn't live there?</p> <p>11 A. From the documents that I have in front of</p> <p>12 me, I cannot answer that question. Perhaps if I saw</p> <p>13 the mailings, if there was an offsite address. But I</p> <p>14 don't see anything in the file so far to indicate</p> <p>15 that.</p> <p>16 Q. Does Alessi &amp; Koenig -- or, did Alessi &amp;</p> <p>17 Koenig do anything in terms of making sure they had</p> <p>18 current mailing information for the homeowner?</p> <p>19 MR. MARTINEZ: Objection, form.</p> <p>20 THE WITNESS: We did review the public</p> <p>21 records to ascertain current addresses.</p> <p>22 BY MR. MILNE:</p> <p>23 Q. Beyond that, any other research?</p> <p>24 A. No, not that I can think of.</p> <p>25 Q. And if a mailing came back, would any</p>
<p style="text-align: right;">Page 11</p> <p>1 marked as Exhibit B, which I believe may be that</p> <p>2 status report, if I'm using the language correctly --</p> <p>3 A. Yes.</p> <p>4 Q. -- that you referenced.</p> <p>5 A. Yes. And so, to answer your question, it</p> <p>6 looks like we did make contact with the homeowner on</p> <p>7 October 12th, 2009. There's an entry in the status</p> <p>8 report to that effect. And it also says:</p> <p>9 "Spoke with homeowner, payment</p> <p>10 forthcoming."</p> <p>11 Q. Tell me a little bit about this Exhibit B,</p> <p>12 how it's prepared or was prepared.</p> <p>13 I'm going to assume it's by whoever does</p> <p>14 anything substantive with the file. There's a</p> <p>15 computer entry made as to what was done and when and</p> <p>16 a description and so forth.</p> <p>17 A. Yes.</p> <p>18 Q. Is that how it's generated?</p> <p>19 A. These entries are done by employees of the</p> <p>20 law firm.</p> <p>21 Q. Alessi &amp; Koenig?</p> <p>22 A. Of Alessi &amp; Koenig, yes. And they're meant</p> <p>23 to capture all of the pertinent, relevant events on a</p> <p>24 foreclosure file, such as the recording of the</p> <p>25 various notices, communications with the bank and/or</p>	<p style="text-align: right;">Page 13</p> <p>1 inquiry, either with the management company or the</p> <p>2 HOA, be made?</p> <p>3 A. Generally, any updates to mailing addresses</p> <p>4 or offsite addresses are reflected on the ledger.</p> <p>5 Generally, we would obtain an updated</p> <p>6 accounting ledger when we take the next step in the</p> <p>7 foreclosure process.</p> <p>8 I see several entries here where we</p> <p>9 requested an updated accounting ledger.</p> <p>10 So in that way, we are updating our</p> <p>11 records.</p> <p>12 (Exhibit C was marked for</p> <p>13 identification by the reporter.)</p> <p>14 BY MR. MILNE:</p> <p>15 Q. David, I've handed you what we've marked as</p> <p>16 Exhibit C to your deposition. It's a deed of trust</p> <p>17 recorded on November 21st, 2005.</p> <p>18 Did you see this upon your review of the</p> <p>19 collection file?</p> <p>20 A. I did not.</p> <p>21 Q. Is it typical to obtain a copy of the deed</p> <p>22 of trust in the process of foreclosing an HOA's lien?</p> <p>23 A. I don't know if it's typical or atypical.</p> <p>24 We oftentimes do either review it online -- I can't</p> <p>25 say that it's typical for us to print it out and scan</p>



<p style="text-align: right;">Page 14</p> <p>1 it into the file, although I have seen it on a number 2 of occasions.</p> <p>3 Q. And I'll represent to you that the 4 documents we obtained from the Dropbox did include a 5 copy of the deed of trust. I don't know whether it 6 was this exact one, exact copy, in other words, this 7 copy might have been obtained somewhere else, but one 8 was seen in the collection file.</p> <p>9 But be that as it may, why would Alessi &amp; 10 Koenig want to have a copy of the deed of trust in 11 the collection file?</p> <p>12 MR. MARTINEZ: Objection, form.</p> <p>13 THE WITNESS: We would place the -- to 14 obtain information as to who to mail the notices to 15 as well as the amount owed on the property.</p> <p>16 BY MR. MILNE:</p> <p>17 Q. Anything else?</p> <p>18 A. Not that I can think of.</p> <p>19 We would also be looking for assignments of 20 the deed of trust. All of this is done to ensure 21 that we mail the notices to the right parties.</p> <p>22 (Exhibit D was marked for 23 identification by the reporter.)</p> <p>24 THE WITNESS: Exhibit D is a copy of a 25 notice of delinquent assessment lien recorded</p>	<p style="text-align: right;">Page 16</p> <p>1 a super-priority lien?</p> <p>2 MR. MARTINEZ: Objection, form.</p> <p>3 THE WITNESS: The words "super-priority 4 lien" are not on this document. It just has a total 5 amount due. So there would be no way for a person 6 reading the document to ascertain a super-priority 7 amount.</p> <p>8 BY MR. MILNE:</p> <p>9 Q. The recording date is, I don't know, looks 10 to be about three weeks after the date the notice of 11 lien was signed.</p> <p>12 Is that typical, or is there any 13 requirement by the statute, as you understand it?</p> <p>14 MR. MARTINEZ: Objection, form.</p> <p>15 THE WITNESS: There's no requirement by the 16 statute, as I understand it.</p> <p>17 (Exhibit E was marked for 18 identification by the reporter.)</p> <p>19 BY MR. MILNE:</p> <p>20 Q. David, Exhibit E is two letters sent to 21 Magnolia Gotera, both dated April 15, 2008, one with 22 an address in Las Vegas, which I think is the 23 property address, and the other is to Salinas, 24 California.</p> <p>25 What is this letter?</p>
<p style="text-align: right;">Page 15</p> <p>1 May 7th, 2008.</p> <p>2 BY MR. MILNE:</p> <p>3 Q. I notice in looking at Exhibit D, David, 4 that in the first paragraph for recorded information 5 as to the CC&amp;Rs, the word "pending" is indicated 6 there.</p> <p>7 Do you know how or why that is?</p> <p>8 A. I don't.</p> <p>9 Q. The total amount due is \$957, and the 10 notice purports to break that amount down into 11 collection and attorney's fees as well as collection 12 costs, late fees, et cetera.</p> <p>13 Would I be correct in understanding, after 14 I subtract out the collection and attorney's fees and 15 the collection costs and late fees, the balance would 16 be the assessments that are delinquent?</p> <p>17 MR. MARTINEZ: Object to form.</p> <p>18 THE WITNESS: As well as the management 19 company intent to lien fee and the management company 20 audit fee.</p> <p>21 BY MR. MILNE:</p> <p>22 Q. Anybody who received this notice of 23 delinquent assessment lien, Exhibit D, upon looking 24 at it, would they be able to determine whether or not 25 the HOA was seeking to foreclose what we now know as</p>	<p style="text-align: right;">Page 17</p> <p>1 A. This is a lien cover letter. With this 2 letter, the notice of delinquent assessment lien 3 would have been enclosed. It's informing the 4 delinquent homeowner that there's a past-due balance 5 due and the date that it's due.</p> <p>6 Q. Can you tell from the -- what did you call 7 Exhibit B, status report or status record, whether or 8 not Exhibit E came back, was delivered, anything 9 about the success of this mailing?</p> <p>10 A. Well, you can see on the second entry, 11 April 11th, 2008, that the lien recordation was sent 12 via regular certified mail. This Exhibit E is a copy 13 of that mailing with the certified mail number.</p> <p>14 You can see the certified mail number on 15 the document.</p> <p>16 Q. Sure. And the dates, April 11 on the 17 report and April 15 on the Exhibit E itself, any 18 understanding as to why those are off by four days?</p> <p>19 MR. MARTINEZ: Objection, form.</p> <p>20 THE WITNESS: I don't think that they're 21 off.</p> <p>22 I would imagine that the lien might have 23 been drafted. The entries in the status report are 24 on or about dates, so it just may not -- the legal 25 assistant was in the process of mailing the lien out</p>

<p style="text-align: right;">Page 18</p> <p>1 and part of that process was entering the event in 2 the status report. 3 (Exhibit F was marked for 4 identification by the reporter.) 5 BY MR. MILNE: 6 Q. David, you have in front of you what we've 7 marked as Exhibit F to your deposition, a trustee 8 sale guarantee for North American Title Company, 9 effective July 23, 2008. 10 Why is this in Alessi &amp; Koenig's collection 11 file? 12 A. This document helps us ascertain the 13 encumbrances on the property, who to -- helps us 14 determine who to mail the notice of default to. 15 Q. And I see on the third page of Exhibit F 16 the deed of trust in favor of Countrywide Home Loans 17 is noted there, correct? 18 A. Yes. 19 (Exhibit G was marked for 20 identification by the reporter.) 21 BY MR. MILNE: 22 Q. David, you've been handed Exhibit G. It's 23 a notice of default and election to sell under 24 homeowners association lien, and it's actually three 25 different documents.</p>	<p style="text-align: right;">Page 20</p> <p>1 that each of the notices references the same lien. 2 BY MR. MILNE: 3 Q. The first lien that was Exhibit D? 4 A. Correct. 5 Q. It looks like, referencing again the status 6 report, Exhibit B, that the June 21, 2008 notice of 7 default is referenced, as is an April 2009 notice of 8 default, April 14th. 9 A. It looks like in parenthesis, it says, 10 "re-recording." I don't know if there was an issue 11 with the recordings or the mailings of that first 12 notice of default. I don't have enough documents in 13 front of me. 14 Q. And then, the third page of Exhibit G, the 15 July 2010 notice of default, again, that also, I 16 think, is reflected in the status report at the 17 bottom of the first page of Exhibit B as June 21st? 18 A. Yes. 19 Q. But your best recollection or understanding 20 is that these multiple notices of default was to 21 prompt the homeowner to pay the delinquent 22 assessment? 23 A. Yes. Going to foreclosure sale, though, 24 was the last resort, especially this long ago. 25 At the beginning of the process, we could</p>
<p style="text-align: right;">Page 19</p> <p>1 The first page is a notice of default 2 recorded on July 23, 2008. The second page is a 3 notice of default recorded on April 30, 2009. And 4 the third page is a notice of default recorded on 5 July 1, 2010. 6 As best as I can tell, the only difference 7 between the documents is some dollar figures are 8 different and maybe some other dates, but I'm just 9 hoping you can maybe help me understand what was the 10 need for successive notice of default under this one 11 notice of lien. 12 MR. MARTINEZ: Objection, form. 13 THE WITNESS: I don't know. It could be 14 that -- I don't know. 15 It does not look like we charged multiple 16 times for the notice of default. 17 This file is an old file, it's 2008, 2009, 18 2010. We really weren't going to sale. So these 19 notices could have been to try to get the attention 20 of the homeowner a year later because we weren't 21 moving forward to sale on properties at this time 22 very regularly. And so, just in an effort to shake 23 the trees, as it were, a little bit, it doesn't look 24 like we charged for the notice. I don't see the 25 mailings for any of the notices. But I would note</p>	<p style="text-align: right;">Page 21</p> <p>1 have certainly recorded a notice of trustee sale and 2 levied more fees on the account. 3 It does look like we might have had a 4 little bit of contact from the homeowner. So we were 5 just trying to close the account out and, like I 6 said, shake the trees a little bit. 7 Q. And the notice of default would, in 8 addition to being mailed to the homeowner would also 9 be mailed to a lender, correct? 10 A. Correct. 11 (Exhibit H was marked for 12 identification by the reporter.) 13 BY MR. MILNE: 14 Q. David, Exhibit H appears to be another 15 trustee sale guarantee like document. This time, 16 instead of it coming from North American Title 17 Company, this one appears to be generated by First 18 American Title Company, effective May 6, 2010. 19 Reason why it didn't go back to North 20 American Title? 21 A. I don't know. We use multiple title 22 insurance companies over the years. 23 Q. And again, Exhibit H shows the deed of 24 trust in favor of Countrywide, correct? 25 A. Correct.</p>

<p style="text-align: right;">Page 22</p> <p>1 (Exhibit I was marked for 2 identification by the reporter.) 3 BY MR. MILNE: 4 Q. David, Exhibit I is a letter on Alessi &amp; 5 Koenig letterhead, dated September 8, 2010 with a 6 subject line "Rejection of Partial Payments." 7 I've kind of tried to compare this to the 8 status report, Exhibit B, to get a better 9 understanding of the communications to and from 10 Alessi &amp; Koenig and Miles Bauer Bergstrom &amp; Winters 11 who is identified on this letter as the recipient. 12 And it looks like, based upon the status 13 report, that on September 9, 2010, Alessi &amp; Koenig 14 received payoff requests from Miles Bauer Bergstrom &amp; 15 Winters. 16 I didn't see that letter in the collection 17 file in preparation for your deposition. But then, I 18 look at that date, September 9, and compare it to 19 Exhibit I, which is a day earlier, September 8, and I 20 was a little confused on the dates. 21 Am I correct in believing and understanding 22 that Exhibit I was received after a request from 23 Miles Bauer for payoff information, whatever date 24 that letter may have been? 25 MR. MARTINEZ: Objection, form.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. But typically in these cases where Alessi &amp; 2 Koenig has communicated with Miles Bauer, Alessi &amp; 3 Koenig would receive communication from Miles Bauer 4 requesting a super-priority amount, and then, a 5 letter such as Exhibit I would be generated? 6 A. No. Exhibit I is an outlier. 7 Generally, the response would be a demand 8 that you see on page 2 of Exhibit I with an account 9 ledger attached to it. 10 Q. Okay. 11 A. I've only seen the first page of Exhibit I 12 at a couple of depositions. 13 Generally what I would see in response to 14 Miles' request for a payoff is a breakdown that you 15 see on page 2 with an attached account ledger. 16 Q. Page 2 of Exhibit I? 17 A. Yes. 18 (Exhibit J was marked for 19 identification by the reporter.) 20 BY MR. MILNE: 21 Q. David, Exhibit J is a letter dated 22 September 30, 2010 from Miles Bauer to Alessi &amp; 23 Koenig; the third page of which includes a Miles 24 Bauer check payable to Alessi &amp; Koenig for \$207. 25 Have you seen this document before, or did</p>
<p style="text-align: right;">Page 23</p> <p>1 THE WITNESS: Not received. This letter 2 would have been sent by our office to Miles Bauer, 3 and I'm not surprised that Ryan didn't note the 4 status report or that this document wouldn't be 5 scanned by Ryan into the status report. 6 But I've seen this document at a couple of 7 my several hundred depositions that Ryan apparently 8 sent out, Ryan Kerbow, K-e-r-b-o-w. I don't know 9 that this letter is noted on the status report, but 10 you are correct that this is part of the 11 back-and-forth communication between our office and 12 Miles Bauer reflected in the status report. 13 BY MR. MILNE: 14 Q. Would this letter ever go out peremptorily 15 or before receipt of communication from Miles Bauer? 16 MR. MARTINEZ: Objection, form. 17 THE WITNESS: No. It would be facilitated 18 by Miles Bauer contacting our office. 19 The document references a rejection of a 20 partial payment. I don't see anything in the status 21 report reflecting receipt of a payment by Miles 22 Bauer, however. 23 BY MR. MILNE: 24 Q. We'll get there. 25 A. Okay.</p>	<p style="text-align: right;">Page 25</p> <p>1 you see it in your review of the collection file? 2 A. I did not. 3 Q. It seems to reference the statement of 4 account that we did see as the second page to 5 Exhibit I. 6 In fact, it references the same \$3,554 as 7 what was being claimed for a full payoff amount. 8 Miles Bauer, however, forwarded a check 9 payable to Alessi &amp; Koenig for \$207, correct? 10 MR. MARTINEZ: Objection, form, facts not 11 in evidence. 12 BY MR. MILNE: 13 Q. I mean, do you know if Alessi &amp; Koenig 14 received Exhibit J? 15 MR. MARTINEZ: Objection, form. 16 THE WITNESS: I don't know. I would expect 17 to see either a copy of the check -- and this is 18 based on my prior testimony in depositions -- either 19 a file -- copy of the check in our file, in our 20 production or a reference to the check in the status 21 report or both. 22 However, the absence of a reference in the 23 status report and a copy in our check -- in our file 24 would not lead me to believe conclusively that we 25 didn't receive the check.</p>

<p style="text-align: right;">Page 26</p> <p>1 There is a possibility that the check was</p> <p>2 sent to our office, and we failed to scan it into the</p> <p>3 program and/or note it in the status report. I just</p> <p>4 don't know for sure.</p> <p>5 BY MR. MILNE:</p> <p>6 Q. Is it possible that Exhibit I, the letter</p> <p>7 from Ryan Kerbow, would be responsive to receipt of</p> <p>8 what Ryan was calling a partial payment?</p> <p>9 MR. MARTINEZ: Objection to form.</p> <p>10 THE WITNESS: The dates wouldn't make sense</p> <p>11 inasmuch as his letter predates --</p> <p>12 BY MR. MILNE:</p> <p>13 Q. The Miles Bauer letter?</p> <p>14 A. -- the Miles Bauer letter.</p> <p>15 So again, I would have no way of knowing</p> <p>16 except to say that it is possible that this letter</p> <p>17 and check were sent to our office and that we failed</p> <p>18 to note it in the status report or make a copy of it.</p> <p>19 Whether it's more likely or not, I don't</p> <p>20 know that I would be comfortable answering that.</p> <p>21 Q. The address for Alessi &amp; Koenig in</p> <p>22 September of 2010 is 9500 West Flamingo Road,</p> <p>23 Suite 100, was it not?</p> <p>24 A. Actually, it was Suite -- in 2010 we were</p> <p>25 upstairs in the Suite 204.</p>	<p style="text-align: right;">Page 28</p> <p>1 to the \$207 that the Miles Bauer check was for?</p> <p>2 MR. MARTINEZ: Objection, form.</p> <p>3 THE WITNESS: I agree.</p> <p>4 BY MR. MILNE:</p> <p>5 Q. So at any rate, assuming that Alessi &amp;</p> <p>6 Koenig received the Miles Bauer letter for \$207, it</p> <p>7 appears they were attempting to tender the</p> <p>8 super-priority lien based upon the</p> <p>9 23-dollar-per-month assessment for the HOA.</p> <p>10 Is that your understanding?</p> <p>11 MR. MARTINEZ: Objection, form, facts not</p> <p>12 in evidence. Also, hypothetical to a lay witness.</p> <p>13 THE WITNESS: Yeah. If we received this</p> <p>14 check, it would appear -- it is equal to nine months</p> <p>15 of assessments, 23 times 9.</p> <p>16 BY MR. MILNE:</p> <p>17 Q. And that was their attempt to -- I mean,</p> <p>18 reading their letter, I mean, Exhibit J speaks for</p> <p>19 itself, but it appears they were attempting to tender</p> <p>20 the super-priority amount as they determined at that</p> <p>21 time based upon the \$23-a-month assessments amount?</p> <p>22 MR. MARTINEZ: Objection, form.</p> <p>23 THE WITNESS: I mean, I would agree with</p> <p>24 you the document speaks for itself. I would defer to</p> <p>25 the author of the document to interpret it.</p>
<p style="text-align: right;">Page 27</p> <p>1 Q. Does this Exhibit J reference the correct</p> <p>2 property we're here to talk about today, Marsh Butte</p> <p>3 Street?</p> <p>4 A. Yes.</p> <p>5 (Exhibit K was marked for</p> <p>6 identification by the reporter.)</p> <p>7 BY MR. MILNE:</p> <p>8 Q. David, you have in front of you what we've</p> <p>9 marked as Exhibit K. It appears to be a ledger for</p> <p>10 Shadow Mountain Ranch HOA showing assessment amounts</p> <p>11 at least as early as January 2009 and continuing</p> <p>12 through October of 2010, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Monthly assessments \$23?</p> <p>15 A. Yes.</p> <p>16 Q. And would that cover the period showing the</p> <p>17 amount of assessments for the notice of lien, the</p> <p>18 notice of default, and the Miles Bauer letters we've</p> <p>19 been talking about here?</p> <p>20 MR. MARTINEZ: Objection, form.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. MILNE:</p> <p>23 Q. I went to law school, so I'm no great</p> <p>24 mathematician, but if I times the \$23 for monthly</p> <p>25 assessment by nine months, I think that computes out</p>	<p style="text-align: right;">Page 29</p> <p>1 BY MR. MILNE:</p> <p>2 Q. Looking at the second page, almost about</p> <p>3 the middle, quote:</p> <p>4 "Thus, enclosed, you will find a</p> <p>5 cashier's check made out to Alessi &amp;</p> <p>6 Koenig, LLC in the sum of \$207 which</p> <p>7 represents the maximum nine months</p> <p>8 worth of delinquent assessments</p> <p>9 recoverable by an HOA."</p> <p>10 Do you see that language?</p> <p>11 A. Yes.</p> <p>12 MR. MARTINEZ: Objection, form.</p> <p>13 BY MR. MILNE:</p> <p>14 Q. Did I read that correctly?</p> <p>15 A. Yes.</p> <p>16 (Exhibit L was marked for</p> <p>17 identification by the reporter.)</p> <p>18 BY MR. MILNE:</p> <p>19 Q. David, Exhibit L appears to be an unsigned</p> <p>20 authorization to conclude nonjudicial foreclosure and</p> <p>21 conduct a trustee's sale on Alessi &amp; Koenig</p> <p>22 letterhead. I don't see a date specific on it, but</p> <p>23 it appears to have been chronologically next in order</p> <p>24 in terms of what we're talking about here today.</p> <p>25 Do you have an understanding as to whether</p>

<p style="text-align: right;">Page 30</p> <p>1 or not the HOA approved proceeding with the trustee  2 sale at or about the time we've been discussing?  3 A. Yes. My understanding is that the  4 association approved the sale. They cashed the check  5 January 10th, 2014. A check was cut to Shadow  6 Mountain Ranch for \$3,806 which they cashed. I've  7 never heard anything from the association that they  8 did not approve the sale.  9 Our policy, Alessi &amp; Koenig's policy, was  10 that we would move forward to sale absent specific  11 direction from the client not to.  12 In other words, this authorization was not  13 required that it be signed.  14 Q. I guess what I -- I guess I want to go back  15 in time before then and drawing your attention to  16 September 15, 2011 on your status report in  17 Exhibit B.  18 A. Yes.  19 Q. That tells me that the trustee sale was not  20 authorized per board of directors.  21 A. Yeah. That -- and I don't have the board  22 meeting minutes.  23 I can tell you that we wanted to show the  24 client that we were looking at the file every month,  25 especially at the beginning of the process, files</p>	<p style="text-align: right;">Page 32</p> <p>1 (Exhibit M was marked for  2 identification by the reporter.)  3 BY MR. MILNE:  4 Q. David, Exhibit M is a notice of trustee  5 sale recorded January 26, 2011. That was signed on  6 December 16, 2010.  7 Looking at Exhibit M, would anybody who  8 received it be able to determine that the HOA was  9 foreclosing on a super-priority lien?  10 MR. MARTINEZ: Objection, form.  11 THE WITNESS: No.  12 BY MR. MILNE:  13 Q. I see the delinquent amount, including  14 costs, expenses and so forth, referenced on Exhibit M  15 is \$5,757, correct?  16 A. Yes.  17 Q. Are you able to break that down into any of  18 its component parts?  19 MR. MARTINEZ: Objection, form.  20 THE WITNESS: Well, I could give you  21 estimates, but I wouldn't be able to give you exact  22 numbers.  23 BY MR. MILNE:  24 Q. And certainly, anybody who had never seen  25 any of the management company documents and so forth,</p>
<p style="text-align: right;">Page 31</p> <p>1 could linger for years, months and years.  2 So that was what we call sort of a filler  3 entry. It did not necessarily mean that the  4 association specifically did not authorize the sale,  5 just that they weren't requiring us to move forward  6 at that time.  7 Q. And that appears to be the same entry for  8 several different dates there in late 2011, early  9 2012?  10 A. Yeah. We wanted the status report touched  11 every 30 days with some sort of entry so that the  12 client knew that we were looking at the file every  13 30 days.  14 And in some instances, months, if not  15 years, could go by without any actual steps being  16 taken.  17 So we wanted to have some sort of an entry.  18 So like I said, I call that a filler entry.  19 Q. Okay. But in terms of Exhibit L, without a  20 date being on that, whether that was contemporaneous  21 with the late 2011 time period or at, we don't know?  22 A. Correct.  23 MR. MARTINEZ: Objection to form of the  24 question.  25 ///</p>	<p style="text-align: right;">Page 33</p> <p>1 a recipient of this wouldn't be able to do that  2 either?  3 MR. MARTINEZ: Objection, form.  4 THE WITNESS: Correct.  5 BY MR. MILNE:  6 Q. A sale date is noted of March 9, 2011.  7 Did this property go to sale down on that  8 date?  9 A. I don't have the trustee's deed in front of  10 me, but based on the status report, it looks like the  11 sale did not take place until January of 2014.  12 Q. Some --  13 A. A year later.  14 Q. -- three years later?  15 A. Or, three years later, sorry.  16 (Exhibit N was marked for  17 identification by the reporter.)  18 BY MR. MILNE:  19 Q. David, Exhibit N is a grant deed, recorded  20 May 27, 2011, Instrument 4010, that purports to have  21 transferred the property from Gotera, Magnolia to  22 JBWNO Revocable Living Trust.  23 Have you seen this document before?  24 A. No.  25 Q. Do you know whether or not it was part of</p>

<p style="text-align: right;">Page 34</p> <p>1 the collection file?</p> <p>2 A. I don't.</p> <p>3 (Exhibit O was marked for</p> <p>4 identification by the reporter.)</p> <p>5 BY MR. MILNE:</p> <p>6 Q. David, you've been handed what we've marked</p> <p>7 as Exhibit O, a second grant deed, but also recorded</p> <p>8 on May 27, 2011 as instrument 4011 that purports to</p> <p>9 transfer title to the property from JBWNO Revocable</p> <p>10 Living Trust to Stacy Moore.</p> <p>11 Have you seen this document before?</p> <p>12 A. No.</p> <p>13 Q. Any understanding as to whether or not it</p> <p>14 was in your collection file?</p> <p>15 A. If it was in our collection file, it would</p> <p>16 have been produced.</p> <p>17 (Exhibit P was marked for</p> <p>18 identification by the reporter.)</p> <p>19 BY MR. MILNE:</p> <p>20 Q. David, you've been handed what we've marked</p> <p>21 as Exhibit P to your deposition, an assignment of</p> <p>22 deed of trust recorded on November 2, 2011, assigning</p> <p>23 the deed of trust that we've seen previously,</p> <p>24 Exhibit C, to US Bank National Association.</p> <p>25 Do you know whether or not a copy of this</p>	<p style="text-align: right;">Page 36</p> <p>1 THE WITNESS: Correct.</p> <p>2 BY MR. MILNE:</p> <p>3 Q. Why another notice of delinquent assessment</p> <p>4 lien?</p> <p>5 MR. MARTINEZ: Objection, form.</p> <p>6 THE WITNESS: I don't know.</p> <p>7 It does appear that we received -- I'm</p> <p>8 looking at Exhibit B, page 2, new ownership</p> <p>9 information received. There's an entry in the status</p> <p>10 report on May 24th, 2012, "New ownership information</p> <p>11 received. AK to proceed with collection efforts."</p> <p>12 I would note that this new notice has the</p> <p>13 owner Stacy Moore on it, not Magnolia Gotera.</p> <p>14 I don't know if this new notice was the</p> <p>15 result of the quitclaim deed that we looked at</p> <p>16 earlier or not, but it could have been.</p> <p>17 BY MR. MILNE:</p> <p>18 Q. It is certainly for the same property, is</p> <p>19 it not?</p> <p>20 A. Yes.</p> <p>21 Q. So our best understanding today might be,</p> <p>22 if we put our heads together, is this new --</p> <p>23 Exhibit Q, this new assessment lien, was perhaps</p> <p>24 necessitated by the change in ownership of the</p> <p>25 property?</p>
<p style="text-align: right;">Page 35</p> <p>1 document was in the collection file?</p> <p>2 A. I don't. If this document was in the</p> <p>3 collection file, it would have been produced.</p> <p>4 Q. But this is a document that would be</p> <p>5 important for Alessi &amp; Koenig to know about so that</p> <p>6 appropriate notices can be mailed to a beneficiary of</p> <p>7 a deed of trust, correct?</p> <p>8 MR. MARTINEZ: Objection, form.</p> <p>9 THE WITNESS: Correct.</p> <p>10 (Exhibit Q was marked for</p> <p>11 identification by the reporter.)</p> <p>12 BY MR. MILNE:</p> <p>13 Q. David, you've been handed what we've marked</p> <p>14 as Exhibit Q. It appears to me to be a new or a</p> <p>15 second notice of delinquent assessment lien, this one</p> <p>16 recorded on September 11, 2012, for our same property</p> <p>17 on Marsh Butte. And it indicates that the total</p> <p>18 amount due through today's date is \$6,448, and that's</p> <p>19 broken down somewhat into collection and attorney's</p> <p>20 fees and also into collection costs, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Anybody receiving this would not be able to</p> <p>23 determine whether there is a super-priority portion,</p> <p>24 would they?</p> <p>25 MR. MARTINEZ: Objection to form.</p>	<p style="text-align: right;">Page 37</p> <p>1 MR. MARTINEZ: Objection, form.</p> <p>2 THE WITNESS: Correct.</p> <p>3 BY MR. MILNE:</p> <p>4 Q. I'm curious as to the amount, \$6,448.</p> <p>5 Does that appear to be a carryover -- I</p> <p>6 don't know if I'm using that word correctly, but</p> <p>7 whatever the delinquent assessments were while the</p> <p>8 property was owned by Gotera, that amount was carried</p> <p>9 over and assessed against the new property owner?</p> <p>10 MR. MARTINEZ: Objection, form.</p> <p>11 THE WITNESS: Yeah. The quitclaim deed</p> <p>12 wouldn't obviate the new owner's responsibility to</p> <p>13 pay the assessments that accrued prior to the</p> <p>14 quitclaim deed.</p> <p>15 (Exhibit R was marked for</p> <p>16 identification by the reporter.)</p> <p>17 BY MR. MILNE:</p> <p>18 Q. David, you've been handed what we marked as</p> <p>19 Exhibit R to your deposition. It appears to be a</p> <p>20 ledger in Spanish -- I'm sorry -- Shadow Mountain</p> <p>21 Ranch HOA letterhead, care of Level Property</p> <p>22 Management for Stacy Moore and the Marsh Butte</p> <p>23 property.</p> <p>24 The ledger starts June 1, 2011 and</p> <p>25 continues through June 1, 2013.</p>

<p style="text-align: right;">Page 38</p> <p>1 As I read this, and again, to my best 2 understanding, it appears through that whole time 3 period, we keep the same \$23-per-month assessment? 4 A. Yes. 5 Q. So nothing has changed there? 6 A. Right. 7 Q. Exhibit R also reflects a balance from the 8 prior owner, does it not, near the top, \$2,730? 9 A. Yes. 10 Q. The last dollar that be saw -- I'm sorry. 11 The last document that we saw, Exhibit M, 12 the notice of trustee sale, seemed to indicate that 13 the delinquent amount -- and this is as of 14 January 26, 2011, was \$5,757? 15 A. Correct. 16 Q. Can you help me with the difference in the 17 two figures looking at Exhibit M and Exhibit R, 18 specifically the balance from prior owner being 2730 19 on Exhibit R, but the notice of trustee sale, 20 Exhibit M, says 5757? 21 A. Oh, those would be the Alessi &amp; Koenig fees 22 and costs as well as the management company's fees 23 and costs. 24 Q. Would those get carried over to the new 25 owner and be part of what is being foreclosed?</p>	<p style="text-align: right;">Page 40</p> <p>1 with the notice of delinquent assessment lien, the 2 second one or the new one -- 3 A. Yes. 4 Q. -- correct? 5 A. Yeah. 6 (Exhibit T was marked for 7 identification by the reporter.) 8 BY MR. MILNE: 9 Q. David, we've marked Exhibit T, a document 10 called "Real Estate Listing Report," which by my 11 observation, appears to provide much the same 12 function as a trustee sale guarantee in terms of 13 identifying entities that have an interest in the 14 property. 15 This one from Stewart Title, a third title 16 company this time, correct? 17 A. Yes. 18 Q. And this is effective February 27, 2013 -- 19 A. Yes. 20 Q. -- correct? 21 A. Yes. 22 Q. We see our deed of trust in the amount of 23 \$508,250, correct? 24 A. Yes. 25 Q. We see the assignment on the second page to</p>
<p style="text-align: right;">Page 39</p> <p>1 A. Yes. 2 Q. In fact, if we look at Exhibit Q, it does 3 show that today's -- as of that date, the amount due 4 was \$6,448? 5 A. Yeah. The quitclaim deed would not obviate 6 the new owner's requirement to pay the prior fees and 7 costs either as well as the assessments. 8 If it did, homeowners would be quitclaiming 9 properties every 12 months. 10 Q. So I guess, then, what I'm understanding is 11 this second notice of delinquent assessment lien, 12 Exhibit Q, included all of the fees, assessments, 13 costs, the kit and kaboodle, from the first notice of 14 assessment lien that we saw, which was Exhibit D? 15 A. Yes. 16 (Exhibit S was marked for 17 identification by the reporter.) 18 BY MR. MILNE: 19 Q. David, you've been handed what we've marked 20 as Exhibit S. It looks kind of like a repeat of some 21 of the same things we've seen but with a new notice 22 of lien. It looks like the process kind of starts 23 over a little bit here, sorry to say. 24 But this is a letter to the new owner, 25 Stacy Moore, dated August 13, 2012, providing her</p>	<p style="text-align: right;">Page 41</p> <p>1 US Bank, correct? 2 A. Yes. 3 Q. And then, of course, we also see the two 4 grant deeds, as they were captioned, on page 3 5 transferring the property ultimately to Stacy Moore, 6 correct? 7 A. Yes. 8 Q. And this is something that Alessi &amp; Koenig 9 received to help it to, what, prosecute or proceed 10 with the foreclosure sale, correct? 11 A. Yes. 12 (Exhibit U was marked for 13 identification by the reporter.) 14 BY MR. MILNE: 15 Q. David, Exhibit U is an undated, unsigned, 16 unrecorded notice of default. It shows an amount due 17 of \$6,631.41. But attached to it, there's also a 18 notice of default 10-day mailings identifying various 19 entities. And the third page is certified mail 20 receipts, correct? 21 A. Yes. 22 Q. If I go back and look at Exhibit T, the 23 real estate listing report from Stewart Title, and 24 compare that to this notice of default, again, I'm 25 not a hundred percent certain of the date of the</p>

<p style="text-align: right;">Page 42</p> <p>1 notice of default, but the real estate listing report 2 is dated February 27, 2013. 3 I don't see that this notice of default was 4 mailed to US Bank. 5 MR. MARTINEZ: Objection, form, facts not 6 in evidence. 7 BY MR. MILNE: 8 Q. Do you see US Bank's name identified on 9 either the second or the third page of Exhibit U? 10 MR. MARTINEZ: Objection, form. 11 Do we have a recorded copy of this? 12 MR. MILNE: Yes. 13 THE WITNESS: I don't know the date of this 14 NOD. 15 MR. MILNE: Well, let me help out this 16 discussion and conversation. We'll attach the next 17 document in order. 18 (Exhibit V was marked for 19 identification by the reporter.) 20 BY MR. MILNE: 21 Q. David, you've been handed what we've marked 22 as Exhibit V. It's actually two different notices of 23 default. 24 The first page was recorded on June 13, 25 2013. The second was recorded on July 5, 2013. They</p>	<p style="text-align: right;">Page 44</p> <p>1 mailings of the notice of default recorded July 5th, 2 2013 in Exhibit V. And those mailings of that notice 3 of default do not show a mailing to US Bank. 4 BY MR. MILNE: 5 Q. Okay. So to make sure I understood, the 6 evidence of mailing attached as part of Exhibit U 7 pertain to the notice of default that was recorded on 8 July 5, 2013, which is part of Exhibit V? 9 MR. MARTINEZ: Objection, form. 10 THE WITNESS: Correct. 11 BY MR. MILNE: 12 Q. And the assignment that you were 13 referencing before, Exhibit P, that was the one 14 showing the assignment of the deed of trust to 15 US Bank, correct? 16 A. Yes. 17 Q. And your question was whether US Bank is 18 somehow -- there's a connection between US Bank and 19 Recon Trust Company in Richardson, Texas? 20 MR. MARTINEZ: Objection, form. 21 THE WITNESS: Yeah. Yes. I understand 22 NODs are mailed to the servicer, not the holder of 23 the deed of trust. 24 I don't see any reference to Recon Trust 25 Company, however, in the assignment of the deed of</p>
<p style="text-align: right;">Page 43</p> <p>1 both have different signature dates at the bottom. 2 The first, again, being June 3rd, 2013, the second 3 July 1st, 2013, both under the signature of attorney 4 Lam, L-a-m. 5 Both of these notices of default, which are 6 recorded and signed, different dates, admittedly, 7 appear to have been signed and recorded after 8 Exhibit T, the real estate listing report, which 9 identifies US Bank, correct? 10 A. Yes. 11 Q. So I have not seen anything by looking at 12 Exhibit U, which is admittedly the unsigned notice of 13 default, that a notice of default was mailed to 14 US Bank. 15 Are you aware of any evidence to the 16 contrary? 17 MR. MARTINEZ: Objection, form. 18 THE WITNESS: I am looking at the 19 assignment of the deed of trust to see if a recon 20 trust company was an agent of US Bank. 21 What I can testify to is that the mailings 22 of the notice of default recorded July 5th, 2013 are 23 shown on page 2 and 3, in particular page 3 of 24 Exhibit -- is that O or U? 25 Okay, yes. Exhibit U, page 3, reflect the</p>	<p style="text-align: right;">Page 45</p> <p>1 trust on Exhibit P. 2 BY MR. MILNE: 3 Q. You do see, though, an address for US Bank 4 in Littleton, Colorado on Park Meadows Drive? 5 A. Yes. I see an address in Littleton, 6 Colorado on Park Meadows Drive. I do not see that 7 the notice of default was mailed to that address. 8 (Exhibit W was marked for 9 identification by the reporter.) 10 BY MR. MILNE: 11 Q. David, you've been handed what we've marked 12 as Exhibit W to your deposition, an assignment of 13 deed of trust recorded October 1, 2013, assigning the 14 deed of trust to Nationstar Mortgage, LLC. 15 Do you see that? 16 A. Yes. 17 Q. And this was recorded, it looks to be, 18 about three months -- I'm not counting days but about 19 three months after the notice of default, the July 5, 20 2013 notice of default that was mailed by Alessi &amp; 21 Koenig, correct? 22 A. Yes. 23 Q. Do you know whether a date-down or some 24 other such document was obtained between the time the 25 notice of default was recorded in July of 2013 and</p>



<p style="text-align: right;">Page 46</p> <p>1 the notice of trustee's sale, which I will represent  2 to you as we haven't got to it yet, which was  3 recorded December 10, 2013?  4 A. We would have done a date-down or should  5 have done a date-down at the time of publication of  6 the notice of trustee sale, the first publication --  7 we call that a pub date-down, and we would have also  8 done a sale date-down on or just before the date of  9 the sale.  10 Q. Do you remember seeing anything like that  11 in your file that you would have reviewed in  12 preparation for today?  13 A. I have not seen the mailings for the notice  14 of trustee sale. Without seeing those, I wouldn't be  15 able to answer that.  16 (Exhibit X was marked for  17 identification by the reporter.)  18 BY MR. MILNE:  19 Q. Well, let's show it to you.  20 David, we've marked as Exhibit X a notice  21 of trustee sale that is not dated and not recorded,  22 but it does include a notice of NOTS mailings. It  23 shows both certified mail receipts and a listing of  24 individuals and entities.  25 First, it shows what I'm going to assume to</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. So it looks like, kind of to summarize  2 where we are, the notice of trustee sale was mailed  3 to lenders but the notice of default was not mailed  4 to US Bank?  5 MR. MARTINEZ: Objection, form.  6 THE WITNESS: That's correct.  7 (Exhibit Y was marked for  8 identification by the reporter.)  9 BY MR. MILNE:  10 Q. David, you've been handed what we've marked  11 as Exhibit Y to your deposition, a notice of trustee  12 sale recorded December 10, 2013 that was dated at the  13 bottom under the signature of attorney Lam  14 November 14, 2013. It shows the same delinquent  15 amount, \$8,017.11, correct?  16 A. Yes.  17 Q. And a sale date of January 8, 2014?  18 A. Yes.  19 Q. And the sale -- let's not go there yet.  20 Same questions, I suppose, as to this  21 recorded document, notice of sale, as I asked with  22 the unrecorded notice of sale, Exhibit X. Nobody can  23 break that delinquent amount down into its component  24 parts?  25 MR. MARTINEZ: Objection, form.</p>
<p style="text-align: right;">Page 47</p> <p>1 be a delinquency amount of \$8,017.11, correct?  2 A. Correct.  3 Q. It set the sale for January 8, 2014?  4 A. Correct.  5 Q. And anybody receiving this notice of sale,  6 would they be able to break that \$8,000-and-change  7 down into its component parts?  8 MR. MARTINEZ: Objection, form.  9 THE WITNESS: No, just one lump sum.  10 BY MR. MILNE:  11 Q. And would they be able to determine whether  12 or not any portion of it is a super-priority lien?  13 MR. MARTINEZ: Objection, form.  14 THE WITNESS: No.  15 BY MR. MILNE:  16 Q. It appears this time, based upon these  17 documents, that this notice of trustee sale was  18 mailed to US Bank in Lone Tree, Colorado, and also to  19 Nationstar Mortgage.  20 Do you see that?  21 A. Yes.  22 Q. Do you know how or where those addresses  23 came from?  24 A. I'm assuming from the public records and  25 the assignments of the deeds of trust.</p>	<p style="text-align: right;">Page 49</p> <p>1 THE WITNESS: Correct.  2 MR. MARTINEZ: The one in Exhibit X is  3 actually recorded. At least on mine, it was. I  4 don't know if the actual one is.  5 Oh, it isn't. Okay. Carry on.  6 BY MR. MILNE:  7 Q. And also, super-priority amount, nobody  8 could determine that from Exhibit Y?  9 MR. MARTINEZ: Objection, form.  10 THE WITNESS: Correct.  11 (Exhibit Z was marked for  12 identification by the reporter.)  13 BY MR. MILNE:  14 Q. David, Exhibit Z is the trustee's deed upon  15 sale, recorded January 13, 2014, indicating that the  16 property was sold on January 8, 2014. It appears to  17 be for the amount of \$59,000 to SFR Investments  18 Pool 1, LLC, correct?  19 A. Yes.  20 Q. The sale was held at Alessi &amp; Koenig?  21 A. Yes.  22 Q. Do you have any knowledge as to the  23 particulars or the procedures of that day, January 8,  24 2014, number of bidders, bidding amounts?  25 A. I did not attend the foreclosure sales.</p>

<p style="text-align: right;">Page 50</p> <p>1 I can testify that by 2014, the conference 2 room was fairly full, and I would estimate a dozen to 3 15 investors were there that day. 4 Q. Based upon -- 5 A. Based upon the number -- we had sales, I 6 think, every other Wednesday, and it was usually the 7 same, you know, usual suspects and 12 or 15 people. 8 By 2014, the conference room was beginning to get 9 full. 10 Q. And do you know how many bidders there were 11 on this property? 12 A. I don't. I don't. 13 Q. Is that something that Alessi &amp; Koenig ever 14 documented in these sales every other Wednesday? 15 A. We would qualify the bidders or we would -- 16 I've seen sheets where we had some notes scribbled on 17 an email as to who the successful bidder was, but we 18 did not document who bid -- you know, it was a pretty 19 fluid, fast process, and we did not write down -- 20 sometimes investors would raise the bid one dollar 21 back and forth ad nauseum. 22 So we did keep a log of who the successful 23 bidder was and the successful bid amount, but we did 24 not track the entire bidding process. 25 Q. And/or when you were qualifying bidders</p>	<p style="text-align: right;">Page 52</p> <p>1 that was started back in 2010, 2011-ish. 2 It didn't ever go to sale through those 3 documents, but we did see that Miles Bauer 4 communication back and forth, a check for \$207, 5 correct? 6 A. Yes. 7 Q. And then, we saw a second foreclosure 8 process started right after there was a new owner for 9 the property, correct? 10 A. Correct. 11 Q. Had Miles Bauer or any other, whoever would 12 have been the current lender, we've seen a couple of 13 assignments, had they attempted to tender a 14 super-priority amount in connection with where we 15 are, 2013 late, early 2014, would they have received 16 or basically got the same communication back that we 17 saw, Exhibit I, the rejection of partial payments? 18 MR. MARTINEZ: Objection, form, facts not 19 in evidence, improper hypothetical to a lay witness, 20 speculation. 21 THE WITNESS: As I testified earlier, the 22 exhibit in the letter from Ryan Kerbow was an 23 outlier. 24 Our general protocol policy was to respond 25 to Miles Bauer by sending a breakdown on the account</p>
<p style="text-align: right;">Page 51</p> <p>1 keep track of who was there that day or anything like 2 that? 3 A. We had -- I know that George Bates, who was 4 at all of the sales, he's since passed away, but he 5 was our trustee sale department, did have a 6 handwritten yellow sheet of who was there on what 7 days, but we have not ever -- I do not believe we 8 retained that. I've never seen that except for years 9 ago during the sales. 10 Q. Was there any -- 11 A. So the documents that George wrote on were 12 not retained. So we do not have any documents as to 13 who was at the sales on a given day. 14 Q. In terms of a script for the calling of the 15 sale? 16 A. Pretty easy process. We would cry the APN 17 number, the opening bid amount, and the common 18 address. 19 Q. Would anything ever be said relative to 20 super-priority lien? 21 MR. MARTINEZ: Objection, form. 22 THE WITNESS: No. 23 BY MR. MILNE: 24 Q. Now, in this particular matter, we saw that 25 there was an initial or first foreclosure process</p>	<p style="text-align: right;">Page 53</p> <p>1 ledger. 2 I've only seen that letter from Ryan on a 3 couple of depositions out of the hundreds involving 4 the Miles Bauer issue. 5 BY MR. MILNE: 6 Q. Would it be your understanding that the 7 \$207 that Miles Bauer sent to Alessi &amp; Koenig was not 8 cashed? 9 MR. MARTINEZ: Objection, form. 10 BY MR. MILNE: 11 Q. We saw that attached as part of Exhibit J? 12 MR. MARTINEZ: Same objection. 13 THE WITNESS: As we discussed, that check 14 is not in the status report, and we don't have a copy 15 of it. 16 Based on my prior depositions, I would 17 expect one of those to be there. 18 So I don't know that I'm willing to concede 19 that we received that payment, but if we had, we 20 would not have cashed it. 21 BY MR. MILNE: 22 Q. Similarly, had you received a tender check 23 in connection with the foreclosure process that 24 culminated in a sale on -- 25 A. January 2014.</p>

<p style="text-align: right;">Page 54</p> <p>1 Q. -- January 8, 2014, you would have likewise 2 have not accepted that tender of a super-priority 3 amount? 4 MR. MARTINEZ: Objection, form, 5 speculation, improper hypothetical to a lay witness, 6 facts not in evidence. 7 THE WITNESS: I would be speculating. It 8 depends on what the restrictive language in the 9 company letter or the memo. I wouldn't feel 10 comfortable speculating on that. 11 I can testify that we did not cash -- I 12 believe we cashed in all the depositions I've done 13 one Miles Bauer check and immediately refunded it. 14 So our standard policy was that we did not cash the 15 Miles Bauer checks. 16 BY MR. MILNE: 17 Q. So that would have been a futile effort on 18 their part to re-tender? 19 MR. MARTINEZ: Objection, form, facts not 20 in evidence, speculation, improper hypothetical to a 21 lay witness. 22 THE WITNESS: I don't know if I would say 23 futile, but your point is well-taken. 24 (A recess was taken.) 25 ///</p>	<p style="text-align: right;">Page 56</p> <p>1 BY MR. MILNE: 2 Q. David, Exhibit BB looks to be an invoice or 3 statement from Alessi &amp; Koenig to Shadow Mountain HOA 4 showing the various services, fees, costs, et cetera, 5 in connection with this foreclosure. 6 Looking at all the items for which charges 7 were assessed, based upon the documents we've 8 reviewed today, does it appear to you that Alessi &amp; 9 Koenig provided all those services for which a fee 10 was charged? 11 MR. MARTINEZ: Objection, form. 12 THE WITNESS: Yes. 13 BY MR. MILNE: 14 Q. The sale date-down, \$150, I know it's 15 referenced in the status report, but I didn't see one 16 in the collection file itself. 17 Would that -- 18 A. I don't know why that is. 19 MR. MILNE: And last, but certainly not 20 least. 21 (Exhibit CC was marked for 22 identification by the reporter.) 23 BY MR. MILNE: 24 Q. Exhibit CC is an appraisal of real property 25 completed by R. Scott Dugan with an effective date of</p>
<p style="text-align: right;">Page 55</p> <p>1 (Exhibit AA was marked for 2 identification by the reporter.) 3 BY MR. MILNE: 4 Q. All right, David. We've handed you what 5 we've marked as AA, an email dated January 8, 2014, 6 from George Bates to Maximum Financial. 7 It includes copies of a couple checks and a 8 nora receipt, check made payable to Alessi &amp; Koenig 9 for \$60,536.80. 10 Recalling that the successful bid amount 11 was 59,000. I think the email explains why the 12 additional moneys were paid in terms of the dollar 13 amount on these checks? 14 A. Correct, taxes and the recording fee. 15 Q. Transfer tax? 16 A. Yep. 17 Q. And the recording fee. 18 And this is the George Bates you identified 19 previously, correct? 20 A. Yes. 21 Q. And the check was remitted on behalf of 22 SFR Investments, correct? 23 A. Yes. 24 (Exhibit BB was marked for 25 identification by the reporter.)</p>	<p style="text-align: right;">Page 57</p> <p>1 January 8, 2014 that was prepared for Wright Finlay &amp; 2 Zak. 3 I don't suppose you've seen this document 4 before? 5 A. I have not. 6 Q. The second page indicates appraiser Dugan's 7 opinion that the property we've been discussing today 8 on Marsh Butte Street was valued on January 8, 2014, 9 \$306,000. 10 Do you have any basis upon which to -- what 11 is the word I'm looking for, Jason? 12 MR. MARTINEZ: I don't know. 13 THE WITNESS: Dispute that? 14 BY MR. MILNE: 15 Q. Dispute that. Thank you, David. 16 MR. MARTINEZ: Objection, form, calls for 17 an expert opinion. 18 THE WITNESS: I do not except to say that 19 my testimony is that the value of a property is 20 different if it's purchased through an escrow with 21 title insurance than a property purchased at an HOA 22 foreclosure sale. 23 So I don't know that it has any relevance 24 on the value of the property at the sale. 25 MR. MILNE: Okay. I thought last but there</p>

<p style="text-align: right;">Page 58</p> <p>1 was one set aside.  2 (Exhibit DD was marked for  3 identification by the reporter.)  4 BY MR. MILNE:  5 Q. Lastly, Exhibit DD is what appears to be a  6 custodian of records certificate for Alessi &amp; Koenig  7 that I believe has your signature on page 2?  8 A. Yes.  9 Q. And if I'm not mistaken, and I need you to  10 correct me if I am, this was produced in connection  11 with Alessi &amp; Koenig's bankruptcy filing and was a  12 means whereby counsel involved in these various HOA  13 pieces of litigation could obtain copies of Alessi &amp;  14 Koenig's collection files through a Dropbox.  15 And this was the custodian of records  16 certificate that was supposed to authenticate those  17 collection files from Alessi &amp; Koenig?  18 A. Yes, sir.  19 Q. Including the documents we've seen today to  20 the extent they were obtained from the collection  21 file?  22 A. Correct.  23 Q. Thank you, sir.  24 A. Thank you, sir.  25 MR. MARTINEZ: I only have about 105</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. And there is no reference to this document,  2 Exhibit J, in Exhibit B?  3 A. Correct.  4 Q. One of the other questions I have, when we  5 look at Exhibit I, there's a letter here from Ryan  6 Kerbow dated September 8th, 2010.  7 What was the purpose of this letter being  8 drafted by Ryan Kerbow?  9 A. To communicate what his position was and to  10 provide a breakdown of what he felt was owed.  11 Q. And this letter is addressed to Miles Bauer  12 Bergstrom &amp; Winters, correct?  13 A. Yes.  14 Q. It appears to be the same address that  15 although not in your records, Exhibit J actually  16 retains an address for Miles Bauer Bergstrom &amp;  17 Winters in the letterhead that appears to match with  18 Exhibit I, the specific address?  19 A. Yes.  20 Q. And is it my understanding that this letter  21 reflects Alessi &amp; Koenig's position regarding  22 potential attempted payments by Miles, Bauer,  23 Bergstrom &amp; Winters such as the one that is listed on  24 Exhibit J?  25 A. This would have just been Ryan's -- our</p>
<p style="text-align: right;">Page 59</p> <p>1 questions.  2 THE WITNESS: Thank you.  3  4 EXAMINATION  5 BY MR. MARTINEZ:  6 Q. So the exhibits I'm going to be looking at  7 are B, I, and J.  8 A. Okay.  9 Q. Now, B is the status report. We had talked  10 about this earlier.  11 If you look at page 2, all of the dates  12 don't correspond perfectly. I'm looking at the  13 fourth and fifth entry down, September 9th and  14 September 13th of 2010?  15 A. Yes.  16 Q. Now, we had talked about these entries, and  17 you thought that they would potentially be relating  18 to Exhibit I; is that correct?  19 A. Potentially, yes.  20 Q. But you weren't sure of that?  21 A. Correct.  22 Q. And then, Exhibit J seems to be dated  23 September 30th, 2010, and you had testified that this  24 document was not within your records, correct?  25 A. Correct.</p>	<p style="text-align: right;">Page 61</p> <p>1 position was, as I testified earlier, to Miles Bauer  2 was why don't you just make a payment for what you  3 think is owed without the restrictive language. We  4 would have cashed that payment and then a court  5 determined the effect of that payment.  6 With regard to our clients, we did not take  7 the position that Ryan lays out here.  8 Q. What do you mean by that specifically?  9 A. Well, we didn't advise the client as to --  10 where Ryan says that the -- I'm sorry, there was a  11 letter from Ryan in the prior deposition I'm  12 confusing.  13 This was a position that we took, yes.  14 This letter is accurate.  15 Q. This letter basically says that Alessi &amp;  16 Koenig recognizes the interpretation that Miles Bauer  17 may be taking as to the statute, specifically  18 NRS 116.3116, but disagreeing with that position,  19 correct?  20 A. Yes.  21 Q. And specifically, Alessi &amp; Koenig took the  22 position that the super-priority lien wasn't limited  23 to nine months of assessments based on the site in  24 this --  25 A. I would say more specifically, Alessi &amp;</p>

<p style="text-align: right;">Page 62</p> <p>1 Koenig took the position that it was up for debate.  2 Q. Obviously at the time of this letter in  3 September of 2010, this was an unsettled area of  4 dispute between either Alessi &amp; Koenig and Miles  5 Bauer especially but also pretty much in the  6 industry?  7 A. Correct.  8 Q. Although Exhibit J is not in your business  9 records and there's no evidence that it was actually  10 received based on the status report, would this  11 position laid out by Mr. Kerbow in Exhibit I  12 obviously be the same position that Alessi &amp; Koenig  13 would retain even if this Exhibit J were sent to them  14 considering that it's only three weeks later?  15 A. If we had received Exhibit J, we would not  16 have cashed the check.  17 Q. And that would be based on your position as  18 set forth in Exhibit I?  19 A. And our policies and procedures at the  20 time, yes.  21 Q. In the second paragraph here, it says:  22 "If the association were to accept  23 your offer that only includes  24 assessments, Alessi &amp; Koenig would  25 be left with a lien against the</p>	<p style="text-align: right;">Page 64</p> <p>1 can you have send it to a different email address,  2 not to me specifically.  3 (The deposition was concluded at  4 5:00 p.m.)  5  6 * * * * *  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
<p style="text-align: right;">Page 63</p> <p>1 association for our substantial  2 out-of-pocket expenses and fees  3 generated."  4 Then it further continues to say:  5 "The association could end up  6 having lost money in attempting to  7 collect assessments from the  8 delinquent owner."  9 Did I read that correctly?  10 A. Yes.  11 Q. Was it Alessi &amp; Koenig's position that if  12 they were to accept a partial payment with any  13 condition such as the ones laid out by Miles Bauer  14 that that would end up causing potential harm to the  15 association, the client of Alessi &amp; Koenig?  16 A. Yes.  17 Q. And possibly, that harm would be the form  18 of waiving any potential rights under NRS 116 moving  19 forward?  20 A. Yes.  21 MR. MARTINEZ: I don't have any further  22 questions.  23 THE REPORTER: Do you need a copy of the  24 transcript?  25 MR. MARTINEZ: Electronic, please. And I</p>	<p style="text-align: right;">Page 65</p> <p>1 CERTIFICATE OF DEPONENT  2  3  4  5 I, DAVID ALESSI, deponent herein, do  6 hereby certify and declare the within and foregoing  7 transcription to be my deposition in said action;  8 that I have read, corrected and do hereby affix my  9 signature to said deposition.  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p> <hr style="width: 20%; margin-left: auto; margin-right: 0;"/> <p style="text-align: right;">DAVID ALESSI, Deponent</p>

## 1 CERTIFICATE OF REPORTER

2 I, Cynthia K. DuRivage, a Certified  
3 Shorthand Reporter of the State of Nevada, do hereby  
4 certify:

5 That the foregoing proceedings were taken  
6 before me at the time and place herein set forth;  
7 that any witnesses in the foregoing proceedings,  
8 prior to testifying, were duly sworn; that a record  
9 of the proceedings was made by me using machine  
10 shorthand which was thereafter transcribed under my  
11 direction; that the foregoing transcript is a true  
12 record of the testimony given.

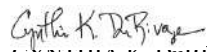
13 Reading and signing by the witness was  
14 requested.

15 I further certify I am neither financially  
16 interested in the action nor a relative or employee  
17 of any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date  
19 subscribed my name.

20 Dated: May 30, 2018

21  
22



23 CYNTHIA K. DURIVAGE

CCR No. 451

24  
25

<p><b>&amp;</b></p> <p><b>&amp;</b> 1:3,17 2:3 4:10 4:20,23 5:4,19 6:12 8:10,18 9:7 11:21,22 12:9,16 12:16 14:9 18:10 22:4,10,10,13,14 24:1,2,22,24 25:9 25:13 26:21 28:5 29:5,21 30:9 35:5 38:21 41:8 45:20 49:20 50:13 53:7 55:8 56:3,8 57:1 58:6,11,13,17 60:12,16,21,23 61:15,21,25 62:4 62:12,24 63:11,15</p>	<p><b>14</b> 4:14 48:14 <b>14-705563</b> 1:5 2:5 <b>14th</b> 20:8 <b>15</b> 16:21 17:17 30:16 50:3,7 <b>150</b> 56:14 <b>16</b> 1:20 2:20 4:16 32:6 <b>18</b> 4:17,18 <b>1st</b> 43:3</p>	<p>49:16,24 50:1,8 52:15 53:25 54:1 55:5 57:1,8 <b>2016</b> 8:15 <b>2018</b> 1:20 2:20 66:20 <b>204</b> 26:25 <b>207</b> 24:24 25:9 28:1,6 29:6 52:4 53:7</p>	<p><b>3:21</b> 2:20 <b>3rd</b> 43:2</p>
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	<p><b>2</b> 24:8,15,16 34:22 36:8 43:23 58:7 59:11 <b>2,730</b> 38:8 <b>200</b> 2:19 3:4 <b>2005</b> 13:17 <b>2008</b> 15:1 16:21 17:11 18:9 19:2 19:17 20:6 <b>2009</b> 11:7 19:3,17 20:7 27:11 <b>2010</b> 19:5,18 20:15 21:18 22:5,13 24:22 26:22,24 27:12 32:6 52:1 59:14,23 60:6 62:3 <b>2011</b> 30:16 31:8,21 32:5 33:6,20 34:8 34:22 37:24 38:14 52:1 <b>2012</b> 31:9 35:16 36:10 39:25 <b>2013</b> 37:25 40:18 42:2,25,25 43:2,3 43:22 44:2,8 45:13,20,25 46:3 48:12,14 52:15 <b>2014</b> 30:5 33:11 47:3 48:17 49:15</p>	<b>3</b>	<b>5</b>
<b>1</b>		<p><b>3</b> 41:4 43:23,23,25 <b>3,554</b> 25:6 <b>3,806</b> 30:6 <b>30</b> 1:17 4:10 8:17 19:3 24:22 31:11 31:13 66:20 <b>306,000</b> 57:9 <b>30th</b> 59:23 <b>32</b> 5:10 <b>33</b> 5:11 <b>34</b> 5:12,13 <b>35</b> 5:15 <b>37</b> 5:16 <b>39</b> 5:18</p>	<p><b>5</b> 42:25 44:8 45:19 <b>5,757</b> 32:15 38:14 <b>5/14/10</b> 4:21 <b>5/27/11</b> 5:11,12 <b>508,250</b> 40:23 <b>55</b> 6:10,12 <b>56</b> 6:13 <b>567-8658</b> 1:23 <b>5757</b> 38:20 <b>58</b> 6:14 <b>59</b> 4:5 <b>59,000</b> 49:17 55:11 <b>5:00</b> 64:4 <b>5th</b> 43:22 44:1</p>
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Nevada Rules of Civil Procedure  
Part V. Depositions and Discovery

Rule 30

(e) Review by Witness; Changes; Signing. If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

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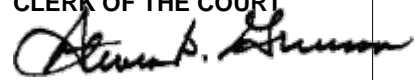
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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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**EIGHTH JUDICIAL DISTRICT COURT****CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBWNO  
REVOCABLE LIVING TRUST, a trust; U.S.  
BANK, N.A., a national banking association;  
NATIONSTAR MORTGAGE, LLC, a foreign  
limited liability company; REPUBLIC SILVER  
STATE DISPOSAL, INC., DBA REPUBLIC  
SERVICES, a domestic governmental entity;  
DOE INDIVIDUALS I through X, inclusive;  
and ROE CORPORATIONS XI through XX  
inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Counter-Defendant.

U.S. BANK, N.A.,

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company; INDIVIDUAL DOES  
I through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive,

Third-Party Defendant(s).

Case No. A-14-705563-C

Dept. No. 17

**MOTION FOR SUMMARY JUDGMENT**



SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,

Third-Party Counterclaimant/Cross-Claimant,

vs.

U.S. BANK, N.A.; NATIONSTAR MORTGAGE, LLC, foreign limited liability company; KRISTEN JORDAL, as Trustee for the JBWNO REVOCABLE LIVING TRUST, a Trust; STACY MOORE, an individual; and MAGNOLIA GOTERA, an individual,

Counter-Defendants/Cross-Defendants.

SFR Investments Pool 1, LLC (“SFR”) hereby moves for summary judgment against Nationstar Mortgage, LLC (“Nationstar”) U.S. Bank, N.A. ( “U.S. Bank”), Stacy Moore and Magnolia Gotera pursuant to NRCP 56(c).

This Motion is based on the papers and pleadings on file herein, the following memorandum of points and authorities, the Declaration of Karen L. Hanks, Esq. (“Hanks Decl.”), attached hereto as **Exhibit A** and the Declaration of Christopher Hardin (“Hardin Decl.”) attached hereto as **Exhibit B**, and such evidence and oral argument as may be presented at the time of the hearing on this matter.

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that on \_\_\_\_ day of August 1, 2018, in Department 17 of the above-entitled Court, at the hour of 8:30 a.m./p.m., or as soon thereafter as counsel may be heard, the undersigned will bring SFR’s Motion for Summary Judgment before this Court for hearing.

DATED this 29th day of June, 2018.

**KIM GILBERT EBRON**

/s/ Karen L. Hanks

KAREN L. HANKS, ESQ.

Nevada Bar No. 9578

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Las Vegas, Nevada 89139

*Attorneys for SFR Investments Pool 1, LLC*

# **MEMORANDUM OF POINTS AND AUTHORITIES**

## **I. INTRODUCTION**

This case involves an Association foreclosure sale of real property commonly referred to as 5327 Marsh Butte Street, Las Vegas, Nevada 89148 (the "Property"). Specifically, on January 8, 2014, the Association held a public auction of the Property based on unpaid monthly assessments. At the foreclosure sale, SFR made the highest cash bid. The evidence establishes that the Association complied with Nevada law, and that U.S. Bank did not protect its lien interest.

## **III. STATEMENT OF UNDISPUTED FACTS**

DATE	FACTS
1991	Nevada adopted Uniform Common Interest Ownership Act as NRS 116, including NRS 116.3116(2).
June 21, 2000	Association perfected and gave notice of its lien by recording its Declaration of Covenants, Conditions & Restrictions and Reservations of Easements for Shadow Mountain Ranch ("CC&Rs") as Book No. 20000621 as Document No. 01735. <sup>1</sup>
November 21, 2005	Grant, Bargain and Sale Deed recorded transferring the Property to Magnolia Gotera ("Gotera"). <sup>2</sup>
November 21, 2005	Deed of Trust listing Countrywide Home Loans, Inc. as Lender recorded as Instrument No. 20051121-0005567 ("DOT"). <sup>3</sup>  The DOT contained a Planned Unit Development Rider that allowed the Lender to pay the Borrowers Association Assessment and add that amount to the Borrower's debt to Lender. <sup>4</sup>  The DOT also included language that allowed the lender to "do and pay for whatever is reasonable or appropriate to protect [its] interest in the Property ... [including] but ... not limited to: (a) paying any sums secured by a lien which has priority over [the DOT]; (b) appearing in court; and (c) paying reasonable attorney's fees to protect its interest." <sup>5</sup>
May 27, 2011	A Grant Deed transferring the Property to JBWNO Revocable Living Trust recorded as Instrument No. 201105270004010. <sup>6</sup>

<sup>1</sup> See excerpts from CC&Rs, attached to Hanks Decl. as **Exhibit A-1**.

<sup>2</sup> See Grant, Bargain and Sale Deed, attached to Hanks Decl. as **Exhibit A-2**.

<sup>3</sup> See Deed of Trust, attached to Hanks Decl. as **Exhibit A-3**.

<sup>4</sup> *Id*

<sup>5</sup> *Id*.

<sup>6</sup> See Grant Deed, attached to Hanks Decl. as **Exhibit A-4**.

May 27, 2011	A Grant Deed transferring the Property to Stacy Moore recorded as Instrument No. 201105270004011. <sup>7</sup>
November 2, 2011	An Assignment of Deed of Trust purportedly transferring the deed of trust from MERS to U.S. Bank recorded as Instrument No. 201111020000754. <sup>8</sup>
September 11, 2012	The Association, through its agent, Alessi & Koenig, LLC ("Alessi"), recorded a Notice of Delinquent Assessment Lien ("NODA") as Instrument No. 201209110002023. <sup>9</sup>  The NODA was mailed to Moore. <sup>10</sup>
July 5, 2013	After more than 30 days elapsed from the date of mailing NODA, Alessi recorded a second Notice of Default and Election to Sell Under Homeowners Association Lien ("NOD") as Instrument No.: 201307050000950. <sup>11</sup>  U.S. Bank received the NOD. <sup>12</sup>
October 1, 2013	An Assignment of Deed of Trust purportedly transferring the deed of trust from Bank of America to Nationstar recorded as Instrument No. 201310010002401. <sup>13</sup>
December 10, 2013	After more than 90 days elapsed from the date of the mailing of the NOD, Alessi recorded a Notice of Trustee's Sale ("Notice of Sale") as Instrument No.: 201312100001308. <sup>14</sup>  The Notice of Sale was mailed to all requisite parties, and others, including, but not limited to, U.S. Bank, Bank of America, Nationstar, MERS, Moore and the Ombudsman. <sup>15</sup>  The Notice of Sale was posted on the Property in a conspicuous place. <sup>16</sup> The Notice of Sale was published in the Nevada Legal News for three consecutive weeks. <sup>17</sup> The Notice of Sale was posted in three public

<sup>7</sup> See Grant Deed, attached to Hanks Decl. as **Exhibit A-5**.

<sup>8</sup> See Assignment of Deed of Trust attached to Hanks Decl. as **Exhibit A-6**.

<sup>9</sup> See NODA, attached to Hanks Decl. as **Exhibit A-7**.

<sup>10</sup> See Ex. 2 to Declaration of Non-Monetary Status on file herein.

<sup>11</sup> See NOD, attached to Hanks Decl. as **Exhibit A-8**.

<sup>12</sup> See excerpts from Keith Kovalic deposition, the 30(b)(6) witness for U.S. Bank and Nationstar at 39:3-7 attached to Hanks Decl. as **Exhibit A-9**.

<sup>13</sup> See Assignment of Deed of Trust attached to Hanks Decl. as **Exhibit A-10**.

<sup>14</sup> See Notice of Sale, attached to Hanks Decl. as **Exhibit A-11**.

<sup>15</sup> See Ex. 4 to Declaration of Non-Monetary Status on file herein.

<sup>16</sup> See Ex. 5 to Declaration of Non-Monetary Status on file herein.

<sup>17</sup> *Id.*

	places. <sup>18</sup>
January 8, 2014	Association foreclosure sale took place and SFR placed the winning bid of \$59,000.00. <sup>19</sup> SFR paid this amount to Alessi. <sup>20</sup>
January 13, 2014	Trustee's Deed Upon Sale vesting title in SFR was recorded as Instrument No. 201401130001460. <sup>21</sup> As recited in the Trustee's Deed, the Association foreclosure sale complied with all requirements of law.
August 31, 2015	Nationstar recorded a lis pendens against the Property as Instrument No. 20150831-0001732. <sup>22</sup> According to the NRCP 30(b)(6) deposition of U.S. Bank and Nationstar, Nationstar only services the loan; it does not have an interest in the promissory note or deed of trust. <sup>23</sup>

#### IV. LEGAL ARGUMENT

##### A. Motion for Summary Judgment Standard.

Summary judgment is appropriate “when the pleadings and other evidence on file demonstrate that no ‘genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.’” *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Additionally, “[t]he purpose of summary judgment ‘is to avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be tried, and the movant is entitled to judgment as a matter of law.’” *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) *quoting Coray v. Home*, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964). Moreover, the non-moving party “must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against [it].” *Wood*, 121 Nev. at 32, 121 P.3d at 1031. The non-moving party “is not entitled to build a case on the gossamer threads of whimsy, speculation, and

<sup>18</sup> *Id.*

<sup>19</sup> See Trustee's Deed Upon Sale attached to Hardin Decl. as **Exhibit B-2**.

<sup>20</sup> See Cashier's Check attached to Hardin Decl. as **Exhibit B-1**.

<sup>21</sup> Ex. B-2.

<sup>22</sup> See Lis Pendens attached to Hanks Decl. as **Exhibit A-12**.

<sup>23</sup> Ex. A-9 at 12:21-23; 36:10-12.

conjecture.” *Id.* Rather, the non-moving party must demonstrate specific facts as opposed to general allegations and conclusions. *LaMantia v. Redisi*, 118 Nev. 27, 29, 38 P.3d 877, 879 (2002); *Wayment v. Holmes*, 112 Nev. 232,237,912 P.2d 816, 819 (1996). Though inferences are to be drawn in favor of the non-moving party, an opponent to summary judgment, must show that it can produce evidence at trial to support its claim or defense. *Van Cleave v. Kietz-Mill Minit Mart*, 97 Nev. 414, 417, 633 P.2d 1220, 222 (1981).

**B. SFR is Entitled to Summary Judgment on its Claims for Quiet Title and Permanent Injunction Against U.S. Bank.**

**1. Title Vested in SFR Without Equity or Right of Redemption.**

NRS 116.3166(3) states that “[t]he sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit’s owner without equity or right of redemption.” According to the Nevada Supreme Court, sales without equity or right of redemption vest the purchaser with absolute title:

[T]he law authorizing the mortgagee to sell is, in our opinion, so thoroughly settled that it cannot now admit of a question. Such being the right of the mortgagee, it follows as a necessary consequence that the **purchaser from him obtains an absolute legal title as complete, perfect and indefeasible as can exist or be acquired by purchase; and a sale**, upon due notice to the mortgagor, whether at public or private sale, **forecloses all equity of redemption as completely as a decree of court.**

*In re Grant*, 303 B.R. 205, 209 (Bankr. D. Nev. 2003) (*quoting Bryant v. Carson River Lumbering Co.*, 3 Nev. 313, 317–18 (1867)) (emphasis added).

As the dissent in *SFR* correctly explained, “the owner, as well as the first security, will have no right to redeem the property under the majority’s holding.” *SFR Investments*, 334 P.3d at 422 *citing* NRS 116.31166(3) and *Bldg. Energetix Corp. v. EHE, LP*, 129 Nev. \_\_\_, \_\_\_, 294 P.3d 1228, 1233 (Nev. 2013) (recognizing that there is no right to redeem after a Chapter 107 non-judicial foreclosure sale because a sale under that chapter ‘vests in the purchaser the title of the grantor and any successors in interest without equity or right of redemption’ (*quoting* NRS 107.080(5))). This is consistent with long-standing Nevada non-judicial foreclosure law that “[i]f the sale is properly, lawfully and fairly carried out, [the Bank] cannot unilaterally create a right of

redemption in [itself].” *Golden v. Tomiyasu*, 79 Nev. 503, 518, 387 P.2d 989, 997 (1963). Here, because Nevada law does not allow the Bank or this Court to create a redemption period to save the Bank from its failure to preserve its interest, title must be quieted in favor of SFR.

**2. The Deed Recitals are Conclusive.**

Pursuant to NRS 116.31166(1), the recitals in the deed are conclusive as to (1) default; (2) mailing of the notice of delinquent assessment; (3) recording of the notice of default and notice of sale; (4) elapsing of 90 days; and (5) giving notice of sale.

**3. The Foreclosure Deed and Sale are Presumed Valid.**

Under Nevada law, foreclosure sales and the resulting deeds are presumed valid. *See Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996) (presumption in favor of record titleholder); *see also* NRS 47.250(16)-(18) (stating that there are disputable presumptions “that the law has been obeyed,” “that a trustee or other person, whose duty it was to convey real property to a particular person, has actually conveyed to that person, when such presumption is necessary to perfect the title of such person or a successor in interest,” “that private transactions have been fair and regular,” and “that the ordinary course of business has been followed.”). As a result, it is presumed that (1) the Association and NAS obeyed the law; (2) the Property was conveyed to SFR; (3) the Association foreclosure sale was “fair and regular,” and (4) the Association foreclosure proceedings were conducted in the “ordinary course of business.” NRS 47.250(16)-(18).

Nevada law further provides that “[a] presumption not only fixes the burden of going forward with evidence, but it also shifts the burden of proof.” *Yeager v. Harrah's Club, Inc.*, 111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995) (*citing Vancheri v. GNLV Corp.*, 105 Nev. 417, 421, 777 P.2d 366, 368 (1989)). “These presumptions impose on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.” *Id.* (*citing* NRS 47.180.).

Using these same presumptions, the Nevada Supreme Court held that all the burdens lie with the party seeking to set aside the presumptively valid sale and deed. *Nationstar Mortgage, LLC v. Saticoy Bay Series 2227 Shadow Canyon*, 133 Nev. \_\_\_, 405 P.3d 641, 646 (2017) (“[The

Bank] has the burden to show that the sale should be set aside in light of [the purchaser's] status as the record title holder.” (citing *Breliant*, 112 Nev. at 669, 918 P.2d at 318; NRS 47.250(16); NRS 116.31166; and *Shadow Wood Homeowners Ass’n Inc. v. New York Community Bancorp, Inc.*, 132 Nev. at \_\_\_, 366 P.3d 1105, 1111 (2016) (observing that NRS 116.31166’s language was taken from NRS 107.030(8), which governs power-of-the sale foreclosures))).

Having produced the Trustee’s Deed Upon Sale, SFR has no further burden. Nevada law automatically presumes the deed and the sale are valid. Because of this, U.S. Bank now bears the burden to overcome these presumptions. In other words, U.S. Bank, and not SFR, bears the burden to prove that the Association foreclosure sale and the resulting Trustee’s Deed Upon Sale are not valid. U.S. Bank cannot and has not met this burden. The evidence establishes that Alessi complied with Nevada law.<sup>24</sup>

Regarding the second presumption (NRS 47.250(17)), there is no dispute that the property was conveyed to SFR. In accordance with NRS 116.31164(3)(a), the Agent, after receipt of payment from SFR, made, executed and delivered a deed to SFR.<sup>25</sup> Finally, with regard to the third presumption (NRS 47.250(18)), there is no dispute that the Association sale was fair and regular and conducted in the ordinary course of business. In accordance with NRS 116.31164, the Association foreclosure was conducted in Clark County, the county where the Association is located, it was conducted by the agent for the Association, at a public auction to the highest cash bidder.<sup>26</sup>

In light of this evidence, U.S. Bank cannot possibly meet its burden to overcome the presumptions that (1) the Association and its agent obeyed the law; (2) the Property was conveyed to SFR; (3) the Association foreclosure sale was “fair and regular,” and conducted in the “ordinary course of business.” As such, the deed of trust was extinguished by the Association foreclosure sale, and given that the Property was subsequently conveyed to SFR, SFR is entitled to summary judgment on its claim for quiet title and permanent injunction.

<sup>24</sup> See Ex. 2, 4 and 5 to Declaration of Non-Monetary Status on file herein. See also, Ex. A-9.

<sup>25</sup> Ex. B-2.

<sup>26</sup> *Id.*

**C. SFR is Entitled to Summary Judgment Against Moore and Gotera.**

When SFR made the highest bid and purchased the Property at the Association sale, it obtained title of the unit's owner without equity or right of redemption. NRS 116.31166(2). Thus, any interest Moore and/or Gotera could claim in the Property was extinguished. On June 27, 2018, default was entered against Moore and Gotera for failing to answer SFR's complaint. Based on the foregoing, SFR is entitled to summary judgment against Moore and Gotera.

**D. SFR is Entitled to Summary Judgment on its Claim for Slander of Title Against Nationstar.**

According to the NRCP 30(b)(6) deposition of U.S. Bank and Nationstar, Nationstar only services the loan; it does not have an interest in the promissory note or deed of trust.<sup>27</sup> Despite this, on August 31, 2015, Nationstar recorded a lis pendens against the Property.<sup>28</sup> NRS 14.015 sets forth the requirements for maintaining a lis pendens on a property. The relevant portion of the statute provides:

2. Upon 15 days' notice, the party who recorded the notice of pendency of the action must appear at the hearing and, through affidavits and other evidence which the court may permit, establish to the satisfaction of the court that:

(a) The action is for the foreclosure of a mortgage upon the real property described in the notice or **affects the title or possession of the real property** described in the notice; (b) The action was **not brought in bad faith** or for an improper motive; (c) The party who recorded the notice **will be able to perform any conditions precedent** to the relief sought in the action insofar as it affects the title or possession of the real property; and (d) The party who recorded the notice **would be injured by any transfer of an interest in the property** before the action is concluded.

3. In addition to the matters enumerated in subsection 2, the party who recorded the notice must establish to the satisfaction of the court either:

(a) That the party who recorded the notice is **likely to prevail in the action;**

<sup>27</sup> See Ex. A-9 at 12:21-23; 36:10-12.

<sup>28</sup> See Ex. A-12.



or (b) That the party who recorded the notice **has a fair chance of success on the merits** in the action and the **injury described in paragraph (d) of subsection 2 would be sufficiently serious that the hardship** on him or her in the event of a transfer would be **greater than the hardship on the defendant** resulting from the notice of pendency, and that if the party who recorded the notice prevails he or she will be entitled to relief affecting the title or possession of the real property.

NRS 14.015 (emphasis added).

In the present case, at the time Nationstar recorded the lis pendens, it did not have a pending action that was for (1) foreclosure or (2) that affected title or possession of the Property. This remains true today. Nationstar has no pending claims against SFR. Because Nationstar lacked any basis to even record the lis pendens against the Property in the first place, and still has no basis to maintain it, SFR is entitled to a judgment from this Court that the cloud on SFR's title i.e. the lis pendens be expunged.

**E. SFR is Entitled to Summary Judgment Against U.S. Bank on U.S. Bank's Claim for Unjust Enrichment.**

To prevail on its claim for unjust enrichment, U.S. Bank must show that it conferred a benefit on SFR, that SFR appreciated such benefit, and there was "acceptance and retention by [SFR] of such benefit under circumstances such that it would be inequitable for [SFR] to retain the benefit without payment of the value thereof." *Unionamerica Mtg. v. McDonald*, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981) (quoting *Dass v. Epplen*, 162 Colo. 60, 424 P.2d 779, 780 (1967)). In the present case, U.S. Bank alleges that SFR has benefitted from U.S. Bank's payment of taxes, insurance or homeowner's association assessments since the time of the HOA sale. Other than alleging it however, U.S. Bank has never proven this to be true. U.S. Bank has not produced one shred of evidence that any such payments were made. Additionally, U.S. Bank has never disclosed any special damages under NRCP 16.1 on this issue. Under NRCP 16.1(a)(1)(C), a party is required to produce, "without awaiting a discovery request ... [a] computation of any category of damages claimed." There being no evidence that U.S. Bank paid any monies toward the Property, let alone that SFR somehow benefited from these fictitious payments, U.S. Bank's claim for unjust enrichment fails as a matter of law. For this reason, SFR is entitled to summary judgment on this issue.

**V. CONCLUSION**

Based on the above, this Court should enter summary judgment in favor of SFR and against U.S. Bank, Nationstar Moore and Gotera stating that (1) title is quieted in SFR's name; (2) the DOT recorded as Instrument No. 20051121-0005567 was extinguished; (3) the lis pendens recorded by Nationstar is expunged; (4) U.S. Bank, Nationstar, Moore and Gotera, and any of their agents, successors and assigns are permanently enjoined from interfering with SFR's possession and ownership of the Property; and (5) U.S. Bank's claim for unjust enrichment fails as a matter of law.

DATED June 29, 2018.

**KIM GILBERT EBRON**

/s/ Karen L. Hanks

Diana S. Ebron, Esq.

Nevada Bar No. 10580

Jacqueline A. Gilbert, Esq.

Nevada Bar No. 10593

Karen L. Hanks, Esq.

Nevada Bar No. 9578

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

*Attorneys for SFR Investments Pool 1, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29th day of June, 2018, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing MOTION FOR SUMMARY JUDGMENT, to the following parties:

**Douglas D. Gerrard, Esq.**    [dgerrard@gerrard-cox.com](mailto:dgerrard@gerrard-cox.com)

**Akerman LLP**    [Melanie.morgan@akerman.com](mailto:Melanie.morgan@akerman.com)

[akermanLAS@akerman.com](mailto:akermanLAS@akerman.com)

[thera.cooper@akerman.com](mailto:thera.cooper@akerman.com)

Alessi & Koenig	
Contact	Email
A&K eserve	<a href="mailto:eserve@alessikoenig.com">eserve@alessikoenig.com</a>
Wright, Finlay & Zak, LLP	
Email <a href="mailto:sgreenberg@wrightlegal.net">sgreenberg@wrightlegal.net</a>	

*/s/ Karen L. Hanks*  
An employee of Kim Gilbert Ebron

Ex. A

# EXHIBIT A

Ex. A

**DECLARATION OF KAREN L. HANKS IN SUPPORT OF SFR INVESTMENTS POOL  
1, LLC'S MOTION FOR SUMMARY JUDGMENT**

I, Karen L. Hanks, Esq., declare as follows:

1. I am an attorney with Kim Gilbert Ebron, and I am admitted to practice law in the State of Nevada.

2. I am counsel for SFR Investments Pool 1, LLC ("SFR") in this action.

3. I make this declaration in support of SFR's Motion for Summary Judgment.

4. I have personal knowledge of the facts set forth below based upon my review of the documents produced in this matter, except for those factual statements expressly made upon information and belief, and as to those facts, I believe them to be true, and I am competent to testify.

5. I am knowledgeable about how Kim Gilbert Ebron maintains its records associated with litigation, including litigation in this case.

6. In connection with this litigation, I reviewed copies of the relevant recorded documents my office obtained through a title company. This includes the documents attached hereto as **Exhibit A-1** through **A-8** and **A-10** through **A-12**. These are true and correct copies of the recorded documents.

7. Attached hereto as **Exhibit A-9** are excerpts from the Keith Kovalic deposition who was the 30(b)(6) witness for U.S. Bank and Nationstar in this case.

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

DATED June 28, 2018

/s/ Karen L. Hanks  
Karen L. Hanks, Esq.

# EXHIBIT A-1

20000621  
01735

When Recorded Mail To:

Pardee Construction Company  
10880 Wilshire Boulevard  
Suite 1900  
Los Angeles, CA 90024  
Attn: Barbara Bail

APN: 163-30-310-001  
through 163-30-310-003 and  
163-30-310-014  
through 163-30-310-016

75

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
SHADOW MOUNTAIN RANCH**

# EXHIBIT A-2



RECORDING REQUESTED BY:  
Fidelity National Title Agency of Nevada  
Escrow No. 05-191253-TH  
Title Order No. 00191253

**When Recorded Mail Document  
and Tax Statement To:**

Ms. Magnolia Gotera  
*1090 Twin Creeks Drive*  
*Salinas, CA. 93905*

RPTT: 2,728.50  
APN: 163-30-312-007

20051121-0005566

Fee: \$15.00 RPTT: \$2,728.50  
N/C Fee: \$0.00

11/21/2005 14:38:39  
T20050211957

Requestor:  
FIDELITY NATIONAL TITLE

Frances Deane JSB  
Clark County Recorder Pgs: 2

**GRANT, BARGAIN, SALE DEED**

THIS INDENTURE WITNESSETH: That **Wei Hong Yang, An Unmarried Woman**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do(es) hereby Grant,  
Bargain, Sell and

Convey to **Magnolia Gotera, A Single Woman**

all that real property situated in the Clark County, State of Nevada, bounded and described as follows:

Lot 7 in Block 1 of Final Map of Section 30 R2-60/70 No. 5, as shown by map thereof on file in Book  
102 of Plats, Page 28 in the Office of the County Recorder of Clark County, Nevada.

SUBJECT TO: 1. Taxes for the fiscal year 2005-06  
2. Covenants, Conditions, Reservations, Rights, Rights of Way and Easements  
now of record.

Together with all and singular tenements, hereditaments and appurtenances thereunto belonging or  
in anywise appertaining.

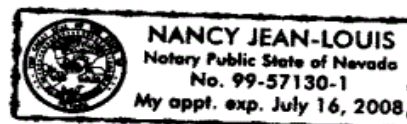
DATED: November 14, 2005

STATE OF NEVADA  
COUNTY OF Clark

This instrument was acknowledged before me  
on November 14, 2005  
by Wei Hong Yang

Signature Nancy Jean-Louis Notary Public  
My Commission Expires: 7/16/08

Wei Hong Yang  
Wei Hong Yang



# STATE OF NEVADA DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a) 163-30-312-007  
b) \_\_\_\_\_  
c) \_\_\_\_\_  
d) \_\_\_\_\_

2. Type of Property:

- a) ☐ Vacant Land      b) ☒ Single Fam. Res. <sup>27</sup>  
c) ☐ Condo/Twnhse      d) ☐ 2 - 4 Plex  
e) ☐ Apt. Bldg.      f) ☐ Comm'l/Ind'l  
g) ☐ Agricultural      h) ☐ Mobile Home  
☐ Other \_\_\_\_\_

FOR RECORDER'S OPTIONAL USE ONLY

Document/Instrument #: \_\_\_\_\_  
Book: \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

3. Total Value/Sales Price of the Property \$ 535,000.00  
Deed in Lieu of Foreclosure Only (Value of Property) ( \_\_\_\_\_ )  
Transfer Tax Value: \$ 535,000.00  
Real Property Transfer Tax Due \$ 2,728.50

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section 0  
b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: 100%

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

Signature Wei Hong Yang Capacity Grantor

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

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

Print Name: Wei Hong Yang

Address: 7201 Mission Hill Dr.

City, State, Zip: Las Vegas NV 89103

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

Print Name: Magnolia Gotera

Address: 1090 Twin Creeks Dr.

City, State, Zip: Salinas, CA 93405

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

Print Name: Fidelity National Title Agency of Nevada

Escrow #: 05-191253-TH

Address: 5597 W. Spring Mountain Road

City, State and Zip: Las Vegas, NV 89102

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

*5566*

# EXHIBIT A-3

20051121-0005567

Assessor's Parcel Number:  
16330312007  
After Recording Return To:  
COUNTRYWIDE HOME LOANS, INC.

Fee: \$39.00  
N/C Fee: \$0.00

11/21/2005 14:38:39  
T20050211957

Requestor:  
FIDELITY NATIONAL TITLE

Frances Deane JSB  
Clark County Recorder Pgs: 26

MS SV-79 DOCUMENT PROCESSING  
P.O.Box 10423  
Van Nuys, CA 91410-0423  
Prepared By:  
APRIL MESA  
~~Recording Requested By:~~  
J. KEPHART

COUNTRYWIDE HOME LOANS, INC.

650 WHITE DRIVE, STE 280  
LAS VEGAS  
NV 89119

[Space Above This Line For Recording Data]

0519191253 00012143406811005  
[Escrow/Closing #] [Doc ID #]

## DEED OF TRUST

MIN 1000157-0006127350-0

### DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated NOVEMBER 10, 2005, together with all Riders to this document.

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

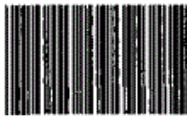
Page 1 of 16

VMP -6A(NV) (0307) CHL (07/03)(d)

VMP Mortgage Solutions - (800)521-7291

Initials: 

Form 3029 1/01



\* 2 3 9 9 1 \*



\* 1 2 1 4 3 4 0 6 8 0 0 0 0 1 0 0 6 A \*

(B) "Borrower" is  
MAGNOLIA GOTERA, A SINGLE WOMAN

Borrower is the trustor under this Security Instrument.

(C) "Lender" is  
COUNTRYWIDE HOME LOANS, INC.

Lender is a  
CORPORATION

organized and existing under the laws of NEW YORK  
P.O. Box 10219

Van Nuys, CA 91410-0219

(D) "Trustee" is  
CTC REAL ESTATE SERVICES

400 COUNTRYWIDE WAY, MSN SV-88, SIMI VALLEY, CA 93065 , ,

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

(F) "Note" means the promissory note signed by Borrower and dated NOVEMBER 10, 2005 .  
The Note states that Borrower owes Lender  
FIVE HUNDRED EIGHT THOUSAND TWO HUNDRED FIFTY and 00/100

Dollars (U.S. \$ 508,250.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than DECEMBER 01, 2035 .

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

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

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

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

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

Initials:



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

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

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

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

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

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

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

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

#### TRANSFER OF RIGHTS IN THE PROPERTY

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

Initials: me

irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property  
located in the COUNTY of

[Type of Recording Jurisdiction]

CLARK

[Name of Recording Jurisdiction]

LOT 7 IN BLOCK 1 OF FINAL MAP OF SECTION 30 R2-60/70 NO. 5,  
AS SHOWN BY MAP THEREOF ON FILE IN BOOK 102 OF PLATS, PAGE 28  
IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.  
ASSESSOR'S PARCEL NO: 163-30-312-007

which currently has the address of

5327 MARSH BUTTE STREET, LAS VEGAS

[Street/City]

Nevada 89148-4669 ("Property Address");

[Zip Code]

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

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

Initials: 

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

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

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

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

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

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

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

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

Initials: 



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

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

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

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

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

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

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

Initials:

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

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

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

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

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

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

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

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

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

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

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

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

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is

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

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

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

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

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

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

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive

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from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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

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

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

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

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

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

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees,

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property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

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Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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

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

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

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

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

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

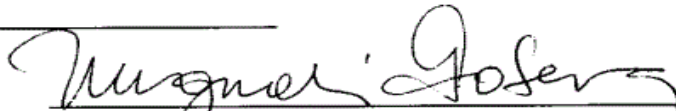
**25. Assumption Fee.** If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$ 300.00 .

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

Witnesses:



  
MAGNOLIA GOTERA

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

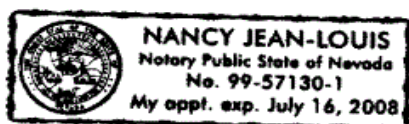
-Borrower

(Seal)

-Borrower

STATE OF NEVADA  
COUNTY OF Clark

This instrument was acknowledged before me on November 15, 2005 by  
Magnolia Go tera



Nancy Jean-Louis

Mail Tax Statements To:  
TAX DEPARTMENT SV3-24

450 American Street  
Simi Valley CA, 93065

Initials: ML

**ADJUSTABLE RATE RIDER**  
**(PayOption MTA Twelve Month Average Index - Payment Caps)**

0519191253                      00012143406811005  
[Escrow/Closing #]                      [Doc ID #]

THIS ADJUSTABLE RATE RIDER is made this Tenth day of  
NOVEMBER, 2005, 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 ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to  
COUNTRYWIDE HOME LOANS, INC.

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

5327 MARSH BUTTE STREET  
LAS VEGAS, NV 89148-4669  
[Property Address]

**THE NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE  
MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY  
PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD  
BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE  
MAXIMUM LIMIT STATED IN THE NOTE.**

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

**A. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

The Note provides for changes in the interest rate and the monthly payments, as follows:

• PayOption MTA ARM Rider  
1E310-XX (12/04)(d)

Page 1 of 6



\* 2 3 9 9 1 \*



\* 1 2 1 4 3 4 0 6 8 0 0 0 0 1 E 3 1 0 \*



**2. INTEREST****(A) Interest Rate**

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 3.000 %. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of the Note.

**(B) Interest Rate Change Dates**

The interest rate I will pay may change on the first day of JANUARY, 2006, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

**(C) Index**

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

**(D) Calculation of Interest Rate Changes**

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding THREE & 75/1000 percentage point(s) (3.075 %) ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.950 %. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

**3. PAYMENTS****(A) Time and Place of Payments**

I will make a payment every month.

I will make my monthly payments on the FIRST day of each month beginning on January, 2006. I will make these payments every month until I have paid all the Principal and interest and any other charges described below that I may owe under the Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on DECEMBER 01, 2035, I still owe amounts under the Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at  
P.O. Box 10219, Van Nuys, CA 91410-0219

or at a different place if required by the Note Holder.

**(B) Amount of My Initial Monthly Payments**

Each of my initial monthly payments until the first Payment Change Date will be in the amount of  
U.S. \$ 2,142.80 , unless adjusted under Section 3 (F).

**(C) Payment Change Dates**

My monthly payment may change as required by Section 3(D) below beginning on the  
first day of JANUARY, 2007 , and on that day every 12th  
month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also  
will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment.  
The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment  
which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If  
the Minimum Payment is not sufficient to cover the amount of the interest due then negative  
amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment  
Change Date or as provided in Section 3(F) or 3(G) below.

**(D) Calculation of Monthly Payment Changes**

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of  
the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe  
at the Payment Change Date in full on the maturity date in substantially equal payments at the interest  
rate effective during the month preceding the Payment Change Date. The result of this calculation is  
called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment  
effective on a Payment Change Date, will not increase by more than 7.5% of my prior monthly  
payment. This 7.5% limitation is called the "Payment Cap." This Payment Cap applies only to the  
Principal and interest payment and does not apply to any escrow payments Lender may require under  
the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my  
Minimum Payment due the month preceding the Payment Change Date and multiplying it by the  
number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or  
3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the  
Limited Payment and the Full Payment. I also have the option to pay the Full Payment for my monthly  
payment.

**(E) Additions to My Unpaid Principal**

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3(D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3(A).

**(F) Limit on My Unpaid Principal; Increased Monthly Payment**

My unpaid Principal can never exceed the Maximum Limit equal to ONE HUNDRED FIFTEEN percent ( 115 %) of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the 7.5% Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

**(G) Required Full Payment**

On the fifth Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

**(H) Payment Options**

After the first Interest Rate Change Date, Lender may provide me with up to three (3) additional payment options that are **greater** than the Minimum Payment, which are called "Payment Options." I may be given the following Payment Options;

(i) **Interest Only Payment:** the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) **Fully Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) at the Maturity Date in substantially equal payments.

(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.



These Payment Options are only applicable if they are greater than the Minimum Payment.

**B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**

Section 18 of the Security Instrument entitled "Transfer of the Property or a Beneficial Interest in Borrower" is amended to read as follows:

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

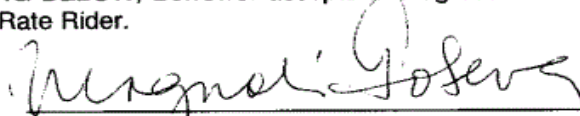
If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by



DOC ID #: 00012143406811005

this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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



MAGNOLIA GOTERA

-Borrower

-Borrower

-Borrower

-Borrower

## PLANNED UNIT DEVELOPMENT RIDER

After Recording Return To:  
COUNTRYWIDE HOME LOANS, INC.  
MS SV-79 DOCUMENT PROCESSING  
P.O.Box 10423  
Van Nuys, CA 91410-0423

PARCEL ID #:  
16330312007

Prepared By:  
APRIL MESA

0519191253  
[Escrow/Closing #]

00012143406811005  
[Doc ID #]

THIS PLANNED UNIT DEVELOPMENT RIDER is made this TENTH day of  
NOVEMBER, 2005, 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

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

**VMP** -7R (0411)

**CHL (11/04)(d)**

Page 1 of 4

Initials *AM*

VMP Mortgage Solutions, Inc. (800)521-7291

**Form 3150 1/01**



\* 2 3 9 9 1 \*



\* 1 2 1 4 3 4 0 6 8 0 0 0 0 1 0 0 7 R \*

undersigned (the "Borrower") to secure Borrower's Note to  
COUNTRYWIDE HOME LOANS, INC.

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

5327 MARSH BUTTE STREET  
LAS VEGAS, NV 89148-4669  
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with  
other such parcels and certain common areas and facilities, as described in  
THE COVENANTS, CONDITIONS, AND RESTRICTIONS FILED OF RECORD  
THAT AFFECT THE PROPERTY

(the "Declaration"). The Property is a part of a planned unit development known as  
SPRING VALLEY SECTION 30

[Name of Planned Unit Development]

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

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

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

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

Initials 

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

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

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

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

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

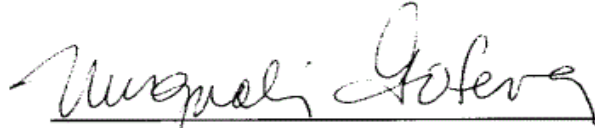
**E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial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

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

Initials 

DOC ID #: 00012143406811005

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



MAGNOLIA GOTERA

(Seal)

- Borrower

(Seal)

- Borrower

(Seal)

- Borrower

(Seal)

- Borrower

# EXHIBIT A-4

Q-1

**APN: 163-30-312-007**

## GRANT DEED

STATE OF NEVADA )  
 )ss  
COUNTY OF CLARK )

KNOW ALL MEN BY THESE PRESENTS, That for and in consideration of the sum of Ten Dollars and zero Cents ( \$10.00 ) in hand paid to Gotera Magnolia (hereinafter called the Grantor), the receipt of whereof is hereby acknowledged, the Grantor, Gotera Magnolia hereby RELEASES, QUITCLAIMS, GRANTS, SELLS, AND CONVEYS to JBWNO revocable living trust, JBWNO revocable living trust, (hereinafter called Grantee), all of the Grantors' right, title, interest, and claim in or to the following described real estate, situated in Clark County, Nevada, to-wit:

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



DATED:

State of Nevada

County of Clark

I hereby certify that Magnolia Gotera whose name(s) are/is signed to the foregoing conveyance, and are known to me (or provided to me on the basis of Satisfactory evidence), acknowledged before me on this day, that, being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Magnolia Gotera  
Grantor

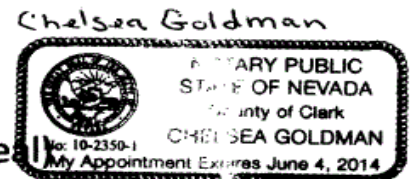
On May 27, 2011 before me,

Magnolia Gotera  
(here insert name and title of the officer)

WITNESS my hand and official seal. May 27, 2011

Signature Chelsea Goldman  
Chelsea Goldman, Notary Public

(Seal)



MAIL TAX STATEMENTS AS DIRECTED ABOVE



**Exhibit A**

**Legal description as recorded on document number  
20051121-0005566**

**Also known as:**

**APN: 163-30-312-007**

**5327 MARSH BUTTE ST  
LAS VEGAS, NV 89148**

**Lot 7 in Block 1 of Final Map of Section 30 R2-60/70 No. 5, as  
shown by map thereof on file in Book 102 of Plats, Page 28 in the  
Office of the County Recorder of Clark County, Nevada**

**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

**1. Assessor Parcel Number(s)**

a. 163-30-312-007  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

**2. Type of Property:**

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

<b>FOR RECORDER'S OPTIONAL USE ONLY</b>	
Book: _____	Page: _____
Date of Recording: _____	
Notes: _____	

3. a. Total Value/Sales Price of Property \$ 0  
b. Deed in Lieu of Foreclosure Only (value of property) ( )  
c. Transfer Tax Value: \$ 0  
d. Real Property Transfer Tax Due \$ 0

**4. If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section 7  
b. Explain Reason for Exemption: Transfer to or from a trust without consideration

5. Partial Interest: Percentage being transferred: 100 %

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

Signature Kristin Jordal Capacity Trustee

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

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

Print Name: Magnolia Gotera  
Address: 5327 Marsh Butte St.  
City: Las Vegas  
State: NV Zip: 89148

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

Print Name: JBWNO revocable living trust  
Address: 5327 Marsh Butte St.  
City: Las Vegas  
State: NV Zip: 89148

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

Print Name: \_\_\_\_\_ Escrow #: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED**

# EXHIBIT A-5

41

APN: 163-30-312-007

## GRANT DEED

STATE OF NEVADA )  
 )ss  
COUNTY OF CLARK )

KNOW ALL MEN BY THESE PRESENTS, That for and in consideration of the sum of Ten Dollars and zero Cents ( \$10.00 ) in hand paid to JBWNO revocable living trust (hereinafter called the Grantor), the receipt of whereof is hereby acknowledged, the Grantor, JBWNO revocable living trust hereby RELEASES, QUITCLAIMS, GRANTS, SELLS, AND CONVEYS to Stacy Moore, Stacy Moore, (hereinafter called Grantee), all of the Grantors' right, title, interest, and claim in or to the following described real estate, situated in Clark County, Nevada, to-wit:

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

**Exhibit A**

**Legal description as recorded on document number  
20051121-0005566**

**Also known as:**

**APN: 163-30-312-007**

**5327 MARSH BUTTE ST  
LAS VEGAS, NV 89148**

**Lot 7 in Block 1 of Final Map of Section 30 R2-60/70 No. 5, as  
shown by map thereof on file in Book 102 of Plats, Page 28 in the  
Office of the County Recorder of Clark County, Nevada**

DATED:

State of Nevada

County of Clark

I hereby certify that Kristin Jordal whose name(s) are/is signed to the foregoing conveyance, and are known to me (or provided to me on the basis of Satisfactory evidence), acknowledged before me on this day, that, being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Kristin Jordal  
Kristin Jordal  
Grantor / Trustee

On MAY 27<sup>th</sup>, 2011 before me,

Kristin Jordal - Trustee  
(here insert name and title of the officer)

WITNESS my hand and official seal.

Signature

[Signature]

MAIL TAX STATEMENTS AS DIRECTED ABOVE



(Seal)

Exp 3-14-14  
Cert No 10-1531-1

**STATE OF NEVADA  
DECLARATION OF VALUE FORM**

**1. Assessor Parcel Number(s)**

a. 163-30-312-007  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

**2. Type of Property:**

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

**FOR RECORDER'S OPTIONAL USE ONLY**

Book: \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

3. a. Total Value/Sales Price of Property \$ 0  
b. Deed in Lieu of Foreclosure Only (value of property) ( )  
c. Transfer Tax Value: \$ 0  
d. Real Property Transfer Tax Due \$ 0

**4. If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section 7  
b. Explain Reason for Exemption: Transfer to or from a trust without consideration

5. Partial Interest: Percentage being transferred: 100 %

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

Signature Kristin Jordal Capacity Trustee

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

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

Print Name: JBWNO revocable living trust  
Address: 5327 Marsh Butte St  
City: Las Vegas  
State: NV Zip: 89148

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

Print Name: Stacy Moore  
Address: 5327 Marsh Butte St.  
City: Las Vegas  
State: NV Zip: 89148

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

Print Name: \_\_\_\_\_ Escrow #: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

# EXHIBIT A-6



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



DocID# 14612143406815262

Tax ID: 163-30-312-007

Property Address:

**5327 Marsh Butte St**

**Las Vegas, NV 89148-4669**

**NV0-ADT 14727720 10/26/2011**

Inst #: 201111020000754

Fees: \$18.00

N/C Fee: \$25.00

11/02/2011 08:02:44 AM

Receipt #: 965446

Requestor:

**CORELOGIC**

Recorded By: MSH Pgs: 2

**DEBBIE CONWAY**

**CLARK COUNTY RECORDER**

This space for Recorder's use

MIN #: 1000157-0006127350-0

MERS Phone #: 888-679-6377

### ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is **3300 S.W. 34th Avenue, Suite 101 Ocala, FL 34474** does hereby grant, sell, assign, transfer and convey unto **U.S. BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE LXS 2006-4N TRUST FUND** whose address is **10350 PARK MEADOWS DR, LITTLETON, CO 80124** all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: **COUNTRYWIDE HOME LOANS, INC.**

Made By: **MAGNOLIA GOTERA, A SINGLE WOMAN**

Trustee: **CTC REAL ESTATE SERVICES**

Date of Deed of Trust: **11/10/2005** Original Loan Amount: **\$508,250.00**

Recorded in **Clark County, NV** on: **11/21/2005**, book **N/A**, page **N/A** and instrument number **20051121-0005567**

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

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

10/27/11

**MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC.**

By: 

**Christopher Herrera Assistant Secretary**

State of California  
County of Ventura

On 10-27-2011 before me, Norma Rojas, Notary Public, personally appeared Christopher Hessesera, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

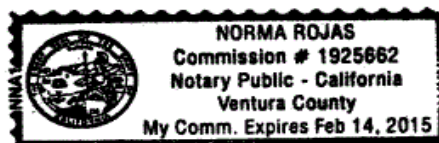
WITNESS my hand and official seal.



Notary Public:

My Commission Expires: \_\_\_\_\_

(Seal)



# EXHIBIT A-7

Inst #: 201209110002023  
Fees: \$17.00  
N/C Fee: \$0.00  
09/11/2012 08:05:52 AM  
Receipt #: 1302455  
Requestor:  
ALESSI & KOENIG LLC  
Recorded By: DXI Pgs: 1  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC  
9500 W. Flamingo Rd., Suite 205  
Las Vegas, Nevada 89147  
Phone: (702) 222-4033

A.P.N. 163-30-312-007

Trustee Sale # SMR-5327-N

**NOTICE OF DELINQUENT ASSESSMENT (LIEN)**

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark** County, Nevada, **Shadow Mountain Ranch Community Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **5327 Marsh Butte St., Las Vegas, NV 89148** and more particularly legally described as: **SECTION 30 R2-60 70 #5 Lot 7 Block 1 Book 102 Page 28** in the County of **Clark**.

The owner(s) of record as reflected on the public record as of today's date is (are): **STACY MOORE**

The mailing address(es) is: **5327 MARSH BUTTE ST, LAS VEGAS, NV 89148**

The total amount due through today's date is: **\$6,448.00**. Of this total amount **\$5,823.00** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$625.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

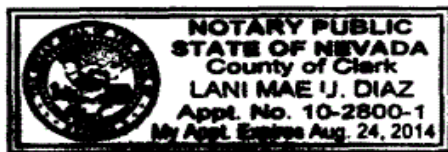
Date: **August 13, 2012**

By: \_\_\_\_\_

Huong Lam, Esq. of Alessi & Koenig, LLC on behalf of **Shadow Mountain Ranch Community Association**

State of Nevada  
County of Clark  
SUBSCRIBED and SWORN before me August <sup>23</sup>~~13~~, 2012

(Seal)



(Signature)

\_\_\_\_\_  
NOTARY PUBLIC

# EXHIBIT A-8

Inst #: 201307050000950

Fees: \$17.00

N/C Fee: \$0.00

07/05/2013 09:02:36 AM

Receipt #: 1681415

Requestor:

ALESSI & KOENIG LLC

Recorded By: MAT Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:

**THE ALESSI & KOENIG, LLC**  
**9500 West Flamingo Rd., Ste 205**  
**Las Vegas, Nevada 89147**  
**Phone: 702-222-4033**

A.P.N. 163-30-312-007

Trustee Sale No. 6601 <sup>28</sup>

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN**

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

You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is **\$6,631.41** as of the date of this notice and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Shadow Mountain Ranch Community Association**, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147, (702)222-4033.

THIS NOTICE pursuant to that certain Notice of Delinquent Assessment Lien, recorded on **September 11, 2012** as document number **0002023**, of Official Records in the County of **Clark**, State of Nevada. Owner(s): **STACY MOORE**, of **SECTION 30 R2-60 70 #5 LOT 7 BLOCK 1**, as per map recorded in Book **102**, Pages **28**, as shown on the Plan and Subdivision map recorded in the Maps of the County of **Clark**, State of Nevada. **PROPERTY ADDRESS: 5327 MARSH BUTTE ST, LAS VEGAS, NV 89148-4669**. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. **REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.** NOTICE IS HEREBY GIVEN THAT Alessi & Koenig, LLC is appointed trustee agent under the above referenced lien, dated **September 11, 2012**, on behalf of **Shadow Mountain Ranch Community Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from **February 1, 2008** and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated:

JUL 01 2013

  
\_\_\_\_\_  
Huong Lam, Esq. of Alessi & Koenig, LLC on behalf of **Shadow Mountain Ranch Community Association**

# EXHIBIT A-9

**In The Matter Of:**  
*Alessi & Koenig, LLC vs.*  
*Stacy Moore, et al.*

---

*Keith Kovalic*  
*July 11, 2017*

---



*Min-U-Script® with Word Index*



Page 9

1 in time only"?  
2 **MS. EBRON:** Correct.  
3 **MR. NITZ:** All right. Well, good.  
4 Q. So starting with the first exhibit, which is the  
5 Nationstar Mortgage, LLC, deposition notice. Actually,  
6 both of them refer to "the Property" as the "property  
7 located at 5327 Marsh Butte Street, Las Vegas, Nevada,  
8 89148...Parcel No. 163-30-312-007."  
9 Whenever we talk about "the property" during  
10 this deposition, it will be -- we'll be talking about the  
11 Marsh Butte Street property. Okay?  
12 **A. Okay. I can't remember if this was said on the**  
13 **record or not, but just for ease of going through these,**  
14 **the depo notices are exactly alike, with the exception of**  
15 **one states "Nationstar" and refers to it as "the Bank."**  
16 **THE WITNESS:** Did we already put all this on?  
17 **MR. GERRARD:** Yeah.  
18 **THE WITNESS:** That's on the record, okay.  
19 **A. Just in case I have to refer back to them, I'll**  
20 **just refer back to the depo notice in Exhibit 1, if**  
21 **that's okay with you?**  
22 Q. Sure.  
23 **MR. NITZ:** The only thing -- I made that  
24 statement, but, Ms. Ebron, you didn't confirm that the  
25 depo notices are the same except for those alternate

Page 10

1 definitions.  
2 **MS. EBRON:** I believe that they are the same.  
3 **MR. NITZ:** Because I think that was your  
4 question, Mr. Kovalic.  
5 **THE WITNESS:** Right. On Page 2 of both  
6 exhibits -- on line 25 on Exhibit 1, it says "Nationstar  
7 Mortgage, LLC" and then parenthetically, "'Nationstar' or  
8 'Bank.'" And then on Exhibit 2 it says -- same  
9 line -- 25, 26, it says "U.S. Bank, N.A." and then  
10 parenthetically, "'U.S. Bank' or 'Bank.'"  
11 Other than that, there are no differences;  
12 correct?  
13 **BY MS. EBRON:**  
14 Q. That's my understanding, yes.  
15 Okay. So during today's deposition whenever we  
16 talk about "the association," we'll be referring to the  
17 Shadow Mountain Ranch Community Association unless  
18 otherwise specified.  
19 Whenever we talk about "the association  
20 foreclosure sale," we'll be referring to the public  
21 auction held on January 8th, 2014, by Alessi & Koenig,  
22 LLC, on behalf of the association.  
23 Okay?  
24 **A. Okay.**  
25 Q. So whenever we talk about anything that happened

Page 11

1 before the date of that sale, we'll be looking towards  
2 that date of January 8, 2014.  
3 Also, I may refer to Alessi & Koenig, LLC as  
4 "Alessi" if that's all right?  
5 **A. That's fine.**  
6 Q. The borrower in this case is Magnolia Gotera.  
7 Is that your understanding?  
8 **A. There is -- for the purposes of who's on the**  
9 **Deed of Trust, yes.**  
10 Q. Would that be different than saying that she was  
11 the borrower?  
12 **A. Can we go off the record for a second?**  
13 **MR. GERRARD:** I'm not sure what you're trying to  
14 distinguish.  
15 Q. The property was later transferred to a  
16 different entity.  
17 **A. Right. That's what I was --**  
18 Q. But they were not ever the borrower.  
19 **A. Okay. That's what I was -- correct. Yeah.**  
20 **That's what I was getting at. I apologize; wasn't trying**  
21 **to be evasive or anything.**  
22 Q. Okay. The Deed of Trust, if we talk about "the  
23 Deed of Trust," we're going to be referring to the  
24 document recorded in Clark County Recorder as Instrument  
25 No. 20051121-0005567 on or about November 21st, 2005.

Page 12

1 Okay?  
2 **A. Okay.**  
3 Q. That was the file that you reviewed in  
4 preparation for this deposition; right?  
5 **A. That is correct.**  
6 Q. Okay. Did you have a chance to thoroughly  
7 review all of the topics listed in these notices, in  
8 Pages 4 through 6?  
9 **A. Yes, I did.**  
10 Q. And are you the person that Nationstar Mortgage,  
11 LLC, has designated to testify on its behalf for these  
12 topics?  
13 **A. Yes.**  
14 Q. Are you the person that U.S. Bank, N.A., has  
15 designated to testify on its behalf in the topics in  
16 Exhibit 2?  
17 **A. Yes.**  
18 Q. What is the relationship between Nationstar and  
19 U.S. Bank such that you would be designated to testify on  
20 U.S. Bank's behalf?  
21 **A. Nationstar is the servicer of the loan and they**  
22 **are servicing this loan on behalf of the investor, who is**  
23 **U.S. Bank.**  
24 Q. U.S. Bank is the trustee for a trust; is that  
25 correct?

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1 Q. When was that digital copy uploaded to your  
2 system?  
3 A. There's -- it's been uploaded multiple times. I  
4 want to say about 10. I reviewed all 10 of them. The  
5 first one was from July 5th, 2013, when the loan was  
6 onboarded.  
7 Most recent one, I think, was in the last six  
8 months, but I'm not positive on that because that's not  
9 one of the topics that was provided in the deposition  
10 notice.  
11 Q. Were all of the copies that you looked at the  
12 same?  
13 A. Yes.  
14 Q. Were there any endorsements?  
15 A. Yes.  
16 Q. How many?  
17 A. One.  
18 Q. Who it was from and who was it to?  
19 A. I don't recall who it was from, but it was  
20 endorsed in blank.  
21 Q. Do you know where that endorsement was on the  
22 promissory note?  
23 A. The last page of the note itself.  
24 Q. Was it on the same page as the signatures?  
25 A. Yes.

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1 Q. Was there an allonge to the note?  
2 A. Yes.  
3 Q. What was on the allonge?  
4 A. I believe it was the adjustable rate terms.  
5 Q. Where is the original wet ink signature  
6 promissory note?  
7 A. I was unable to locate that information.  
8 However, it would be in only one of two places: either  
9 Nationstar's vault or -- which is in Dallas, Texas -- or  
10 in U.S. Bank's vault, as they sometimes hold their own  
11 notes in which the investor -- that's located in Simi  
12 Valley, California.  
13 Q. What did you do to try to find out where the  
14 note was stored?  
15 A. I contacted somebody in our legal department.  
16 Q. Who was that?  
17 A. I believe it was a Sasha Kovacic. I know it was  
18 a paralegal.  
19 Q. Do you know what she did to try to determine  
20 where the original promissory note was located?  
21 MR. GERRARD: I'm going to direct the witness  
22 not to answer the question because that would call for  
23 privileged communication to be disclosed.  
24 Q. Have you spoken to anyone who indicated that  
25 they have seen the original wet ink signature promissory

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1 note?  
2 A. That's not in the deposition topics that were  
3 provided to me in the deposition notices, so that wasn't  
4 something I asked. So I'm not prepared to answer that.  
5 Q. But no one has told you, "I've seen the wet ink  
6 signature promissory note for the file"; right?  
7 A. No. In general conversation, no one just came  
8 out and said, "Hey, you know what? I've seen the wet ink  
9 note."  
10 Q. Okay. Have you seen the original pooling and  
11 servicing agreement?  
12 A. No, I've not seen the original pooling and  
13 servicing agreement.  
14 Q. Do you know where the original is stored?  
15 A. That's not in the topics that were provided to  
16 me in the deposition notices, so I'm not prepared to  
17 answer that.  
18 Q. But you don't know? As you sit here today, you  
19 don't know?  
20 A. That's something I didn't prepare to answer, so  
21 I -- I don't know if that's what you're getting at.  
22 Q. Yeah. That's what I was asking. What damages  
23 do you, Nationstar, allege that you suffered as a result  
24 of the association foreclosure?  
25 A. Based on the fact that litigation is still

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1 ongoing, Nationstar is still accruing attorneys' fees and  
2 costs, other servicing fees and costs that have been  
3 lost, and then, the unpaid principal balance on this  
4 loan, which I do not recall exactly what the balance of  
5 that is, but the entire unpaid principal balance.  
6 Q. Anything else?  
7 A. No.  
8 Q. What damages does U.S. Bank allege it suffered  
9 as a result of the association foreclosure?  
10 A. The same as Nationstar's. Nationstar's only  
11 interest is that of a servicer and is acting on behalf of  
12 U.S. Bank.  
13 Q. Is there a provision in the pooling and  
14 servicing agreement or a servicing guideline that  
15 required Nationstar to protect U.S. Bank's interest in  
16 the Deed of Trust?  
17 MR. GERRARD: I object. That's outside the  
18 scope of the topics in the notice for deposition -- the  
19 witness was prepared to bind the company on.  
20 A. That's not something I was prepared to answer,  
21 based on the deposition topics.  
22 Q. And you don't know the answer to that?  
23 A. I just -- I don't want to bind myself or  
24 Nationstar by giving any answer to that. Any answer I  
25 give would be speculative. I wasn't asked to provide

Page 37	Page 39
<p>1 <b>that information.</b></p> <p>2 Q. Did U.S. Bank have any particular policy or</p> <p>3 procedure that it requires Nationstar to follow as it</p> <p>4 pertains to association liens?</p> <p>5 <b>A. Not that I'm aware of or was able to find.</b></p> <p>6 Q. Okay. In your review of the file, did you see</p> <p>7 any communications with the borrower about the</p> <p>8 association lien, its delinquency to the association?</p> <p>9 <b>A. That's not a topic I was provided in the</b></p> <p>10 <b>deposition notices, so I'm not prepared to answer that.</b></p> <p>11 Q. So you didn't see any communications with the</p> <p>12 borrower about the association foreclosure?</p> <p>13 <b>A. When I was going through the documents on this</b></p> <p>14 <b>file, that's not something, based on the 12 topics, that</b></p> <p>15 <b>I was looking for.</b></p> <p>16 Q. What about Topic No. 8?</p> <p>17 <b>A. I mean, I -- even going through communications,</b></p> <p>18 <b>I didn't see anything that mentioned an HOA sale. But,</b></p> <p>19 <b>once again, that's not something I was specifically</b></p> <p>20 <b>looking for at the time.</b></p> <p>21 Q. Okay.</p> <p>22 <b>A. But nothing in the 6,000, 6,500 documents that I</b></p> <p>23 <b>looked at -- there was nothing to the homeowner that</b></p> <p>24 <b>popped out and said HOA, homeowners association even when</b></p> <p>25 <b>searching by key words before manually opening every</b></p>	<p>1 see any emails between Bank of America and Miles, Bauer?</p> <p>2 <b>A. Not that I recall.</b></p> <p>3 Q. Did you see any comments or notes from the MRT</p> <p>4 department?</p> <p>5 <b>A. Not that I recall, other than a couple that</b></p> <p>6 <b>said, you know, "Received Notice of Default from HOA,</b></p> <p>7 <b>referred to outside counsel."</b></p> <p>8 Q. When was the Notice of Default received?</p> <p>9 <b>MR. GERRARD:</b> I'm going to object to the form of</p> <p>10 the question as vague and ambiguous as to which notice of</p> <p>11 default you're talking about.</p> <p>12 Q. That you were just referring to.</p> <p>13 <b>A. There's -- I don't recall the exact date that</b></p> <p>14 <b>they were received. And once again, these were -- like I</b></p> <p>15 <b>said, they went from July -- I know July of 2008, and</b></p> <p>16 <b>then the check was tendered on September 30th, 2010.</b></p> <p>17 Q. How do you know the check was tendered on</p> <p>18 September 30th, 2010?</p> <p>19 <b>A. It's when the check was dated and the cover</b></p> <p>20 <b>letter is dated that went to the HOA from Miles, Bauer.</b></p> <p>21 Q. Where were those documents contained in your</p> <p>22 business records?</p> <p>23 <b>A. In FileNet, our imaging system.</b></p> <p>24 Q. And were they uploaded at the time of the</p> <p>25 servicing transfer?</p>
Page 38	Page 40
<p>1 <b>document.</b></p> <p>2 Q. Okay. Did Nationstar receive documents from</p> <p>3 Bank of America when it began servicing in July of 2013?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Did Nationstar receive any documents from Bank</p> <p>6 of America related to the association?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. What types of documents did Nationstar receive</p> <p>9 from Bank of America?</p> <p>10 <b>A. Nationstar received a comment history --</b></p> <p>11 <b>THE WITNESS:</b> I'm sorry, could you read that</p> <p>12 question.</p> <p>13 (Whereupon, the record was read by</p> <p>14 the reporter.)</p> <p>15 <b>A. Just in general?</b></p> <p>16 Q. No. Go ahead and state any ones that related to</p> <p>17 the association lien.</p> <p>18 <b>A. Received their comment log; we received a copy</b></p> <p>19 <b>of a check from Miles, Bauer who they had retained to</b></p> <p>20 <b>handle the association lien; copies of some notices</b></p> <p>21 <b>received from -- or regarding the HOA lien in 2008 to</b></p> <p>22 <b>2010 before that check was tendered by Miles, Bauer.</b></p> <p>23 Q. Anything else?</p> <p>24 <b>A. That's really about it.</b></p> <p>25 Q. Now, I'm not asking for the content, but did you</p>	<p>1 <b>A. Yes.</b></p> <p>2 Q. Were there notes about the check in the letter?</p> <p>3 <b>A. Not that I recall seeing. At that point, it</b></p> <p>4 <b>would have been out of Bank of America's hands because</b></p> <p>5 <b>Miles, Bauer would have been handling it.</b></p> <p>6 Q. Okay. Did you see any indication that the check</p> <p>7 was accepted?</p> <p>8 <b>A. I did not. However, it appears that the</b></p> <p>9 <b>process -- based on information I found in my</b></p> <p>10 <b>preparation, that the process was restarted in early --</b></p> <p>11 <b>or late 2012, rather.</b></p> <p>12 Q. Which process?</p> <p>13 <b>A. The HOA -- the delinquent HOA process.</b></p> <p>14 Q. Okay. So did you see any evidence in your</p> <p>15 business records that there were any checks besides the</p> <p>16 one from September 30th of 2010?</p> <p>17 <b>A. I'm sorry? Could you say that again. Sorry.</b></p> <p>18 Q. Did you see any evidence in your business</p> <p>19 records that there were any checks sent to the</p> <p>20 association or its agent, other than the one that you</p> <p>21 said was dated September 30th of 2010?</p> <p>22 <b>A. No.</b></p> <p>23 Q. How much was the check from September 30th of</p> <p>24 2010?</p> <p>25 <b>A. I don't recall the exact amount without having</b></p>

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA )  
3 COUNTY OF CLARK ) ss

4 I, Lori-Ann Landers, a duly commissioned  
5 Notary Public, Clark County, State of Nevada, do hereby  
6 certify:

7 That I reported the taking of the deposition  
8 of the witness, KEITH KOVALIC, at the time and place  
aforesaid;

9 That prior to being examined, the witness  
was by me duly sworn to testify to the truth, the whole  
truth, and nothing but the truth;

10 That I thereafter transcribed my shorthand  
11 notes into typewriting and that the typewritten  
transcript of said deposition is a complete, true and  
12 accurate transcription of my said shorthand notes taken  
down at said time to the best of my ability.

13 I further certify that I am not a relative  
14 or employee of an attorney or counsel of any of the  
parties, nor a relative or employee of any attorney or  
15 counsel involved in said action, nor a person financially  
interested in the action; and that transcript review FRCP  
16 30(e) was requested.

17 IN WITNESS WHEREOF, I have hereunto set my  
18 hand in the County of Clark, State of Nevada, this 11th  
day of July 2017.

19 LORI-ANN LANDERS, CCR 792, RPR

20  
21  
22  
23  
24  
25

# EXHIBIT A-10

Inst #: 201310010002401

Fees: \$18.00

N/C Fee: \$0.00

10/01/2013 01:29:41 PM

Receipt #: 1794477

Requestor:

CORELOGIC

Recorded By: MSH Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

Recording Requested By:  
**Bank of America, N.A.**  
Prepared By: **Marcus Jones**

When recorded mail to:  
**CoreLogic**  
**Mail Stop: ASGN**  
**1 CoreLogic Drive**  
**Westlake, TX 76262-9823**



DocID# 18712143406842077

Tax ID: 163-30-312-007

Property Address:

**5327 Marsh Butte St**

**Las Vegas, NV 89148-4669**

NV0-ADT 26012666 7/1/2013 NS0630A

This space for Recorder's use

### ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is **1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063** does hereby grant, sell, assign, transfer and convey unto **NATIONSTAR MORTGAGE, LLC** whose address is **350 HIGHLAND DRIVE, LEWISVILLE, TX 75067** all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC.**

Made By: **MAGNOLIA GOTERA, A SINGLE WOMAN**

Trustee: **CTC REAL ESTATE SERVICES**

Date of Deed of Trust: **11/10/2005** Original Loan Amount: **\$508,250.00**

Recorded in **Clark County, NV** on: **11/21/2005**, book **N/A**, page **N/A** and instrument number **20051121-0005567**

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

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

7/1/13

**Bank of America, N.A.**

By:

**Kathleen Loera**

**Assistant Vice President**

State of TX, County of **DALLAS**

On **JUL 01 2013**, before me, **Wilayat Ali Sajjani**, a Notary Public, personally appeared **Kathleen Loera**, **Assistant Vice President** of Bank of America, N.A. personally known to me to be the person(s) whose name(s) is/are subscribed to the within document and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the document the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

  
Notary Public: **Wilayat Ali Sajjani**  
My Commission Expires: **10-03-2016**



# EXHIBIT A-11



Inst #: 201312100001308  
Fees: \$17.00  
N/C Fee: \$0.00  
12/10/2013 08:59:36 AM  
Receipt #: 1867800  
Requestor:  
ALESSI & KOENIG LLC  
Recorded By: RNS Pgs: 1  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

When recorded mail to:  
Alessi & Koenig, LLC  
9500 West Flamingo Rd., Suite 205  
Las Vegas, NV 89147  
Phone: 702-222-4033

APN: 163-30-312-007

TSN 6601

## NOTICE OF TRUSTEE'S SALE

**WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ALESSI & KOENIG AT 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY. 6986**

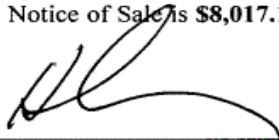
### NOTICE IS HEREBY GIVEN THAT:

On **January 8, 2014**, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on **September 11, 2012**, as instrument number **0002023**, of the official records of **Clark County, Nevada**, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2<sup>nd</sup> Floor)

The street address and other common designation, if any, of the real property described above is purported to be: **5327 MARSH BUTTE ST, LAS VEGAS, NV 89148-4669**. The owner of the real property is purported to be: **STACY MOORE**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is **\$8,017.11**. Payment must be in made in the form of certified funds.

Date: **NOV 14 2013**



By: Huong Lam, Esq. of Alessi & Koenig LLC on behalf of Shadow Mountain Ranch Community Association

# EXHIBIT A-12

(5)

Inst #: 20150831-0001732  
Fees: \$21.00  
N/C Fee: \$0.00  
08/31/2015 10:49:46 AM  
Receipt #: 2540978  
Requestor:  
NATIONWIDE LEGAL  
Recorded By: SHAWA Pgs: 5  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

**RECORDING COVER PAGE**

(Must be typed or printed clearly in BLACK ink only  
and avoid printing in the 1" margins of document)

**APN#** 163-30-312-007

(11 digit Assessor's Parcel Number may be obtained at:  
<http://redrock.co.clark.nv.us/assrrealprop/ownr.aspx>)

**TITLE OF DOCUMENT**

(DO NOT Abbreviate)

Notice of Lis Pendens

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

**RECORDING REQUESTED BY:**

Wright Finlay & Zak, LLP

**RETURN TO: Name** Wright Finlay & Zak, LLP

**Address** 7785 W. Sahara Ave. #200

**City/State/Zip** Las Vegas, NV 89117

**MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)**

**Name** \_\_\_\_\_

**Address** \_\_\_\_\_

**City/State/Zip** \_\_\_\_\_

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of \$1.00 will apply.

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

Using this cover page does not exclude the document from assessing a noncompliance fee.

P:\Common\FORMS & Notices\Cover Page Template Feb2014

  
CLERK OF THE COURT

LIS

Dana Jonathaon Nitz, Esq.  
Nevada Bar No. 0050  
Paterno C. Jurani, Esq.  
Nevada Bar No. 8136  
7785 W. Sahara Ave, Suite 200  
Las Vegas, NV 89117  
(702) 475-7964; Fax: (702) 946-1345  
[dnitz@wrightlegal.net](mailto:dnitz@wrightlegal.net)  
[pjurani@wrightlegal.net](mailto:pjurani@wrightlegal.net)

*Attorneys for Defendant, Nationstar Mortgage, LLC and Defendant/Counterclaimant/Third-Party Defendant U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank, N.A.*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBWNO  
REVOCABLE LIVING TRUST, a trust; U.S.  
BANK, N.A., a national banking association;  
NATIONSTAR MORTGAGE, LLC, a foreign  
limited liability company; REPUBLIC SILVER  
STATE DISPOSAL INC., DBA REPUBLIC  
SERVICES, a domestic governmental entity;  
DOE INDIVIDUALS I through X, inclusive;  
and ROE CORPORATIONS XI through XX,  
inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Counter-Defendant.

Case No.: A-14-705563-C  
Dept. No.: XX

**NOTICE OF LIS PENDENS**

1 U.S. BANK, N.A.,

2 Third-Party Plaintiff,

3 vs.

4 SFR INVESTMENTS POOL 1, LLC, a Nevada  
5 limited liability company; INDIVIDUAL DOES  
6 I through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive,

Third-Party Defendants.

7  
8 **NOTICE OF LIS PENDENS**

9 PLEASE TAKE NOTICE that Defendant/Counterclaimant/Third-Party Defendant U.S.  
10 Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust  
11 Fund, erroneously pled as U.S. Bank, N.A. (hereinafter, "U.S. Bank" or "Counterclaimant"), by  
12 and through its attorneys of record, Dana Jonathon Nitz, Esq., and Paterno C. Jurani, Esq. of the  
13 law firm of Wright, Finlay & Zak, LLP, complains against Alessi & Koenig, LLC; SFR  
14 Investments Pool 1, LLC; Does I through X; and Roe Corporations I through X, inclusive  
15 (collectively, "Counter-Defendants"), in the above-entitled action concerning and affective real  
16 property as described herein. U.S. Bank's Counterclaim and Third-Party Complaint was filed on  
17 August 18, 2015. The above-captioned matter is pending in the District Court, Clark County,  
18 Nevada, located at 200 Lewis Ave., Las Vegas, Nevada.

19 This action, and the affirmative relief that U.S. Bank requests in its Counterclaim, affects  
20 title to specific real property and the right to possession of specific real property situated in Clark  
21 County, Nevada, commonly known as 5327 Marsh Butte Street, Las Vegas, Nevada 89148  
22 (hereinafter "Property"), and more particularly described as:

23 Lot 7 in Block 1 of Final Map of Section 30 R2-60/70 No. 5, as shown by map thereof on  
24 file in Book 102 of Plats, Page 28 in the Office of the County Recorder of Clark County,  
25 Nevada.

26 and more particularly described as Clark County Assessor Parcel No. 163-30-312-007.  
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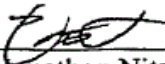


1 In its Counterclaim, U.S. Bank has asked the Court to provide the following affirmative relief:

- 2 1. For a declaration and determination that U.S. Bank's interest is secured against the  
3 Property, and that U.S. Bank's first Deed of Trust was not extinguished by the HOA  
4 Sale;
- 5 2. For a declaration and determination that U.S. Bank's interest is superior to the interest  
6 of Defendants; and
- 7 3. For a declaration and determination that the HOA Sale was invalid to the extent it  
8 purports to convey the Property free and clear to SFR Investments Pool 1, LLC.

9 DATED this 26 day of August, 2015.

10 WRIGHT, FINLAY & ZAK, LLP

11   
12 Dana Jonathon Nitz, Esq.

13 Nevada Bar No. 0050

14 Paterno C. Jurani, Esq.

15 Nevada Bar No. 8136

16 7785 W. Sahara Ave, Suite 200

17 Las Vegas, NV 89117

18 (702) 475-7964; Fax: (702) 946-1345

19 [dnitz@wrightlegal.net](mailto:dnitz@wrightlegal.net)

20 [pjurani@wrightlegal.net](mailto:pjurani@wrightlegal.net)

21 *Attorneys for Defendant, Nationstar Mortgage, LLC*  
22 *and Defendant/Counterclaimant/Third-Party*  
23 *Defendant U.S. Bank, National Association, as*  
24 *Trustee for the Certificateholders of the LXS 2006-*  
25 *4N Trust Fund, erroneously pled as U.S. Bank, N.A.*

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**AFFIRMATION**

Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **NOTICE OF LIS PENDENS**  
**does not** contain the social security number of any person.

DATED this 26 day of August, 2015.

WRIGHT, FINLAY & ZAK, LLP

  
\_\_\_\_\_  
Dana Jonathon Nitz, Esq.  
Nevada Bar No. 0050  
Paterno C. Jurani, Esq.  
Nevada Bar No. 8136  
7785 W. Sahara Ave, Suite 200  
Las Vegas, NV 89117  
(702) 475-7964; Fax: (702) 946-1345  
[dnitz@wrightlegal.net](mailto:dnitz@wrightlegal.net)  
[pjurani@wrightlegal.net](mailto:pjurani@wrightlegal.net)

*Attorneys for Defendant, Nationstar Mortgage, LLC  
and Defendant/Counterclaimant/Third-Party  
Defendant U.S. Bank, National Association, as  
Trustee for the Certificateholders of the LXS 2006-  
4N Trust Fund, erroneously pled as U.S. Bank, N.A.*

CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE

  
\_\_\_\_\_  
CLERK OF THE COURT

Ex. B

# EXHIBIT B

Ex. B



**DECLARATION OF CHRISTOPHER HARDIN IN SUPPORT OF SFR INVESTMENTS  
POOL 1, LLC'S MOTION FOR SUMMARY JUDGMENT**

I, Christopher Hardin, declare that,

1. I am over the age of eighteen years old and competent to testify.
2. I am a resident of Clark County, Nevada.
3. Unless otherwise stated, I have personal knowledge of the facts set forth in this declaration, and for those facts stated on information and belief, I believe them to be true.
4. I am the manager at SFR Investments Pool 1, LLC ("SFR").
5. SFR maintains records related to real property located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148 (the "Property"). As manager, I am familiar with the type of records maintained by SFR. I have personal knowledge of SFR's procedure for obtaining and keeping these records, which are kept and maintained in the ordinary course of SFR's business.
6. I make this declaration in support of SFR's Motion for Summary Judgment.
7. As part of my duties for SFR, I attended auctions and bid on real property.
8. I attended the Association sale of the subject Property on January 8, 2014. At the sale, I placed the winning bid of \$59,000. I paid \$60,536.80 to Alessi, which included the bid amount, transfer tax and recording fee. A true and correct copy of the cashier's check is attached hereto as **Exhibit B-1**.
9. After the auction, SFR received a Trustee's Deed Upon Sale. A true and correct copy of the Trustee's Deed Upon Sale is attached hereto as **Exhibit B-2**.
10. Neither I nor SFR has any reason to doubt the recitals in the Trustee's Deed Upon Sale.
11. If there were any issues with delinquency or noticing, none of these were communicated to SFR before the sale.
12. Based on my research, there was no lis pendens or release of the superpriority portion of the Association's lien recorded against the Property before SFR purchased the Property.
13. Neither SFR nor I have any relationship or interest in the Association, other than owning property within the Association.

1 14. Neither SFR nor I have any relationship with or interest in Alessi, outside of my  
2 attending auctions, bidding and, occasionally, purchasing properties at these publicly held  
3 auctions, or having purchased some reverted properties through arm's-length transactions.

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

5 DATED June 28, 2018.

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7 /s/ Christopher Hardin  
Christopher Hardin  
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# EXHIBIT B-1

PURPOSE/REMITTER:



CASHIER'S CHECK

No. 8354504175

93-38  
929

DATE: JANUARY 09, 2014

PAY SIXTY THOUSAND FIVE HUNDRED THIRTY SIX DOLLARS AND 80 CENTS

TO THE  
ORDER OF: ALESSI & KOENIG

\$ 60,536.80

Location: 8354 West Flamingo

U.S. Bank National Association  
Minneapolis, MN 55480

NON NEGOTIABLE

AUTHORIZED SIGNATURE

SFR336

# EXHIBIT B-2

Inst #: 201401130001460  
Fees: \$17.00 N/C Fee: \$0.00  
RPTT: \$1519.80 Ex: #  
01/13/2014 01:10:44 PM  
Receipt #: 1899989  
Requestor:  
ALESSI & KOENIG, LLC  
Recorded By: SUO Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

When recorded mail to and  
Mail Tax Statements to:  
SFR Investments Pool 1, LLC  
5030 Paradise Road, B-214  
Las Vegas, NV 89119

A.P.N. No.163-30-312-007

TS No. 6601

### TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **SFR Investments Pool 1, LLC**  
The Foreclosing Beneficiary herein was: **Shadow Mountain Ranch Community Association**  
The amount of unpaid debt together with costs: \$8,499.11  
The amount paid by the Grantee (Buyer) at the Trustee's Sale: **\$59,000.00**  
The Documentary Transfer Tax: \$1,519.80  
Property address: **5327 MARSH BUTTE ST, LAS VEGAS, NV 89148-4669**  
Said property is in [ ] unincorporated area: City of **LAS VEGAS**  
Trustor (Former Owner that was foreclosed on): **STACY MOORE**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded September 11, 2012 as instrument number 0002023, in Clark County, does hereby grant, without warranty expressed or implied to: **SFR Investments Pool 1, LLC** (Grantee), all its right, title and interest in the property legally described as: **SECTION 30 R2-60 70 #5 LOT 7 BLOCK 1**, as per map recorded in Book 102, Pages 28 as shown in the Office of the County Recorder of Clark County Nevada.

#### TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **January 8, 2014** at the place indicated on the Notice of Trustee's Sale.

Huong Lam, Esq.

Signature of AUTHORIZED AGENT for Alessi & Koenig, Llc.

State of Nevada )  
County of Clark )

SUBSCRIBED and SWORN before me JAN 13 2014, by Huong Lam

WITNESS my hand and official seal.

(Seal)



(Signature)

STATE OF NEVADA  
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 163-30-312-007  
b. \_\_\_\_\_  
c. \_\_\_\_\_  
d. \_\_\_\_\_

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY  
Book \_\_\_\_\_ Page: \_\_\_\_\_  
Date of Recording: \_\_\_\_\_  
Notes: \_\_\_\_\_

3.a. Total Value/Sales Price of Property \$ 59,000.00  
b. Deed in Lieu of Foreclosure Only (value of property ( \_\_\_\_\_ )  
c. Transfer Tax Value: \$ 297,577.00  
d. Real Property Transfer Tax Due \$ 1,519.80

4. **If Exemption Claimed:**

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

5. Partial Interest: Percentage being transferred: 100 %

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

Signature  Capacity: Grantor

Signature \_\_\_\_\_ Capacity: \_\_\_\_\_

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

Print Name: Alessi & Koenig, LLC  
Address: 9500 W. Flamingo Rd., Ste. 205  
City: Las Vegas  
State: NV      Zip: 89147

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

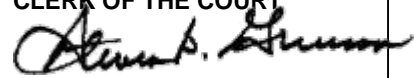
Print Name: SFR Investments Pool 1, LLC  
Address: 5030 Paradise Road, B-214  
City: Las Vegas  
State: NV      Zip: 89119

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

Print Name: Alessi & Koenig, LLC  
Address: 9500 W. Flamingo Rd., Ste. 205  
City: Las Vegas

Escrow # N/A Foreclosure  
State: NV      Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED



**JMSJ**  
MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215  
DONNA M. WITTIG, ESQ.  
Nevada Bar No. 11015

**AKERMAN LLP**  
1635 Village Center Circle, Suite 200  
Las Vegas, Nevada 89134  
Telephone: (702) 634-5000  
Facsimile: (702) 380-8572  
Email: melanie.morgan@akerman.com  
Email: donna.wittig@akerman.com

*Attorneys for Defendant, Nationstar Mortgage, LLC and Defendant/Counterclaimant/Third-Party Defendant U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank, N.A.*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA GOTERA, an individual; KRISTEN JORDAL, AS TRUSTEE FOR THE JBNWO REVOCABLE LIVING TRUST; U.S. BANK, N.A.; NATIONSTAR MORTGAGE, LLC; REPUBLIC SILVER STATE DISPOSAL, INC., et al.;

Defendants.

U.S. BANK., N.A.,,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Counter-Defendant.

U.S. BANK, N.A.

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, et al.

Third-Party Defendants.

Case No.: A-14-705563-C

Dept.: XVII

**U.S. BANK, N.A. AS TRUSTEE FOR THE  
CERTIFICATEHOLDERS OF THE LXS  
2006-4N TRUST FUND'S JOINDER TO  
NATIONSTAR MORTGAGE LLC'S  
MOTION FOR SUMMARY JUDGMENT**

AKERMAN LLP

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



1 Defendant/Counterclaimant/Third-Party Defendant U.S. Bank, National Association, as  
2 Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank,  
3 N.A. (**U.S. Bank**), submits its notice of joinder to Nationstar Mortgage LLC's (**Nationstar**) motion  
4 for summary judgment, filed June 29, 2018.

5 U.S. Bank herein adopts the arguments and legal authority set forth in the aforementioned  
6 Motion for Summary Judgment as though fully set forth herein. Nationstar is servicer for U.S. Bank,  
7 and all arguments made by Nationstar equally apply to U.S. Bank.

8 DATED July 2, 2018.

9 **AKERMAN LLP**

10  
11 /s/ Donna M. Wittig

12 MELANIE D. MORGAN, ESQ.

13 Nevada Bar No. 8215

14 DONNA M. WITTIG, ESQ.

15 Nevada Bar No. 11015

16 1635 Village Center Circle, Suite 200

17 Las Vegas, Nevada 89134

18 *Attorneys for Defendant, Nationstar Mortgage,*  
19 *LLC and Defendant/Counterclaimant/Third-Party*  
20 *Defendant U.S. Bank, National Association, as*  
21 *Trustee for the Certificateholders of the LXS 2006-*  
22 *4N Trust Fund, erroneously pled as U.S. Bank,*  
23 *N.A.*  
24  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 2nd day of July, 2018, I caused to be served a true and correct copy of the foregoing **U.S. BANK, N.A. AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE LXS 2006-4N TRUST FUND's JOINDER TO NATIONSTAR MORTGAGE LLC'S MOTION FOR SUMMARY JUDGMENT**, in the following manner:

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

**KIM GILBERT EBRON**

Diana S. Ebron

diana@kgelegal.com

KGE E-Service List

eservice@kgelegal.com

KGE Legal Staff

staff@kgelegal.com

Michael L. Sturm

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E-Service for Kim Gilbert Ebron

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Tomas Valerio

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dgerrard@gerrard-cox.com

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Kaytlyn Johnson

kjohnson@gerrard-cox.com

Esther Medellin

emedellin@gerrard-cox.com

**ALESSI & KOENIG**

A&amp;K eserve

eserve@alessikoenig.com

**WRIGHT FINLAY & ZAK, LLP**

Sarah Greenberg Davis

sgreenberg@wrightlegal.net

/s/ Patricia Larsen

An employee of AKERMAN LLP

*Steven D. Grierson*

☐ Voluntary Dismissal  
☐ Involuntary Dismissal  
☐ Stipulated Dismissal  
☐ Motion to Dismiss by Defendant(s)  
☒ Summary Judgment  
☐ Stipulated Judgment  
☐ Default Judgment  
☐ Judgment of Arbitration

**FFCL**  
JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
E-mail: jackie@kgelegal.com  
DIANA S. EBRON, ESQ.  
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KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
E-mail: karen@kgelegal.com  
KIM GILBERT EBRON  
7625 Dean Martin Dr., Suite 110  
Las Vegas, Nevada 89139  
Telephone: (702) 485-3300  
Facsimile: (702) 485-3301  
*Attorneys for SFR Investments Pool 1, LLC*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF CLARK**

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Plaintiff,

vs.

Case No. A-14-705563-C

Dept. No. 17

STACY MOORE, an individual; MAGNOLIA GOTERA, an individual; KRISTIN JORDAL, AS TRUSTEE FOR THE JBWNO REVOCABLE LIVING TRUST, a trust; U.S. BANK, N.A., a national banking association; NATIONSTAR MORTGAGE, LLC, a foreign limited liability company; REPUBLIC SILVER STATE DISPOSAL, INC., DBA REPUBLIC SERVICES, a domestic governmental entity; DOE INDIVIDUALS I through X, inclusive; and ROE CORPORATIONS XI through XX inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Counter-Defendant.

U.S. BANK, N.A.,

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; INDIVIDUAL DOES I through X, inclusive; and ROE CORPORATIONS I through X, inclusive,

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**KIM GILBERT EBRON**

7625 DEAN MARTIN DRIVE, SUITE 110  
LAS VEGAS, NEVADA 89139  
(702) 485-3300 FAX (702) 485-3301

**RECEIVED BY  
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Third-Party Defendant(s).

SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company,

Third-Party Counterclaimant/Cross-Claimant,

vs.

U.S. BANK, N.A.; NATIONSTAR  
MORTGAGE, LLC, foreign limited liability  
company; KRISTEN JORDAL, as Trustee for  
the JBWNO REVOCABLE LIVING TRUST, a  
Trust; STACY MOORE, an individual; and  
MAGNOLIA GOTERA, an individual,

Counter-Defendants/Cross-Defendants.

This matter came before the Court on August 15, 2018 on SFR Investments Pool 1, LLC's ("SFR") Motion for Summary Judgment, Nationstar Mortgage, LLC's ("Nationstar") Motion for Summary Judgment and U.S. Bank, N.A.'s ("U.S. Bank") (collectively referred to as "Bank") Joinder to Nationstar's Motion for Summary Judgment. Jason G. Martinez, Esq. appeared on behalf of SFR. Douglas D. Gerrard, Esq. appeared on behalf of Nationstar. Donna Wittig, Esq. appeared on behalf of Nationstar and U.S. Bank.

Having reviewed and considered the full briefing and arguments of counsel, for the reasons stated on the record and in the pleadings, and good cause appearing, this Court makes the following findings of fact and conclusions of law.<sup>1</sup>

**FINDINGS OF UNDISPUTED FACT**

1. In 1991, Nevada adopted the Uniform Common Interest Ownership Act as NRS 116, including NRS 116.3116(2).

2. On June 21, 2000, Shadow Mountain Ranch Community Association (the "Association") perfected and gave notice of its lien by recording its Declaration of Covenants, Conditions, and Restrictions ("CC&Rs") in the Official Records of the Clark County Recorder in Book No. 20000621 as Instrument No. 01735.

3. On November 21, 2005, a Grant, Bargain, Sale Deed was recorded in the Official

<sup>1</sup> Any findings of fact that are more appropriately conclusions of law shall be so deemed. Any conclusions of law that are more appropriately findings of fact shall be so deemed.

1 Records of the Clark County Recorder as Instrument No. 20051121-0005566, transferring real  
2 property located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-  
3 007 (the "Property") to Magnolia Gotera ("Gotera").

4 4. On November 21, 2005, a Deed of Trust listing Countrywide Home Loans, Inc.  
5 ("Countrywide" or "Lender") as lender, with Mortgage Electronic Registration Systems, Inc.  
6 ("MERS") as beneficiary, was recorded in the Official Records of the Clark County Recorder as  
7 Instrument No. 20051121-0005567 ("DOT").

8 5. The DOT contained a Planned Unit Development Rider that allowed the Lender to  
9 pay the Gotera association assessments and add that amount to the Gotera debt to Lender.

10 6. The DOT also included language that allowed the lender to "do and pay for  
11 whatever is reasonable or appropriate to protect [its] interest in the Property ... [including]  
12 but...not limited to: (a) paying any sums secured by a lien which has priority over [the DOT]; (b)  
13 appearing in court; and (c) paying reasonable attorney's fees to protect its interest."

14 7. On May 27, 2011, a Grant Deed transferring the Property to JBWNO Revocable  
15 Living Trust was recorded in the Official Records of the Clark County Recorder as Instrument  
16 No. 201105270004010.

17 8. On May 27, 2011, a Grant Deed transferring the Property to Stacy Moore  
18 ("Moore") was recorded in the Official Records of the Clark County Recorder as Instrument No.  
19 201105270004011.

20 9. On November 2, 2011, an Assignment of Deed of Trust purportedly transferring  
21 the DOT from MERS to U.S. Bank was recorded in the Official Records of the Clark County  
22 Recorder as Instrument No. 201111020000754.

23 10. On September 11, 2012, the Association, through its agent, Alessi & Koenig, LLC  
24 ("Alessi"), recorded a Notice of Delinquent Assessment Lien ("NODA") against the Property in  
25 the Official Records of the Clark County Recorder as Instrument No. 201209110002023.

26 11. Pursuant to NRS 116.31162(1)(a), the NODA states the cumulative amount of  
27 assessments and other sums due, describes the unit which the lien is imposed, and names the  
28 record owner of the unit.

12. Pursuant to NRS 116.31162(1)(a), the NODA was mailed to Moore.

13. Pursuant to NRS 116.31162(b), after more than 30 days elapsed from the date of mailing the NODA, on July 5, 2013, the Association recorded its Notice of Default in the Official Records of the Clark County Recorder as Instrument No. 201307050000950 ("NOD"). The NOD contains the same information as the NODA, and describes the deficiency, states the name and address of the person authorized to enforce the lien, and contains in 14-point bold type: WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

14. U.S. Bank admits it received the NOD.

15. The Bank proffered a letter dated September 2, 2010, executed by Rock K. Jung, Esq. of the law firm of Miles, Bauer, Bergstrom & Winters ("Miles Bauer") and addressed to the Association and Alessi and the Bank proffered a letter dated September 28, 2010, enclosing a check for \$207.00, also addressed to the Association and Alessi. The Bank sought to authenticate these records through the affidavit of Doug Miles. However, the Court finds that because Doug Miles was never disclosed and his affidavit contains defects as alleged by SFR, these records are inadmissible. Therefore, Nationstar/U.S. Bank failed to provide admissible evidence to establish delivery of the check, or admissible evidence that the check was rejected without explanation.

16. On October 1, 2013, an Assignment of Deed of Trust purportedly transferring the DOT from Bank of America, N.A. to Nationstar was recorded in the Official Records of the Clark County Recorder as Instrument No. 201310010002401.

17. Pursuant to NRS 116.311635, after expiration of 90 days, on December 10, 2013, the Association recorded a Notice of Trustee's Sale in the Official Records of the Clark County Recorder as Instrument No. 201307150002689 ("Notice of Sale"). Pursuant to NRS 116.311635(3), the Notice of Sale contains the amount necessary to satisfy the lien and contains 14-bold type: WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ALESSI &

1 KOENIG AT 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE  
2 FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE  
3 DIVISION, AT 1-877-829-9907 IMMEDIATELY.

4 18. Pursuant to NRS 116.311635, the Notice of Sale was posted on the Property in a  
5 conspicuous place. The Notice of Sale was posted at three public places within Clark County for  
6 20 consecutive days. The Notice of Sale was published in the Nevada Legal News for three  
7 consecutive weeks.

8 19. The Notice of Sale was mailed to all requisite parties, and others, including, but  
9 not limited to, U.S. Bank, Bank of America, Nationstar, MERS, Moore and the Ombudsman.

10 20. On January 8, 2014, Alessi held a public non-judicial foreclosure auction for the  
11 Property and SFR placed the highest cash bid of \$59,000.00. As the Notice of Sale references the  
12 NODA, the Association's lien included assessments pursuant to NRS 116.3116. and, therefore,  
13 included amounts that constituted the super-priority portion of the lien.

14 21. The Association sale met all the requirements of NRS 116.31164.

15 22. There were multiple bidders in attendance at the sale.

16 23. Pursuant to NRS 116.31164(3)(a), after SFR paid the money to Alessi, Alessi  
17 made, executed, and delivered a deed to SFR, which vested title in SFR.

18 24. The Trustee's Deed Upon Sale was recorded in the Official Records of the Clark  
19 County Recorder as Instrument No. 201401130001460 ("Foreclosure Deed").

20 25. As recited in the Foreclosure Deed, "[a]ll requirements of law regarding the  
21 mailing of copies of notices and the posting and publication of the copies of the Notice of Sale  
22 have been complied with."

23 26. Prior to the Association sale, no release of the super-priority portion of the lien  
24 was recorded against the Property.

25 27. Prior to the Association sale, no lis pendens was recorded against the Property.

26 28. SFR's agent, Christopher Hardin, stated in his declaration that SFR had no reason  
27 to doubt the recitals in the Foreclosure Deed that all noticing requirements were satisfied in  
28 compliance with NRS 116 *et seq.* The recitals regarding default and noticing have been supported

1 by evidence of mailings and remain undisputed.

2 29. Mr. Hardin declared that neither he nor SFR had any relationship with the  
3 Association besides owning property within the community. There was no evidence presented to  
4 the draw this assertion into question.

5 30. Mr. Hardin declared that neither he nor SFR had any relationship with A&K, the  
6 Association's agent, beyond attending auctions, bidding, and occasionally purchasing properties  
7 at publicly-held auctions. There was no evidence presented to draw this assertion into question.

8 31. Default against Stacy Moore was entered on June 27, 2018.

9 32. Default against Magnolia Gotera was entered June 27, 2018.

10 CONCLUSIONS OF LAW

11 A. Summary judgment is appropriate "when the pleadings and other evidence on file  
12 demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is  
13 entitled to a judgment as a matter of law.'" *Wood v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026,  
14 1029 (2005). Additionally, "[t]he purpose of summary judgment 'is to avoid a needless trial when  
15 an appropriate showing is made in advance that there is no genuine issue of fact to be tried, and  
16 the movant is entitled to judgment as a matter of law.'" *McDonald v. D.P. Alexander & Las Vegas*  
17 *Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) quoting *Coray v. Hom*, 80 Nev.  
18 39, 40-41, 389 P.2d 76, 77 (1964). Moreover, the non-moving party "must, by affidavit or  
19 otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have  
20 summary judgment entered against [it]." *Wood*, 121 Nev. at 732, 121 P.3d at 1031. The non-  
21 moving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and  
22 conjecture." *Id.* Rather, the non-moving party must demonstrate specific facts as opposed to  
23 general allegations and conclusions. *LaMantia v. Redis*, 118 Nev. 27, 29, 38 P.3d 877, 879  
24 (2002); *Wayment v. Holmes*, 112 Nev. 232, 237, 912 P.2d 816, 819 (1996). Though inferences  
25 are to be drawn in favor of the non-moving party, an opponent to summary judgment, must show  
26 that it can produce evidence at trial to support its claim or defense. *Van Cleave v. Kietz-Mill Minit*  
27 *Mart*, 97 Nev. 414, 417, 633 P.2d 1220, 1222 (1981).

28 B. While the moving party generally bears the burden of proving there is no genuine



1 issue of material fact, in this case, there are a number of presumptions that this Court must  
2 consider in deciding the issues, including:

3 1. Recorded title is presumed valid. *See Brellant v. Preferred Equities Corp.*,  
4 112 Nev. 663, 670, 918 P.2d 314, 319 (1996)("[T]here is a presumption in favor of the  
5 record titleholder.")

6 2. Foreclosure sales and the resulting deeds are presumed valid. NRS  
7 47.250(16)-(18) (stating that there are disputable presumptions "[t]hat the law has been  
8 obeyed[,] "[t]hat a trustee or other person, whose duty it was to convey real property to  
9 a particular person, has actually conveyed to that person, when such presumption is  
10 necessary to perfect the title of such person or a successor in interest[,] "[t]hat private  
11 transactions have been fair and regular[,] and "[t]hat the ordinary course of business has  
12 been followed.").

13 3. A foreclosure deed issued pursuant to NRS 116.31164 that "recit[es]  
14 compliance with notice provisions of NRS 116.31162 through NRS 116.31168 "is  
15 conclusive" as to the recitals "against the unit's former owner, his or her heirs and assigns  
16 and all other persons" unless a party like Nationstar can establish that it is entitled to  
17 equitable relief from a defective sale. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132  
18 Nev. Adv. Op. 5, 1105 (2016); *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev.  
19 Adv. Op. 75, 334 P.3d 408, 411-412 (2014) (citing NRS 116.31166(2)).

20 4. That "[i]f the trustee's deed recites that all statutory notice requirements  
21 and procedures required by law for the conduct of the foreclosure have been satisfied, a  
22 rebuttable presumption arises that the sale has been conducted regularly and properly; this  
23 presumption is conclusive as to a bona fide purchaser." *Moeller v. Lien*, 30 Cal. App. 4th  
24 822, 831-32, 30 Cal. Rptr. 777, 783 (1994)(emphasis added); *see also* 4 Miller & Starr,  
25 Cal. Real Estate (3d ed. 2000) Deeds of Trust and Mortgages § 10:211, pp. 647-652; 2  
26 Bernhardt, Cal. Mortgage and Deed of Trust Practice (Cont.Ed.Bar 2d ed. 1990) § 7:59,  
27 pp. 476-477).

28 C. These presumptions "not only fix[] the burden of going forward with evidence, but

1 it also shifts the burden of proof." *Yeager v. Harrah's Club, Inc.*, 111 Nev. 830, 835, 897 P.2d  
2 1093, 1095 (1995)(citing *Vancheri v. GNLV Corp.*, 105 Nev. 417, 421, 777 P.2d 366, 368 (1989)).  
3 "These presumptions impose on the party against whom it is directed the burden of proving that  
4 the nonexistence of the presumed fact is more probable than its existence." *Id.* at 842 (citing NRS  
5 47.180).

6 D. Thus, Bank bore the burden of proving it was more probable than not that the  
7 Association sale and the resulting Foreclosure Deed were invalid. This burden has been confirmed  
8 in the recent case of *Nationstar Mortgage, LLC v. Saticoy Bay Series 2227 Shadow Canyon*, 133  
9 Nev. \_\_\_, \_\_\_, 405 P.3d 641, 646 (2017) ("...Nationstar has the burden to show that that the sale  
10 should be set aside in light of Saticoy Bay's status as the record title holder[.]" (citing *Breliant*,  
11 112 Nev. at 669, 918 P.2d at 318; NRS 47.250(16); NRS 116.31166(10-(2); and *Shadow Wood*  
12 *Homeowners Ass'n, Inc. v. New York Community Bankcorp, Inc.*, 132 Nev. \_\_\_, \_\_\_, 366 P.3d  
13 1105, 1111 (noting that NRS 107.030(8) provided the language in NRS 116.31166)).

14 E. Bank failed to meet its burden of proving it was more probable than not that the  
15 Association sale and the resulting Foreclosure Deed were invalid.

16 F. Pursuant to *SFR*, NRS 116.3116(2) gives associations a true super-priority lien,  
17 the non-judicial foreclosure of which extinguishes a first deed of trust. *SFR*, 334 P.3d at 419.

18 G. A properly conducted foreclosure sale conducted pursuant to NRS 116.31162-  
19 NRS 116.31168, like all foreclosure sales, extinguishes the title owner's interest in real property  
20 and all junior liens and encumbrances, including deeds of trust.

21 H. The Association foreclosure sale vested title in SFR "without equity or right of  
22 redemption." *SFR*, 334 P.3d at 412 (citing NRS 116.31166(3)).

23 I. These sales vest the purchaser with absolute title. *In re Grant*, 303 B.R. 205, 209  
24 (Bankr. D. Nev. 2003).

25 J. If the sale is properly, lawfully and fairly carried out, <sup>the Bank</sup>~~the Bank~~ cannot unilaterally  
26 create a right of redemption in [itself]. *Golden v. Tomiyasu*, 79 Nev. 503, 518 (1963).

27 K. Here, the sale was a non-judicial foreclosure sale conducted pursuant to NRS  
28 116.31166(2). The COURT FINDS the sale vested in SFR title without equity or right of

1 redemption and title must be quieted in favor of SFR.

2 L. *Shadow Wood* holds that the deed recitals are conclusive, unless a party like the  
3 Bank can establish that it is entitled to equitable relief from a defective sale. *Shadow Wood HOA*  
4 *v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 1105 (2016). Here, ~~the Bank~~ <sup>Nationstar</sup> has not established  
5 that this was a defective sale. As the purchaser at the Association foreclosure sale, SFR need only  
6 show the Trustee's Deed Upon Sale to be entitled to quiet title free and clear of the deed of trust  
7 since there was no defective sale. The COURT FINDS the deed recitals are conclusive.

8 M. The Bank is not entitled to equitable relief. The Nevada Supreme Court stated that  
9 when a BFP has no notice of a pre-sale dispute, such as an attempted tender, equity cannot be  
10 granted to the tendering party, who could defeat any BFP status by giving notice of an attempt to  
11 pay. Equitable relief cannot be granted to a party who ignored earlier remedies and allowed a BFP  
12 to purchase the property, when the relief would be to the detriment to the BFP. Here, the Bank  
13 failed to adequately protect its interest. It failed to try for earlier remedies and allowed a BFP to  
14 purchase the property. The COURT FINDS equitable relief is no longer available to the Bank.

15 N. The Foreclosure Deed and Sale are Presumed Valid. SFR contends that the Bank  
16 cannot overcome the presumptions that (1) the Association and its agent obeyed the law, (2) the  
17 property was conveyed to SFR, (3) the Association foreclosure sale was fair and regular, and  
18 conducted in the ordinary course of business. The COURT FINDS the DOT was extinguished by  
19 the Association foreclosure sale and since the property was conveyed to SFR, SFR is entitled to  
20 summary judgment on its claim for quiet title and permanent injunction. The Bank has not  
21 overcome the conclusive presumption that the foreclosure sale and resulting deed are valid, and  
22 SFR can rely on the conclusive recitals in the foreclosure deed.

23 O. To prevail on a claim for unjust enrichment, U.S. Bank must show that it conferred  
24 a benefit on SFR, that SFR appreciated such benefit, and there was acceptance and retention by  
25 [SFR] of such benefit under circumstances such that it would be inequitable for [SFR] to retain  
26 the benefit without payment of the value thereof. *Unionamerica Mtg. v. McDonald*, 97 Nev. 210  
27 212 (1981). Under NRCP 16.1(a)(1)(C), a party is required to produce, without awaiting a  
28 discovery request . . . [a] computation of any category of damages claimed. U.S. Bank contends

1 that SFR has benefited from U.S. Bank's payment of taxes, insurance, and homeowner s  
2 association assessments since the time of the HOA sale. However, U.S. Bank has not proven this  
3 to be true nor produced evidence that any such payments were made. Further, U.S. Bank has never  
4 disclosed any special damages under NRCP 16.1 on this issue. There being no evidence that U.S.  
5 Bank paid any monies toward the property or that SFR benefited from these payments, therefore,  
6 the COURT FINDS U.S. Bank's claim for unjust enrichment fails as a matter of law.

7 P. ~~The Bank~~ <sup>Nationstar</sup> contends a proper tender was made on 9/2/10 for the amount of \$207.00  
8 which represented the statutory super-priority amount of the HOA s lien at \$23.00 per month for  
9 months, thereby discharging the super priority lien in dispute. The Nevada Supreme Court held  
10 in *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. Adv. Op 35, 373 P.3d 66 (2016) that the  
11 superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees and  
12 foreclosure costs incurred; rather it is limited to an amount equal to the common expense  
13 assessments due during the nine months before foreclosure. While this Court acknowledges that  
14 in *Horizons at Seven Hills v. Ikon*, the association in question did not foreclose, the Nevada  
15 Supreme Court's in depth review of legislative history and statutory interpretation indicates the  
16 superpriority portion in question does not include fees and costs. *Id.* at 70. Therefore, the COURT  
17 FINDS said tender of \$207.00 was the proper amount of the superpriority lien, as it was nine  
18 months of assessments under NRS 116.3116(2).

19 Q. The question then hinges on whether this tender precludes SFR from taking said  
20 property free and clear of the DOT, or whether SFR takes said property subject to the DOT. The  
21 Court looks to whether refusal of the tender was grounded on an honest belief that the tender was  
22 insufficient. See, 59 C.J.S. Mortgages 582 (2016); *Bank of Am., N.A. v. Rugged Oaks Investments,*  
23 *LLC*, 68504, 2016 WL 5219841, at \*1 (Nev. Sept. 16, 2016)( It has been held... that a good and  
24 sufficient tender on the day when payment is due will relieve the property from the lien of the  
25 mortgage, except where the refusal [of payment] was... grounded on an honest belief that the  
26 tender was insufficient. ). ~~The Bank's~~ <sup>Nationstar's</sup> tender of the past due assessments in the amount of \$207.00  
27 occurred on 9/2/10, which was rejected by the HOA Trustee. However, SFR did not have  
28 knowledge of this tender, either by inquiry notice or constructive notice. ~~The Bank~~ <sup>Nationstar</sup> has failed to

1 set forth sufficient information that proper notice of the tender was provided, such that individuals  
2 or entities would be put on notice of the same. The Association rejected the payment in good faith.  
3 ~~The Bank~~ <sup>Nationstar</sup> failed to record its performance so as to protect itself from third-party purchasers as  
4 required by NV law. David Alessi testified that Alessi & Koenig did not receive the letter with  
5 the check. If Alessi & Koenig never received the purported tender there was nothing to reject. All  
6 the Bank has is a copy of the purported check and a screenshot, neither of which are properly  
7 admissible. Further, Doug Miles was not disclosed and has defects in his affidavit. The Bank is  
8 lacking admissible evidence to establish the delivery of the check, or admissible evidence that the  
9 check was rejected without explanation. Thus, SFR was a bona fide purchaser ("BFP"). A  
10 subsequent purchaser is bona fide purchaser under common-law principles if it takes the property  
11 for a valuable consideration and without notice of the prior equity, and without notice of facts  
12 which upon diligent inquiry would be indicated and from which notice would be imputed to him,  
13 if he failed to make such inquiry. *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947)  
14 (emphasis omitted); see also *Moore v. De Bernardi*, 47 Nev. 33, 54, 220 P. 544, 547 (1923) (The  
15 decisions are uniform that the bona fide purchaser of a legal title is not affected by any latent  
16 equity founded either on a trust, [e]ncumbrance, or otherwise, of which he has no notice, actual  
17 or constructive.). The Nevada Supreme Court has further held, that [w]here the complaining party  
18 has access to all the facts surrounding the questioned transaction and merely makes a mistake as  
19 to the legal consequences of his act, equity should normally not interfere, especially where the  
20 rights of third parties might be prejudiced thereby. *Shadow Wood*, 366 P.3d at 1116 (quoting  
21 *Nussbaumer v. Sup. Ct. in & for Yuma Cty.*, 107 Ariz. 504, 489 P.2d 843, 846 (1971)). In *Shadow*  
22 *Wood*, the Nevada Supreme Court held that [c]onsideration of harm to potentially innocent third  
23 parties is especially pertinent where [the lender] did not use the legal remedies available to it to  
24 prevent the property from being sold to a third party, such as by seeking a temporary restraining  
25 order and preliminary injunction and filing a lis pendens on the property. *Shadow Wood*, 366 P.3d  
26 at 1114 fn. 7. Here, ~~the Bank~~ <sup>Nationstar</sup> was in the position to take any number of simple steps to avoid a  
27 BFP issue and simply failed to take such action. The Bank has failed to offer any evidence to  
28 refute that SFR had no knowledge of a prior equity and paid valuable consideration. Lastly, in the



1 Hardin declaration, SFR provided evidence of being a BFP The COURT FINDS Nationstar failed  
2 to protect its interest in said property, and SFR is a BFP.

3 R. ~~The Bank~~ <sup>Nationstar</sup> contends the sales price at the HOA foreclosure sale was grossly  
4 inadequate and was commercially unreasonable. To set aside an association foreclosure sale on a  
5 theory of commercial unreasonableness there must be a showing of grossly inadequate price, plus,  
6 fraud, unfairness, or oppression. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op.  
7 5, 366 P.3d 1105, 1112 (2016) (citing *Long v. Towne*, 98 Nev. 11, 13, 639, P.2d 528, 530 (1982));  
8 *See also Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at \*1 (Nev. Mar.  
9 18, 2016)(unpublished Order Vacating and Remanding)(Holding a low sales price is not a basis  
10 for voiding a foreclosure sale absent fraud, unfairness, oppression...); *See also Golden v.*  
11 *Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale  
12 foreclosure may not be set aside for mere inadequacy of price, it may be if the price is grossly  
13 inadequate and there is in addition proof of some element of fraud, unfairness, or oppression  
14 (internal quotation omitted))). The Supreme Court of Nevada recently clarified that in Nevada,  
15 courts retain the power to grant equitable relief from a defective [association] foreclosure sale  
16 when appropriate .... *Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*,  
17 366 P.3d 1105, 1110 (Nev.2016) (en banc). [D]emonstrating that an association sold a property  
18 at its foreclosure sale for an inadequate price is not enough to set aside a foreclosure sale; there  
19 must also be a showing of fraud, unfairness, or oppression. *Id.* (citing *Long*, 98 Nev. 11, 639 P.2d  
20 530). In considering whether equity supports setting aside the sale in question, the Court is to  
21 consider any other factor bearing on the equities, including actions or inactions of both parties  
22 seeking to set aside the sale and the impact on a bona fide purchaser for value. *Id.* at 1114 (finding  
23 courts must consider the entirety of the circumstances that bear upon the equities). Here, ~~the Bank~~ <sup>Nationstar</sup>  
24 contends that the sale should be set aside under equitable principles because the sale of the  
25 Property for less than 20% of its fair market value is grossly inadequate. The Court, however,  
26 does not find this argument to be persuasive. The analysis for finding fraud, unfairness, or  
27 oppression applies to the seller (HOA) and purchaser, not whatever mistake may have occurred  
28 by the HOA in rejecting tender or accepting payments from the Borrower. *See Golden v.*

1 *Tomiyasu*, 79 Nev. 503, 513, 387 P.2d 989, 994 (reviewing fraud and collusion between the  
2 foreclosing trustee and bidders, not fraud, unfairness, or oppression in the underlying trustee s  
3 substantive actions). *See also Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL  
4 1122449, at \*1 (Nev. Mar. 18, 2016)(unpublished Order Vacating and Remanding)(Holding a  
5 low sales price is not a basis for voiding a foreclosure sale absent fraud, unfairness, oppression...).

6 Because the Bank failed to set forth material issues of fact demonstrating some fraud, unfairness,  
7 or oppression with the actual sale to demonstrate commercial unreasonableness, the COURT  
8 FINDS the sale in question was commercially reasonable.

9 S. On 8/31/15, Nationstar recorded a lis pendens against the property. NRS 14.015  
10 sets forth the requirements for maintaining a lis pendens on a property. Here, when Nationstar  
11 recorded the lis pendens, it did not have a pending action that was for (1) foreclosure or (2) that  
12 affected title or possession of the property and still has no pending claims against SFR today. The  
13 NRCP30(b)(6) deposition of U.S. Bank and Nationstar, concedes that Nationstar only services  
14 the loan and that it does not have an interest in the promissory note or deed of trust. Because  
15 Nationstar lacked any basis to record the lis pendens against the property in the first place and  
16 still lacks basis to maintain it, SFR is entitled to a judgment from this Court on its slander of title  
17 claim against Nationstar and that the lis pendens be expunged.

18 T. Pursuant to NRS 116.31166(2), when SFR made the highest bid and purchased the  
19 property at the Association sale, it obtained the title of the unit's owner without equity or right of  
20 redemption. Thus, any interest Moore and/or Gotera could claim in the property was extinguished.  
21 On 6/27/18 default was entered against Moore and Gotera for failing to answer SFR s complaint.

22 U. As a result of the Association's non-judicial foreclosure sale, the DOT was  
23 extinguished. As such, SFR is entitled to summary judgment on its claim for quiet title and a  
24 permanent injunction.

25 V. Any attempt to foreclose on the DOT by the Bank would be invalid as the DOT  
26 was extinguished by the Association sale.

27 W. Any assignment, sale, or transfer of the DOT by the Bank has no legal effect  
28 because the DOT was extinguished by the Association sale.

X. Any attempt to take or maintain possession of the Property by the Bank would be invalid because its interest in the Property, if any, was extinguished by the Association sale.

**ORDER**

**IT IS ORDERED, ADJUDGED, AND DECREED** that SFR's Motion for Summary Judgment is **GRANTED**.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Nationstar's Motion for Summary Judgment is **DENIED**.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that U.S. Bank's Joinder to Nationstar's Motion for Summary Judgment is **DENIED**.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Association's non-judicial foreclosure sale relating to real property located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-007 extinguished the DOT recorded against the Property in the Official Records of the Clark County Recorder as Instrument No. 20051121-0005567.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Nationstar has no further right, title, or interest in real property located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-007, and is hereby permanently enjoined from taking any further action to cloud SFR's title to the Property or enforce the now extinguished DOT, including but not limited to initiating, or continuing to initiate, foreclosure proceedings and from selling or transferring the Property.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that U.S. Bank has no further right, title, or interest in real property located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-007, and is hereby permanently enjoined from taking any further action to cloud SFR's title to the Property or enforce the now extinguished DOT, including but not limited to initiating, or continuing to initiate, foreclosure proceedings and from selling or transferring the Property.

...

...



1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that title to real property  
2 located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-007 is  
3 hereby quieted in favor of SFR.

4 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that JUDGMENT be  
5 entered in favor of SFR pursuant to this ORDER.

6 **IT IS SO ORDERED.**

7 DATED this 26 day of Nov, 2018.


8  
9   
DISTRICT COURT JUDGE  
10 Jm

11 Respectfully Submitted By:

Approved as to Form and Content By:

12 **KIM GILBERT EBRON**

**AKERMAN LLP**

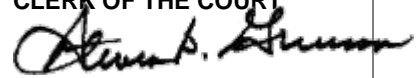
13   
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**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada  
limited liability company,

Plaintiff,

vs.

STACY MOORE, an individual;  
MAGNOLIA GOTERA, an individual;  
KRISTIN JORDAL, AS TRUSTEE FOR  
THE JBWNO REVOCABLE LIVING  
TRUST, a trust; U.S. BANK, N.A., a  
national banking association;  
NATIONSTAR MORTGAGE, LLC, a  
foreign limited liability company;  
REPUBLIC SILVER STATE DISPOSAL,  
INC., DBA REPUBLIC SERVICES, a  
domestic governmental entity; DOE  
INDIVIDUALS I through X, inclusive; and  
ROE CORPORATIONS XI through XX  
inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada  
limited liability company,

Counter-Defendant.

U.S. BANK., N.A.

Third-Party Plaintiff,

Case No.: A-14-705563-C

Dept. No.: XVII

**NOTICE OF ENTRY OF FINDINGS OF  
FACT AND CONCLUSIONS OF LAW**

vs.

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company;  
INDIVIDUAL DOES I through X,  
inclusive; and ROE CORPORATIONS I  
through X, inclusive,

Third-Party Defendant(s)

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company,

Third-Party Counterclaimant/Cross-  
Claimant,

vs.

U.S. BANK, N.A.; NATIONSTAR  
MORTGAGE, LLC, foreign limited liability  
company; KRISTEN JORDAL, as trustee  
for the JBWNO REVOCABLE LIVING  
TRUST, a trust; STACY MOORE, an  
individual; and MAGNOLIA GOTERA, an  
individual,

Counter-Defendants/Cross-Defendants.

PLEASE TAKE NOTICE that on November 29<sup>th</sup>, 2018 **Findings of Fact and  
Conclusions of Law** were entered. A copy of said Findings of Fact and Conclusions of Law are  
attached hereto.

DATED this 26<sup>th</sup> day of December, 2018.

**KIM GILBERT EBRON**

/s/Diana S. Ebron

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 26<sup>th</sup> day of December, 2018, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW** to the following parties:

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/s/ Tomas Valerio

An Employee of KIM GILBERT EBRON

*Steven D. Grierson*

☐ Voluntary Dismissal  
☐ Involuntary Dismissal  
☐ Stipulated Dismissal  
☐ Motion to Dismiss by Defendant(s)  
☒ Summary Judgment  
☐ Stipulated Judgment  
☐ Default Judgment  
☐ Judgment of Arbitration

**FFCL**  
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**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF CLARK**

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Plaintiff,

vs.

Case No. A-14-705563-C

Dept. No. 17

STACY MOORE, an individual; MAGNOLIA GOTERA, an individual; KRISTIN JORDAL, AS TRUSTEE FOR THE JBWNO REVOCABLE LIVING TRUST, a trust; U.S. BANK, N.A., a national banking association; NATIONSTAR MORTGAGE, LLC, a foreign limited liability company; REPUBLIC SILVER STATE DISPOSAL, INC., DBA REPUBLIC SERVICES, a domestic governmental entity; DOE INDIVIDUALS I through X, inclusive; and ROE CORPORATIONS XI through XX inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Counter-Defendant.

U.S. BANK, N.A.,

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; INDIVIDUAL DOES I through X, inclusive; and ROE CORPORATIONS I through X, inclusive,

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**KIM GILBERT EBRON**

7625 DEAN MARTIN DRIVE, SUITE 110  
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**RECEIVED BY  
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OCT 01 2018**

Third-Party Defendant(s).

SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company,

Third-Party Counterclaimant/Cross-Claimant,

vs.

U.S. BANK, N.A.; NATIONSTAR  
MORTGAGE, LLC, foreign limited liability  
company; KRISTEN JORDAL, as Trustee for  
the JBWNO REVOCABLE LIVING TRUST, a  
Trust; STACY MOORE, an individual; and  
MAGNOLIA GOTERA, an individual,

Counter-Defendants/Cross-Defendants.

This matter came before the Court on August 15, 2018 on SFR Investments Pool 1, LLC's ("SFR") Motion for Summary Judgment, Nationstar Mortgage, LLC's ("Nationstar") Motion for Summary Judgment and U.S. Bank, N.A.'s ("U.S. Bank") (collectively referred to as "Bank") Joinder to Nationstar's Motion for Summary Judgment. Jason G. Martinez, Esq. appeared on behalf of SFR. Douglas D. Gerrard, Esq. appeared on behalf of Nationstar. Donna Wittig, Esq. appeared on behalf of Nationstar and U.S. Bank.

Having reviewed and considered the full briefing and arguments of counsel, for the reasons stated on the record and in the pleadings, and good cause appearing, this Court makes the following findings of fact and conclusions of law.<sup>1</sup>

**FINDINGS OF UNDISPUTED FACT**

1. In 1991, Nevada adopted the Uniform Common Interest Ownership Act as NRS 116, including NRS 116.3116(2).

2. On June 21, 2000, Shadow Mountain Ranch Community Association (the "Association") perfected and gave notice of its lien by recording its Declaration of Covenants, Conditions, and Restrictions ("CC&Rs") in the Official Records of the Clark County Recorder in Book No. 20000621 as Instrument No. 01735.

3. On November 21, 2005, a Grant, Bargain, Sale Deed was recorded in the Official

<sup>1</sup> Any findings of fact that are more appropriately conclusions of law shall be so deemed. Any conclusions of law that are more appropriately findings of fact shall be so deemed.

1 Records of the Clark County Recorder as Instrument No. 20051121-0005566, transferring real  
2 property located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-  
3 007 (the "Property") to Magnolia Gotera ("Gotera").

4 4. On November 21, 2005, a Deed of Trust listing Countrywide Home Loans, Inc.  
5 ("Countrywide" or "Lender") as lender, with Mortgage Electronic Registration Systems, Inc.  
6 ("MERS") as beneficiary, was recorded in the Official Records of the Clark County Recorder as  
7 Instrument No. 20051121-0005567 ("DOT").

8 5. The DOT contained a Planned Unit Development Rider that allowed the Lender to  
9 pay the Gotera association assessments and add that amount to the Gotera debt to Lender.

10 6. The DOT also included language that allowed the lender to "do and pay for  
11 whatever is reasonable or appropriate to protect [its] interest in the Property ... [including]  
12 but...not limited to: (a) paying any sums secured by a lien which has priority over [the DOT]; (b)  
13 appearing in court; and (c) paying reasonable attorney's fees to protect its interest."

14 7. On May 27, 2011, a Grant Deed transferring the Property to JBWNO Revocable  
15 Living Trust was recorded in the Official Records of the Clark County Recorder as Instrument  
16 No. 201105270004010.

17 8. On May 27, 2011, a Grant Deed transferring the Property to Stacy Moore  
18 ("Moore") was recorded in the Official Records of the Clark County Recorder as Instrument No.  
19 201105270004011.

20 9. On November 2, 2011, an Assignment of Deed of Trust purportedly transferring  
21 the DOT from MERS to U.S. Bank was recorded in the Official Records of the Clark County  
22 Recorder as Instrument No. 201111020000754.

23 10. On September 11, 2012, the Association, through its agent, Alessi & Koenig, LLC  
24 ("Alessi"), recorded a Notice of Delinquent Assessment Lien ("NODA") against the Property in  
25 the Official Records of the Clark County Recorder as Instrument No. 201209110002023.

26 11. Pursuant to NRS 116.31162(1)(a), the NODA states the cumulative amount of  
27 assessments and other sums due, describes the unit which the lien is imposed, and names the  
28 record owner of the unit.

12. Pursuant to NRS 116.31162(1)(a), the NODA was mailed to Moore.

13. Pursuant to NRS 116.31162(b), after more than 30 days elapsed from the date of mailing the NODA, on July 5, 2013, the Association recorded its Notice of Default in the Official Records of the Clark County Recorder as Instrument No. 201307050000950 ("NOD"). The NOD contains the same information as the NODA, and describes the deficiency, states the name and address of the person authorized to enforce the lien, and contains in 14-point bold type: WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

14. U.S. Bank admits it received the NOD.

15. The Bank proffered a letter dated September 2, 2010, executed by Rock K. Jung, Esq. of the law firm of Miles, Bauer, Bergstrom & Winters ("Miles Bauer") and addressed to the Association and Alessi and the Bank proffered a letter dated September 28, 2010, enclosing a check for \$207.00, also addressed to the Association and Alessi. The Bank sought to authenticate these records through the affidavit of Doug Miles. However, the Court finds that because Doug Miles was never disclosed and his affidavit contains defects as alleged by SFR, these records are inadmissible. Therefore, Nationstar/U.S. Bank failed to provide admissible evidence to establish delivery of the check, or admissible evidence that the check was rejected without explanation.

16. On October 1, 2013, an Assignment of Deed of Trust purportedly transferring the DOT from Bank of America, N.A. to Nationstar was recorded in the Official Records of the Clark County Recorder as Instrument No. 201310010002401.

17. Pursuant to NRS 116.311635, after expiration of 90 days, on December 10, 2013, the Association recorded a Notice of Trustee's Sale in the Official Records of the Clark County Recorder as Instrument No. 201307150002689 ("Notice of Sale"). Pursuant to NRS 116.311635(3), the Notice of Sale contains the amount necessary to satisfy the lien and contains 14-bold type: WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ALESSI &



1 KOENIG AT 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE  
2 FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE  
3 DIVISION, AT 1-877-829-9907 IMMEDIATELY.

4 18. Pursuant to NRS 116.311635, the Notice of Sale was posted on the Property in a  
5 conspicuous place. The Notice of Sale was posted at three public places within Clark County for  
6 20 consecutive days. The Notice of Sale was published in the Nevada Legal News for three  
7 consecutive weeks.

8 19. The Notice of Sale was mailed to all requisite parties, and others, including, but  
9 not limited to, U.S. Bank, Bank of America, Nationstar, MERS, Moore and the Ombudsman.

10 20. On January 8, 2014, Alessi held a public non-judicial foreclosure auction for the  
11 Property and SFR placed the highest cash bid of \$59,000.00. As the Notice of Sale references the  
12 NODA, the Association's lien included assessments pursuant to NRS 116.3116. and, therefore,  
13 included amounts that constituted the super-priority portion of the lien.

14 21. The Association sale met all the requirements of NRS 116.31164.

15 22. There were multiple bidders in attendance at the sale.

16 23. Pursuant to NRS 116.31164(3)(a), after SFR paid the money to Alessi, Alessi  
17 made, executed, and delivered a deed to SFR, which vested title in SFR.

18 24. The Trustee's Deed Upon Sale was recorded in the Official Records of the Clark  
19 County Recorder as Instrument No. 201401130001460 ("Foreclosure Deed").

20 25. As recited in the Foreclosure Deed, "[a]ll requirements of law regarding the  
21 mailing of copies of notices and the posting and publication of the copies of the Notice of Sale  
22 have been complied with."

23 26. Prior to the Association sale, no release of the super-priority portion of the lien  
24 was recorded against the Property.

25 27. Prior to the Association sale, no lis pendens was recorded against the Property.

26 28. SFR's agent, Christopher Hardin, stated in his declaration that SFR had no reason  
27 to doubt the recitals in the Foreclosure Deed that all noticing requirements were satisfied in  
28 compliance with NRS 116 *et seq.* The recitals regarding default and noticing have been supported

1 by evidence of mailings and remain undisputed.

2 29. Mr. Hardin declared that neither he nor SFR had any relationship with the  
3 Association besides owning property within the community. There was no evidence presented to  
4 the draw this assertion into question.

5 30. Mr. Hardin declared that neither he nor SFR had any relationship with A&K, the  
6 Association's agent, beyond attending auctions, bidding, and occasionally purchasing properties  
7 at publicly-held auctions. There was no evidence presented to draw this assertion into question.

8 31. Default against Stacy Moore was entered on June 27, 2018.

9 32. Default against Magnolia Gotera was entered June 27, 2018.

10 CONCLUSIONS OF LAW

11 A. Summary judgment is appropriate "when the pleadings and other evidence on file  
12 demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is  
13 entitled to a judgment as a matter of law.'" *Wood v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026,  
14 1029 (2005). Additionally, "[t]he purpose of summary judgment 'is to avoid a needless trial when  
15 an appropriate showing is made in advance that there is no genuine issue of fact to be tried, and  
16 the movant is entitled to judgment as a matter of law.'" *McDonald v. D.P. Alexander & Las Vegas*  
17 *Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) quoting *Coray v. Hom*, 80 Nev.  
18 39, 40-41, 389 P.2d 76, 77 (1964). Moreover, the non-moving party "must, by affidavit or  
19 otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have  
20 summary judgment entered against [it]." *Wood*, 121 Nev. at 732, 121 P.3d at 1031. The non-  
21 moving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and  
22 conjecture." *Id.* Rather, the non-moving party must demonstrate specific facts as opposed to  
23 general allegations and conclusions. *LaMantia v. Redis*, 118 Nev. 27, 29, 38 P.3d 877, 879  
24 (2002); *Wayment v. Holmes*, 112 Nev. 232, 237, 912 P.2d 816, 819 (1996). Though inferences  
25 are to be drawn in favor of the non-moving party, an opponent to summary judgment, must show  
26 that it can produce evidence at trial to support its claim or defense. *Van Cleave v. Kietz-Mill Minit*  
27 *Mart*, 97 Nev. 414, 417, 633 P.2d 1220, 1222 (1981).

28 B. While the moving party generally bears the burden of proving there is no genuine

1 issue of material fact, in this case, there are a number of presumptions that this Court must  
2 consider in deciding the issues, including:

3 1. Recorded title is presumed valid. *See Brellant v. Preferred Equities Corp.*,  
4 112 Nev. 663, 670, 918 P.2d 314, 319 (1996)("[T]here is a presumption in favor of the  
5 record titleholder.")

6 2. Foreclosure sales and the resulting deeds are presumed valid. NRS  
7 47.250(16)-(18) (stating that there are disputable presumptions "[t]hat the law has been  
8 obeyed[,] "[t]hat a trustee or other person, whose duty it was to convey real property to  
9 a particular person, has actually conveyed to that person, when such presumption is  
10 necessary to perfect the title of such person or a successor in interest[,] "[t]hat private  
11 transactions have been fair and regular[,] and "[t]hat the ordinary course of business has  
12 been followed.").

13 3. A foreclosure deed issued pursuant to NRS 116.31164 that "recit[es]  
14 compliance with notice provisions of NRS 116.31162 through NRS 116.31168 "is  
15 conclusive" as to the recitals "against the unit's former owner, his or her heirs and assigns  
16 and all other persons" unless a party like Nationstar can establish that it is entitled to  
17 equitable relief from a defective sale. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132  
18 Nev. Adv. Op. 5, 1105 (2016); *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev.  
19 Adv. Op. 75, 334 P.3d 408, 411-412 (2014) (citing NRS 116.31166(2)).

20 4. That "[i]f the trustee's deed recites that all statutory notice requirements  
21 and procedures required by law for the conduct of the foreclosure have been satisfied, a  
22 rebuttable presumption arises that the sale has been conducted regularly and properly; this  
23 presumption is conclusive as to a bona fide purchaser." *Moeller v. Lien*, 30 Cal. App. 4th  
24 822, 831-32, 30 Cal. Rptr. 777, 783 (1994)(emphasis added); *see also* 4 Miller & Starr,  
25 Cal. Real Estate (3d ed. 2000) Deeds of Trust and Mortgages § 10:211, pp. 647-652; 2  
26 Bernhardt, Cal. Mortgage and Deed of Trust Practice (Cont.Ed.Bar 2d ed. 1990) § 7:59,  
27 pp. 476-477).

28 C. These presumptions "not only fix[] the burden of going forward with evidence, but

1 it also shifts the burden of proof." *Yeager v. Harrah's Club, Inc.*, 111 Nev. 830, 835, 897 P.2d  
2 1093, 1095 (1995)(citing *Vancheri v. GNLV Corp.*, 105 Nev. 417, 421, 777 P.2d 366, 368 (1989)).  
3 "These presumptions impose on the party against whom it is directed the burden of proving that  
4 the nonexistence of the presumed fact is more probable than its existence." *Id.* at 842 (citing NRS  
5 47.180).

6 D. Thus, Bank bore the burden of proving it was more probable than not that the  
7 Association sale and the resulting Foreclosure Deed were invalid. This burden has been confirmed  
8 in the recent case of *Nationstar Mortgage, LLC v. Saticoy Bay Series 2227 Shadow Canyon*, 133  
9 Nev. \_\_\_, \_\_\_, 405 P.3d 641, 646 (2017) ("...Nationstar has the burden to show that that the sale  
10 should be set aside in light of Saticoy Bay's status as the record title holder[.]" (citing *Brelant*,  
11 112 Nev. at 669, 918 P.2d at 318; NRS 47.250(16); NRS 116.31166(10-(2); and *Shadow Wood*  
12 *Homeowners Ass'n, Inc. v. New York Community Bankcorp, Inc.*, 132 Nev. \_\_\_, \_\_\_, 366 P.3d  
13 1105, 1111 (noting that NRS 107.030(8) provided the language in NRS 116.31166)).

14 E. Bank failed to meet its burden of proving it was more probable than not that the  
15 Association sale and the resulting Foreclosure Deed were invalid.

16 F. Pursuant to *SFR*, NRS 116.3116(2) gives associations a true super-priority lien,  
17 the non-judicial foreclosure of which extinguishes a first deed of trust. *SFR*, 334 P.3d at 419.

18 G. A properly conducted foreclosure sale conducted pursuant to NRS 116.31162-  
19 NRS 116.31168, like all foreclosure sales, extinguishes the title owner's interest in real property  
20 and all junior liens and encumbrances, including deeds of trust.

21 H. The Association foreclosure sale vested title in SFR "without equity or right of  
22 redemption." *SFR*, 334 P.3d at 412 (citing NRS 116.31166(3)).

23 I. These sales vest the purchaser with absolute title. *In re Grant*, 303 B.R. 205, 209  
24 (Bankr. D. Nev. 2003).

25 J. If the sale is properly, lawfully and fairly carried out, <sup>the Bank</sup>~~the Bank~~ cannot unilaterally  
26 create a right of redemption in [itself]. *Golden v. Tomiyasu*, 79 Nev. 503, 518 (1963).

27 K. Here, the sale was a non-judicial foreclosure sale conducted pursuant to NRS  
28 116.31166(2). The COURT FINDS the sale vested in SFR title without equity or right of

1 redemption and title must be quieted in favor of SFR.

2 L. *Shadow Wood* holds that the deed recitals are conclusive, unless a party like the  
3 Bank can establish that it is entitled to equitable relief from a defective sale. *Shadow Wood HOA*  
4 *v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 1105 (2016). Here, ~~the Bank~~ <sup>Nationstar</sup> has not established  
5 that this was a defective sale. As the purchaser at the Association foreclosure sale, SFR need only  
6 show the Trustee's Deed Upon Sale to be entitled to quiet title free and clear of the deed of trust  
7 since there was no defective sale. The COURT FINDS the deed recitals are conclusive.

8 M. The Bank is not entitled to equitable relief. The Nevada Supreme Court stated that  
9 when a BFP has no notice of a pre-sale dispute, such as an attempted tender, equity cannot be  
10 granted to the tendering party, who could defeat any BFP status by giving notice of an attempt to  
11 pay. Equitable relief cannot be granted to a party who ignored earlier remedies and allowed a BFP  
12 to purchase the property, when the relief would be to the detriment to the BFP. Here, the Bank  
13 failed to adequately protect its interest. It failed to try for earlier remedies and allowed a BFP to  
14 purchase the property. The COURT FINDS equitable relief is no longer available to the Bank.

15 N. The Foreclosure Deed and Sale are Presumed Valid. SFR contends that the Bank  
16 cannot overcome the presumptions that (1) the Association and its agent obeyed the law, (2) the  
17 property was conveyed to SFR, (3) the Association foreclosure sale was fair and regular, and  
18 conducted in the ordinary course of business. The COURT FINDS the DOT was extinguished by  
19 the Association foreclosure sale and since the property was conveyed to SFR, SFR is entitled to  
20 summary judgment on its claim for quiet title and permanent injunction. The Bank has not  
21 overcome the conclusive presumption that the foreclosure sale and resulting deed are valid, and  
22 SFR can rely on the conclusive recitals in the foreclosure deed.

23 O. To prevail on a claim for unjust enrichment, U.S. Bank must show that it conferred  
24 a benefit on SFR, that SFR appreciated such benefit, and there was acceptance and retention by  
25 [SFR] of such benefit under circumstances such that it would be inequitable for [SFR] to retain  
26 the benefit without payment of the value thereof. *Unionamerica Mtg. v. McDonald*, 97 Nev. 210  
27 212 (1981). Under NRCP 16.1(a)(1)(C), a party is required to produce, without awaiting a  
28 discovery request . . . [a] computation of any category of damages claimed. U.S. Bank contends

1 that SFR has benefited from U.S. Bank's payment of taxes, insurance, and homeowner s  
2 association assessments since the time of the HOA sale. However, U.S. Bank has not proven this  
3 to be true nor produced evidence that any such payments were made. Further, U.S. Bank has never  
4 disclosed any special damages under NRCP 16.1 on this issue. There being no evidence that U.S.  
5 Bank paid any monies toward the property or that SFR benefited from these payments, therefore,  
6 the COURT FINDS U.S. Bank's claim for unjust enrichment fails as a matter of law.

7 P. ~~The Bank~~ <sup>Nationstar</sup> contends a proper tender was made on 9/2/10 for the amount of \$207.00  
8 which represented the statutory super-priority amount of the HOA s lien at \$23.00 per month for  
9 months, thereby discharging the super priority lien in dispute. The Nevada Supreme Court held  
10 in *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. Adv. Op 35, 373 P.3d 66 (2016) that the  
11 superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees and  
12 foreclosure costs incurred; rather it is limited to an amount equal to the common expense  
13 assessments due during the nine months before foreclosure. While this Court acknowledges that  
14 in *Horizons at Seven Hills v. Ikon*, the association in question did not foreclose, the Nevada  
15 Supreme Court's in depth review of legislative history and statutory interpretation indicates the  
16 superpriority portion in question does not include fees and costs. *Id.* at 70. Therefore, the COURT  
17 FINDS said tender of \$207.00 was the proper amount of the superpriority lien, as it was nine  
18 months of assessments under NRS 116.3116(2).

19 Q. The question then hinges on whether this tender precludes SFR from taking said  
20 property free and clear of the DOT, or whether SFR takes said property subject to the DOT. The  
21 Court looks to whether refusal of the tender was grounded on an honest belief that the tender was  
22 insufficient. See, 59 C.J.S. Mortgages 582 (2016); *Bank of Am., N.A. v. Rugged Oaks Investments,*  
23 *LLC*, 68504, 2016 WL 5219841, at \*1 (Nev. Sept. 16, 2016)( It has been held... that a good and  
24 sufficient tender on the day when payment is due will relieve the property from the lien of the  
25 mortgage, except where the refusal [of payment] was... grounded on an honest belief that the  
26 tender was insufficient. ). ~~The Bank's~~ <sup>Nationstar's</sup> tender of the past due assessments in the amount of \$207.00  
27 occurred on 9/2/10, which was rejected by the HOA Trustee. However, SFR did not have  
28 knowledge of this tender, either by inquiry notice or constructive notice. ~~The Bank~~ <sup>Nationstar</sup> has failed to



1 set forth sufficient information that proper notice of the tender was provided, such that individuals  
2 or entities would be put on notice of the same. The Association rejected the payment in good faith.  
3 ~~The Bank~~ <sup>Nationstar</sup> failed to record its performance so as to protect itself from third-party purchasers as  
4 required by NV law. David Alessi testified that Alessi & Koenig did not receive the letter with  
5 the check. If Alessi & Koenig never received the purported tender there was nothing to reject. All  
6 the Bank has is a copy of the purported check and a screenshot, neither of which are properly  
7 admissible. Further, Doug Miles was not disclosed and has defects in his affidavit. The Bank is  
8 lacking admissible evidence to establish the delivery of the check, or admissible evidence that the  
9 check was rejected without explanation. Thus, SFR was a bona fide purchaser ("BFP"). A  
10 subsequent purchaser is bona fide purchaser under common-law principles if it takes the property  
11 for a valuable consideration and without notice of the prior equity, and without notice of facts  
12 which upon diligent inquiry would be indicated and from which notice would be imputed to him,  
13 if he failed to make such inquiry. *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947)  
14 (emphasis omitted); see also *Moore v. De Bernardi*, 47 Nev. 33, 54, 220 P. 544, 547 (1923) (The  
15 decisions are uniform that the bona fide purchaser of a legal title is not affected by any latent  
16 equity founded either on a trust, [e]ncumbrance, or otherwise, of which he has no notice, actual  
17 or constructive.). The Nevada Supreme Court has further held, that [w]here the complaining party  
18 has access to all the facts surrounding the questioned transaction and merely makes a mistake as  
19 to the legal consequences of his act, equity should normally not interfere, especially where the  
20 rights of third parties might be prejudiced thereby. *Shadow Wood*, 366 P.3d at 1116 (quoting  
21 *Nussbaumer v. Sup. Ct. in & for Yuma Cty.*, 107 Ariz. 504, 489 P.2d 843, 846 (1971)). In *Shadow*  
22 *Wood*, the Nevada Supreme Court held that [c]onsideration of harm to potentially innocent third  
23 parties is especially pertinent where [the lender] did not use the legal remedies available to it to  
24 prevent the property from being sold to a third party, such as by seeking a temporary restraining  
25 order and preliminary injunction and filing a lis pendens on the property. *Shadow Wood*, 366 P.3d  
26 at 1114 fn. 7. Here, ~~the Bank~~ <sup>Nationstar</sup> was in the position to take any number of simple steps to avoid a  
27 BFP issue and simply failed to take such action. The Bank has failed to offer any evidence to  
28 refute that SFR had no knowledge of a prior equity and paid valuable consideration. Lastly, in the

Hardin declaration, SFR provided evidence of being a BFP The COURT FINDS Nationstar failed to protect its interest in said property, and SFR is a BFP.

R. ~~The Bank~~ <sup>Nationstar</sup> contends the sales price at the HOA foreclosure sale was grossly inadequate and was commercially unreasonable. To set aside an association foreclosure sale on a theory of commercial unreasonableness there must be a showing of grossly inadequate price, plus, fraud, unfairness, or oppression. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1112 (2016) (citing *Long v. Towne*, 98 Nev. 11, 13, 639, P.2d 528, 530 (1982)); *See also Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at \*1 (Nev. Mar. 18, 2016)(unpublished Order Vacating and Remanding)(Holding a low sales price is not a basis for voiding a foreclosure sale absent fraud, unfairness, oppression...); *See also Golden v. Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale foreclosure may not be set aside for mere inadequacy of price, it may be if the price is grossly inadequate and there is in addition proof of some element of fraud, unfairness, or oppression (internal quotation omitted))). The Supreme Court of Nevada recently clarified that in Nevada, courts retain the power to grant equitable relief from a defective [association] foreclosure sale when appropriate .... *Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*, 366 P.3d 1105, 1110 (Nev.2016) (en banc). [D]emonstrating that an association sold a property at its foreclosure sale for an inadequate price is not enough to set aside a foreclosure sale; there must also be a showing of fraud, unfairness, or oppression. *Id.* (citing *Long*, 98 Nev. 11, 639 P.2d 530). In considering whether equity supports setting aside the sale in question, the Court is to consider any other factor bearing on the equities, including actions or inactions of both parties seeking to set aside the sale and the impact on a bona fide purchaser for value. *Id.* at 1114 (finding courts must consider the entirety of the circumstances that bear upon the equities). Here, ~~the Bank~~ <sup>Nationstar</sup> contends that the sale should be set aside under equitable principles because the sale of the Property for less than 20% of its fair market value is grossly inadequate. The Court, however, does not find this argument to be persuasive. The analysis for finding fraud, unfairness, or oppression applies to the seller (HOA) and purchaser, not whatever mistake may have occurred by the HOA in rejecting tender or accepting payments from the Borrower. *See Golden v.*



1 *Tomiyasu*, 79 Nev. 503, 513, 387 P.2d 989, 994 (reviewing fraud and collusion between the  
2 foreclosing trustee and bidders, not fraud, unfairness, or oppression in the underlying trustee s  
3 substantive actions). *See also Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL  
4 1122449, at \*1 (Nev. Mar. 18, 2016)(unpublished Order Vacating and Remanding)(Holding a  
5 low sales price is not a basis for voiding a foreclosure sale absent fraud, unfairness, oppression...).

6 Because the Bank failed to set forth material issues of fact demonstrating some fraud, unfairness,  
7 or oppression with the actual sale to demonstrate commercial unreasonableness, the COURT  
8 FINDS the sale in question was commercially reasonable.

9 S. On 8/31/15, Nationstar recorded a lis pendens against the property. NRS 14.015  
10 sets forth the requirements for maintaining a lis pendens on a property. Here, when Nationstar  
11 recorded the lis pendens, it did not have a pending action that was for (1) foreclosure or (2) that  
12 affected title or possession of the property and still has no pending claims against SFR today. The  
13 NRCP30(b)(6) deposition of U.S. Bank and Nationstar, concedes that Nationstar only services  
14 the loan and that it does not have an interest in the promissory note or deed of trust. Because  
15 Nationstar lacked any basis to record the lis pendens against the property in the first place and  
16 still lacks basis to maintain it, SFR is entitled to a judgment from this Court on its slander of title  
17 claim against Nationstar and that the lis pendens be expunged.

18 T. Pursuant to NRS 116.31166(2), when SFR made the highest bid and purchased the  
19 property at the Association sale, it obtained the title of the unit's owner without equity or right of  
20 redemption. Thus, any interest Moore and/or Gotera could claim in the property was extinguished.  
21 On 6/27/18 default was entered against Moore and Gotera for failing to answer SFR s complaint.

22 U. As a result of the Association's non-judicial foreclosure sale, the DOT was  
23 extinguished. As such, SFR is entitled to summary judgment on its claim for quiet title and a  
24 permanent injunction.

25 V. Any attempt to foreclose on the DOT by the Bank would be invalid as the DOT  
26 was extinguished by the Association sale.

27 W. Any assignment, sale, or transfer of the DOT by the Bank has no legal effect  
28 because the DOT was extinguished by the Association sale.

X. Any attempt to take or maintain possession of the Property by the Bank would be invalid because its interest in the Property, if any, was extinguished by the Association sale.

**ORDER**

**IT IS ORDERED, ADJUDGED, AND DECREED** that SFR's Motion for Summary Judgment is **GRANTED**.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Nationstar's Motion for Summary Judgment is **DENIED**.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that U.S. Bank's Joinder to Nationstar's Motion for Summary Judgment is **DENIED**.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Association's non-judicial foreclosure sale relating to real property located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-007 extinguished the DOT recorded against the Property in the Official Records of the Clark County Recorder as Instrument No. 20051121-0005567.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Nationstar has no further right, title, or interest in real property located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-007, and is hereby permanently enjoined from taking any further action to cloud SFR's title to the Property or enforce the now extinguished DOT, including but not limited to initiating, or continuing to initiate, foreclosure proceedings and from selling or transferring the Property.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that U.S. Bank has no further right, title, or interest in real property located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-007, and is hereby permanently enjoined from taking any further action to cloud SFR's title to the Property or enforce the now extinguished DOT, including but not limited to initiating, or continuing to initiate, foreclosure proceedings and from selling or transferring the Property.

...

...

1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that title to real property  
2 located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-007 is  
3 hereby quieted in favor of SFR.

4 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that JUDGMENT be  
5 entered in favor of SFR pursuant to this ORDER.

6 **IT IS SO ORDERED.**

7 DATED this 26 day of Nov, 2018.

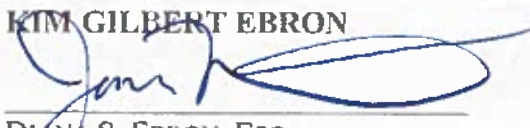
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9   
DISTRICT COURT JUDGE  
10 Jm

11 Respectfully Submitted By:

Approved as to Form and Content By:

12 **KIM GILBERT EBRON**

**AKERMAN LLP**

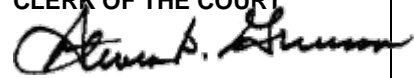
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*Attorneys for Defendant Nationstar Mortgage, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC,

Plaintiff,

v.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBWNO  
REVOCABLE LIVING TRUST, a trust; U.S.  
BANK, N.A., a national banking association;  
NATIONSTAR MORTGAGE, LLC, a foreign  
limited liability company; REPUBLIC SILVER  
STATE DISPOSAL, INC., DBA REPUBLIC  
SERVICES, a domestic government entity; DOE  
INDIVIDUALS I through X, inclusive; and  
ROE CORPORATIONS XI through XX  
inclusive.

Defendants.

Case No.: A-14-705563-C

Dept.: XVII

**DEFENDANT NATIONSTAR  
MORTGAGE, LLC'S MOTION FOR  
RECONSIDERATION AND/OR TO  
ALTER/AMEND JUDGMENT**

1 U.S. BANK, N.A.,  
2 Counterclaimant,  
3 vs.  
4 ALESSI & KOENIG, LLC, a Nevada limited  
liability company,  
Counter-Defendant.

5 U.S. BANK, N.A.,  
6 Third Party Plaintiff,  
7 v.  
8 SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company; INDIVIDUAL DOES  
9 I through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive.  
10 Third Party Defendants.

11 SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company,  
12 Third Party Counterclaimant/Cross-claimant,  
13 vs.  
14 U.S. BANK, N.A.; NATIONSTAR  
MORTGAGE, LLC, a foreign limited liability  
15 company; KRISTIN JORDAL, AS TRUSTEE  
FOR THE JBWNO REVOCABLE LIVING  
16 TRUST, a trust; STACY MOORE, an  
individual; and MAGNOLIA GOTERA, an  
17 individual,  
18 Counter-Defendant/Cross-Defendants.

19 **DEFENDANT NATIONSTAR MORTGAGE, LLC'S MOTION FOR RECONSIDERATION**  
20 **AND/OR TO ALTER/AMEND JUDGMENT**

21 COMES NOW, Defendant / Cross-Defendant, NATIONSTAR MORTGAGE, LLC  
22 ("Nationstar" or "Defendant"), by and through its attorneys, GERRARD COX LARSEN and  
23 AKERMAN, LLP, and hereby move this Court for reconsideration of its Findings of Facts and  
24 Conclusions of Law and/or to alter or amend the Findings and Fact and Conclusions of Law entered  
25 into this Court on November 29, 2018. This Motion is made and based upon the pleadings and  
26 papers on file, the exhibits, Points and Authorities attached hereto, the Declarations submitted  
27 herewith, and any oral argument the Court may entertain at the time of the hearing.  
28

Dated this 13<sup>th</sup> day of January, 2019.

**GERRARD COX LARSEN**

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Attorneys for Defendant Nationstar  
Mortgage, LLC

**NOTICE OF MOTION**

TO: ALL PARTIES IN INTEREST

PLEASE TAKE NOTICE that Defendant / Counter-claimant NATIONSTAR MORTGAGE, LLC will be bring the foregoing **MOTION FOR RECONSIDERATION AND TO ALTER / AMEND JUDGMENT** on for hearing before the Eighth Judicial District Court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155 on the 20 day of XVIII **February**, 2019, at the hour of 9:00 o'clock a.m. of said date, in Department ~~XVII~~, or as soon thereafter as counsel may be heard.

DATED this 13<sup>th</sup> day of January, 2019

**GERRARD COX LARSEN**

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Attorneys for Defendant Nationstar  
Mortgage, LLC

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

This lawsuit arises out of a dispute between the parties over the legal effect of a non-judicial foreclosure of real property located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; APN 163-30-312-007 (the “Property”) that was conducted by Shadow Mountain Ranch Community Association (“Shadow Mountain” or the “HOA”) through its agent, Alessi & Koenig, LLC (“Alessi & Koenig” or the “HOA Trustee”) pursuant to NRS 116 (“HOA Lien Statute”).

On November 29, 2018, this Court issued its Findings of Fact and Conclusions of Law (the “FFCL”) granting SFR Investments Pool 1, LLC’s (“SFR”) Motion for Summary Judgment against Nationstar Mortgage, LLC and U.S. Bank, N.A. *See* FFCL attached hereto as **Exhibit “A”** and incorporated herein by this reference.

The Court concluded that Nationstar failed to protect its interest the Property, and that as a result SFR was a bona fide purchaser. *See* FFCL at **Exhibit “A”** at 11:27-12:2. The Court further concluded that the HOA’s non-judicial foreclosure sale extinguished Nationstar’s Deed of Trust and that title to the Property was quieted in favor of SFR. However, as set forth herein, the Court made numerous errors in its findings of facts, which included failing to consider the Affidavit of Rock Jung, Esq. which clearly attested that a check in the full amount of the HOA’s super-priority lien was tendered to the HOA Trustee prior to the HOA Sale, and rebutted SFR’s claim that Nationstar’s predecessor failed to protect its interest in the Deed of Trust.

The Court further came to an erroneous conclusion based on the testimony of David Alessi, the witness for the HOA Trustee, that the HOA Trustee never received a tender from the Bank. Quite to the contrary, Mr. Alessi testified that he could not conclude whether a check was received based on the information he had before him at the deposition; however, a copy of the tendered check clearly appears in the documents produced in this case by Alessi & Koenig, from Alessi’s business records, as was made clear to the Court in Nationstar’s Reply in support of its Motion for Summary Judgment. Inexplicably, the Court ignored all of these crucial pieces of evidence in its findings of facts.

1 Finally, the law with respect to tender has also significantly changed since the August 15, 2018  
2 hearing on the competing motions for summary judgment, with the Supreme Court's decision in *Bank*  
3 *of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. Adv. Op. 72 (Sept. 13, 2018). The *Bank*  
4 *of America* decision refutes nearly every defense raised by SFR in this case. Based on the evidence  
5 that was ignored or improperly excluded by the Court and the *Bank of America* decision, Nationstar is  
6 entitled to summary judgment for the following reasons:

7 **First**, BAC Home Loan Servicing, the servicer for the loan secured by the deed of trust ("Deed  
8 of Trust"), tendered a check to the HOA in the amount the HOA represented would constitute nine  
9 months of assessments, and thus fully satisfied the super-priority portion of the HOA's lien prior to the  
10 HOA's foreclosure sale, rendering the HOA's sale either void or subject to the Deed of Trust. The  
11 Nevada Supreme Court made it clear in *SFR Investments* that a senior mortgagee can tender the super-  
12 priority amount of an association's lien prior to the association's foreclosure sale to maintain the  
13 priority of its deed of trust. *See SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 418  
14 (Nev. 2014). Because BAC tendered an amount equal to the statutory super-priority amount of the  
15 HOA's lien before the HOA's foreclosure sale, and the HOA unjustifiably rejected the tender, the  
16 tender discharged the lien and invalidated the subsequent foreclosure HOA Sale because the sale  
17 purports to extinguish the Deed of Trust. *See Bank of America, N.A. v. SFR Investments Pool 1, LLC*,  
18 134 Nev. Adv. Op. 72 (Sept. 13, 2018). Because the HOA had no right to foreclose the extinguished  
19 super-priority lien, the sale is void. *Id.* When a sale is void, no title passes to the subsequent purchaser  
20 and a bona fide purchaser status cannot validate a void sale. *Id.* *See also* 1 Grant S. Nelson, Dale A.  
21 Whitman, Ann M. Burkhardt & R. Wilson Freyermuth, *Real Estate Finance Law* § 7:21 (6th ed. 2014).  
22 Furthermore, as confirmed in *Bank of America*, the tender made to the HOA Trustee was unconditional,  
23 BAC was not required to record its tender, nor was BAC or Nationstar required to keep its tender good.

24 **Second**, the sale of the Property for 19.2% of its fair market value, coupled with the blatant  
25 unfairness of proceeding with the foreclosure sale after BAC had tendered a check to fully satisfy the  
26 super-priority portion of the HOA's lien, rendered the HOA's foreclosure sale commercially  
27 unreasonable and requires that the sale be set aside. As confirmed by the Nevada Supreme Court in  
28 *Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty, Bancorp, Inc.*, 132 Nev. Adv. Rep. 5, 366



1 P.3d 1105 (2016), a sale for less than 20% of a property's fair market value is grossly inadequate, and  
2 according to *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev.  
3 Adv. Op. 91, 405 P.3d 641, 642 (2017) this grossly inadequate price is a highly relevant factor in  
4 determining whether to set the sale aside. In *Saticoy Bay* the Supreme Court explained that this grossly  
5 inadequate price coupled with "very slight additional evidence of unfairness" is all that is needed for  
6 the Court to set the sale aside. Here we have a material defect in the sale itself as the HOA proceeded  
7 to foreclose after the super-priority lien tender had discharged the super-priority portion of the lien,  
8 which is both unfair, oppressive and fraudulent as the HOA no longer held a lien to foreclose (except  
9 for its sub-priority lien).

10 **Third**, while the *Shadow Wood* court explained that a court must take the potential harm to a  
11 bona fide purchaser into account in determining whether to set aside a foreclosure sale, SFR is not  
12 entitled to this additional protection because a bona fide purchaser status is no defense to a void sale.  
13 The Court concluded that SFR was a bona fide purchaser because it wrongfully ignored evidence that  
14 a tender was made to the HOA and by coming to the erroneous conclusion that the Bank had a duty  
15 to put SFR on inquiry notice of the tender (which is flatly rejected by *Bank of America*). The tender  
16 to the HOA rendered the subsequent HOA sale void as the HOA lacked authority to proceed with the  
17 sale. *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. Adv. Op. 72 (Sept. 13, 2018);  
18 see also 1 Grant S. Nelson, Dale A. Whitman, Ann M. Burkhardt & R. Wilson Freyermuth, Real  
19 Estate Finance Law § 7:21 (6th ed. 2014). If a sale is void, no title passes to the purchaser and the  
20 bona fide purchaser defense is inapplicable. *Id.*; *7912 Limbwood Court Trust v. Wells Fargo Bank,*  
21 *N.A.*, 2:13-CV-00506-APG-GWF (D. Nev. 2015).

22 Thus, the Court's decision was clearly erroneous based upon the undisputed facts and the  
23 proper application of current Nevada law. Based on the arguments set forth herein, the Court should  
24 grant Nationstar's Motion to Reconsider and grant summary judgment in favor of Nationstar. For the  
25 reasons set forth below, Nationstar respectfully requests that the Court reconsider its FFCL.

**II.**

**STATEMENT OF FACTS**

1. On or about November 21, 2005, Magnolia Gotera ("Gotera" or the "Borrower") purchased the subject property located at 5327 Marsh Butte, Las Vegas, Nevada 89148 (the "Property") as evidenced by a Grant, Bargain, Sale Deed recorded in the Official Records of Clark County, Nevada as Instrument No. 20051121-0005566. *See Exhibit "A"* at 2:26-3:3. A true and correct copy of the Grant, Bargain, Sale Deed is attached hereto as **Exhibit "B"**.

2. A Deed of Trust (the "Deed of Trust") listing Gotera as the Borrower, Countrywide Home Loans, Inc. as the Lender ("Lender") and MERS as beneficiary was recorded on November 21, 2005 in the Official Records of Clark County, Nevada as Instrument No. 20051121-0005567. The Deed of Trust granted Lender a security interest in the Property to secure the repayment of a loan in the original amount of \$508,250.00 (the "Loan"). *Id. See Exhibit "A"* at 3:4-7. A true and correct copy of the Deed of Trust which was recorded is attached hereto as **Exhibit "C"**.

3. The Deed of Trust included a Planned Unit Development Rider, that contained the following provision:

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

See ¶ 9 of Deed of Trust attached hereto as **Exhibit "C"**. (Emphasis Added); See also FFCL at 3:8-13.

4. The Borrower fell behind on her obligations to the HOA, as evidenced by that certain Notice of Delinquent Assessment Lien that was recorded against the Property on May 7, 2008 in the

1 Official Records of Clark County, Nevada as Inst. No. 20080507-0001378 ("1<sup>st</sup> HOA Lien"), by the  
2 HOA through its agent, Alessi & Koenig. A true and correct copy of the HOA Lien is attached hereto  
3 as **Exhibit "D"**.

4 5. After two other earlier recorded default notices, on July 1, 2010, the HOA through its  
5 agent, Alessi & Koenig, recorded a third Notice of Default and Election to Sell in the Official Records  
6 of Clark County, Nevada as Inst. No. 20100701-0000190 ("HOA NOD"). The HOA NOD stated the  
7 amount due Shadow Mountain HOA was \$3,140.00 which included assessments, late fees, interest,  
8 and collection costs. A true and correct copy of the HOA NOD is attached hereto as **Exhibit "E"**.

9 6. On September 2, 2010, MERS as nominee for BAC Home Loans Servicing, LP, fka  
10 Countrywide Home Loans, Inc. ("BAC"), through its counsel, Rock K. Jung, Esq. of the law firm of  
11 Miles, Bauer, Bergstrom & Winters, LLP ("Miles Bauer"), sent a letter to the HOA and HOA Trustee  
12 in response to the HOA NOD requesting the status of the foreclosure sale including the amount due in  
13 arrears. Furthermore, Mr. Jung stated in his letter as follows: "It is unclear, based upon the information  
14 known to date, what amount the nine months' of common assessments pre-dating the NOD actually  
15 are. That amount, whatever it is, is the amount BAC should be required to rightfully pay to fully  
16 discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum  
17 upon presentation of adequate proof of the same by the HOA." See Miles Bauer Affidavit attached  
18 hereto as **Exhibit "F"** and the Miles Bauer Letter dated September 2, 2010 attached hereto as **Exhibit**  
19 **"F-1"**. (Emphasis added). See also **Exhibit "A"** at 15:10-17. See also Affidavit of Rock K. Jung, Esq.  
20 attached hereto as **Exhibit "G"**.

21 7. On or about September 28, 2010, Miles Bauer delivered a check for \$207.00 to Alessi,  
22 which represented nine months of common assessments at \$23.00 per month ( $\$23.00 \times 9 = \$207.00$ ).  
23 See **Exhibit "F-5"**. The Court concluded that the amount of \$207.00 of the tendered check was  
24 the correct amount of the super-priority lien, as it was nine months of assessments under NRS  
25 116.3116(2). See **Exhibit "A"** at 10:16-18. However, because the HOA Trustee disagreed with the  
26 amount Miles Bauer offered to satisfy the super-priority portion of the HOA's lien, it rejected the  
27 tendered check. See Miles Bauer Affidavit attached hereto as **Exhibit "F" and "F-5"** and Deposition  
28 of David Alessi at **Exhibit "T"** at 53-54. In the Reply in Support of its Motion, Nationstar presented

1 the Affidavit of Rock K. Jung, Esq. attesting that he sent a tender check in the amount of \$207.00 to  
2 Alessi & Koenig. *See* **Exhibit “G”**. The Court did not address or acknowledge Mr. Jung’s affidavit in  
3 the FFCL, but made an unsupported finding that there was no admissible evidence the tender check  
4 was sent.<sup>1</sup> *See* **Exhibit “A”** at 4:10-17.

5 8. On November 30, 2010, the HOA and its agent, Alessi, released the HOA Lien as  
6 evidenced by that certain Release of Delinquent Assessment Lien recorded in the Official Records of  
7 Clark County, Nevada as Instrument No. 20101130-0003315. A true and correct copy of the Release  
8 of Delinquent Assessment Lien is attached hereto as **Exhibit “H”**. As of the date of the Release, the  
9 balance of the HOA Lien, which included delinquent assessments, late fees, and nuisance abatement  
10 was approximately \$2,545.00 as indicated in Shadow Mountain HOA’s account ledger. *See* Shadow  
11 Mountain HOA Ledger attached hereto as **Exhibit “I”** which is supported by the Affidavit of David  
12 Alessi as Custodian of Records for Alessi & Koenig, attached hereto as **Exhibit “J”**.

13 9. On or about January 26, 2011, Alessi recorded a Notice of Trustee’s Sale against the  
14 Property, as Inst. No. 20110126-0002852, in the Official Records of Clark County, Nevada (“HOA  
15 NOS”). The HOA NOS stated the amount due to Shadow Mountain HOA was \$5,757.00<sup>2</sup> which  
16 included assessments, late fees, interest, and collection costs. A true and correct copy of the HOA NOS  
17 is attached hereto as **Exhibit “K”**.

18 10. On May 27, 2011, Gotera transferred her interest in the Property to JBNWO Revocable  
19 Living Trust as evidenced by the Grant Deed recorded in the Official Records of Clark County, Nevada,  
20 as Inst. No. 20110527-0004010. *See* **Exhibit “A”** at 3:14-16.

21 11. On May 27, 2011, Kristin Jordal, acting in her capacity as the Trustee of the JBNWO  
22 Revocable Living Trust, transferred her interest in the Property to Stacy Moore as evidenced by the  
23 Grant Deed recorded in the Official Records of Clark County, Nevada, as Inst. No. 20110527-0004011.  
24 *See* **Exhibit “A”** at 3:17-19.

25 <sup>1</sup> The Court made this finding by also disregarding the Affidavit of Doug Miles, on the basis that Mr. Miles had not been  
26 properly disclosed as a witness. The Rule 30(b)(6) designee of the Miles Bauer Firm had been properly disclosed, as  
27 discussed below, and it was error for the Court to reject this Affidavit, but it cannot be disputed that Rock Jung was  
28 disclosed as a witness and his Affidavit makes it clear that the tender check was delivered.

<sup>2</sup> The amount of \$5,757.00 as stated in the HOA NOS includes all of assessments covered by the Release and appears to  
include additional trustee fees charged by Alessi & Koenig as the account ledger for the Property indicates a balance of  
\$2,602.94 on January 31, 2011. *See* **Exhibit “I”**.

12. On November 2, 2011, MERS assigned the Loan and the Deed of Trust to U.S. BANK, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund ("US Bank") by virtue of that certain Assignment of Deed of Trust recorded in the Official Records of Clark County, Nevada ("Assignment") as Inst. No. 20111101-0000754. *See Exhibit "A"* at 3:20-22-19. A true and correct copy of the Assignment is attached hereto as **Exhibit "L"**.

13. On September 11, 2012, Shadow Mountain HOA and its agent, Alessi, recorded a new Notice of Delinquent Assessment Lien against the Property in the Official Records of Clark County, Nevada, as Inst. No. 20120911-0002023 ("Second HOA Lien"). *See Exhibit "A"* at 10:23-25. The Second HOA Lien stated the amount due Shadow Mountain HOA was \$6,448.00 **which included in full all assessments, late fees, interest, collection costs from the prior owner, Gotera, in the amount of \$2,730.00.** *See* also Shadow Mountain HOA's Ledger attached hereto as **Exhibit "M"**.

14. The HOA Ledgers show that no payments were made on this HOA account after the 1<sup>st</sup> HOA Lien was recorded May 7, 2008, and that **all of the same assessments included in the First HOA Lien were included in the Second HOA Lien** recorded September 11, 2012. *See* HOA Ledgers attached as **Exhibits "I" and "M"**.

15. On or about July 5, 2013, Shadow Mountain HOA and its agent, Alessi, recorded a Notice of Default and Election to Sell in the Official Records of Clark County, Nevada, as Inst. No. 20130705-0000950 ("Second HOA NOD"). The Second HOA NOD stated the amount due Shadow Mountain HOA was \$6,631.41 which included assessments, late fees, interest, and collection costs. A true and correct copy of the Shadow Mountain HOA NOD is attached hereto as **Exhibit "N"**. The FFCL did not include any finding that the July 5, 2013 HOA NOD was recorded but made reference to it at 4:2-8 in **Exhibit "A"**.

16. On October 1, 2013, MERS assigned its remaining interest as the servicer of the Loan to Nationstar Mortgage, LLC by virtue of that certain Assignment of Deed of Trust recorded in the Official Records of Clark County, Nevada ("Second Assignment") as Inst. No. 20131001-0002401. *See Exhibit "A"* at 4:18-20. A true and correct copy of the Second Assignment is attached hereto as **Exhibit "O"**.

1           17.       On or about December 10, 2013, Shadow Mountain HOA and its agent, Alessi, recorded  
2 a Notice of Trustee's Sale against the Property, as Inst. No. 20131210-0001308, in the Official Records  
3 of Clark County, Nevada (the "Second HOA NOS"). The Second HOA NOS stated the amount due to  
4 Shadow Mountain HOA was \$8,017.11 which included assessments, late fees, interest, and collection  
5 costs. *See Exhibit "A"* at 5:10-13 and 5:18-20. A true and correct copy of the Second HOA NOS is  
6 attached hereto as **Exhibit "P"**.

7           18.       On May 7, 2014, Shadow Mountain HOA and its agent, Alessi, conducted a foreclosure  
8 sale of the Property, whereat SFR Investments Pool 1, LLC ("SFR") purported to be the highest bidder  
9 and allegedly purchased the Property for \$59,000.00 (the "HOA Sale") as evidenced by that certain  
10 Trustee's Deed Upon Sale in favor of SFR recorded in the Official Records of Clark County, Nevada  
11 as Inst. No. 20140113-0001460 ("TDUS"). A true and correct copy of the TDUS is attached as **Exhibit**  
12 **"Q"**. *See Exhibit "A"* at 5:10-13 and 5:18-20.

13           19.       At the time of the foreclosure sale, the fair market value of the Property was  
14 \$306,000.00. *See* Declaration of R. Scott Dugan, SRA attached hereto as **Exhibit "R"**. The purchase  
15 price of \$59,000.00 for the Property at the HOA's foreclosure sale was 19.2% of the Property's fair  
16 market value.

17           20.       On November 28, 2018, the Court issued its Findings of Fact and Conclusion of Law  
18 (hereinafter "FFCL") which completely ignores or disregards critical evidence, and did not even  
19 reference the controlling *Bank of America* case decided two months earlier on September 13, 2018.  
20 The Court found that the Affidavit of Doug Miles, Esq., as the corporate designee and custodian of  
21 records for Miles Bauer, was inadmissible to evidence that a check in the amount of \$207.00 to satisfy  
22 the super-priority portion of the HOA's lien was delivered to the HOA Trustee because Nationstar  
23 failed to properly disclose Douglas Miles as a witness. *See FFCL at 4:16-17*. However, in its Reply,  
24 Nationstar included an Affidavit from Rock K. Jung, Esq. as evidence that a tender in the amount of  
25 \$207.00 was delivered. A copy of Rock K. Jung's Affidavit is attached hereto as **Exhibit "G"**.  
26 Nationstar Mortgage, LLC's Second Supplement Disclosures of Documents and Witnesses served June  
27 21, 2018, (attached hereto as **Exhibit "S"**) clearly disclosed both Rock Jung, Esq. as a witness (page  
28

1 4, no. 11) and the Corporate Representative and/or 30(b) Witness for Miles, Bauer & Winters, LLP, as  
2 a witness (page 5, no. 20).

3 21. In its FFCL, the Court found that “David Alessi testified that Alessi & Koenig did not  
4 receive the letter with the check. If Alessi & Koenig never received the purported tender there was  
5 nothing to reject.” *See* FFCL at 11:4-7. However, this finding is clearly erroneous as it is completely  
6 inconsistent with both David Alessi’s testimony and the Affidavits of both Doug Miles and Rock Jung.  
7 David Alessi never testified that the HOA Trustee did not receive the check. He testified that he did  
8 not know whether the HOA Trustee received the check because he did not see the check referenced in  
9 Alessi’s status report. In particular, David Alessi testified about his knowledge of the tendered check  
10 in relevant part is as follows:

11 Q. David, Exhibit J is a letter dated September 30, 2010 from Miles Bauer to Alessi &  
12 Koenig; the third page of which includes a Miles Bauer check payable to Alessi &  
13 Koenig for \$207. Have you seen this document before, or did you see it in your review  
of the collection file?

14 A. I did not.

15 Q. I mean, do you know if Alessi & Koenig received Exhibit J?

16 A: **I don't know.** I would expect to see either a copy of the check -- and this is  
17 based on my prior testimony in depositions -- either a file -- copy of the check in our  
18 file, in our production or a reference to the check in the status report or both. **However,**  
19 **the absence of a reference in the status report and a copy in our check -- in our file**  
20 **would not lead me to believe conclusively that we didn't receive the check.**

21 *See* Deposition of David Alessi at 24:21-25:25 attached herein as **Exhibit “T”**. Emphasis  
22 Added).

23 22. Mr. Alessi testified that a copy of the check in Alessi’s file would demonstrate to him  
24 that the check was received by Alessi. **Exhibit “J”** is David Alessi’s Custodial Affidavit for the  
25 documents Alessi produced as its file for this collection action, which are available on-line and can be  
26 easily verified. Those documents were bates labeled and disclosed by Nationstar as  
27 NATIONSTAR00036-00333. *See* **Exhibit “S”**. The tender check is clearly included within Alessi’s  
28 disclosed file. Nationstar attached these previously disclosed documents to its Reply in Support of the  
Motion for Summary Judgment; however, the Court completely ignored these properly disclosed  
documents in rendering its findings. *See* Documents from Alessi’s collection file (attached hereto as  
**Exhibit “U”**).

23. The Alessi collection file, produced as the business records of Alessi maintained in the ordinary course of Alessi's business operations, contains a copy of both the Miles Bauer tender letter and the tender check. This cannot be refuted and is not refuted by the deposition testimony of David Alessi. The Affidavits of both Rock Jung and Doug Miles clearly attest that the tender check was delivered to Alessi, and there is no admissible evidence to the contrary that was ever submitted to the Court or that exists.

### III.

#### ADMISSIBILITY OF EXHIBITS

Nationstar requests that this Court take judicial notice of **Exhibit "A"** in accordance with N.R.S. § 47.140, as it is a judicial orders or publications issued by District of Nevada constituting the record from this case.

Nationstar requests that the Court take judicial notice of the following exhibits pursuant to N.R.S. § 47.130: **Exhibits "B", "C", "D", "E", "H", "K", "L", "M", "N", "O", "P", and "Q"** as they are self-authenticating documents pursuant to N.R.S. § 52.165 due to these documents being acknowledged with a notarial certificate and recorded in the public records of Clark County, Nevada. **Exhibits "F", "F-1", "F-2", "F-3", "F-4", and "F-5"** are supported by the Affidavit of Douglas Miles, Esq. of Miles Bauer & Winters, LLP. **Exhibits "G"** is an affidavit from Rock K. Jung, Esq. **"M"**. **Exhibits "I" and "M"** were produced by either the HOA or HOA Trustee in response to a Subpoena *Duces Tecum* and are authenticated by the Deposition testimony of David Alessi, attached hereto as **Exhibit "T"**. **Exhibit "R"** is supported by the Declaration of R. Scott Dugan, SRA, Certified General Appraiser and Nationstar's designated expert witness in this case. **Exhibit "S"** is supported by the Affidavit of Fredrick J. Biedermann, Esq. attached hereto as **Exhibit "V"**. **Exhibit "U"** consisted of disclosed documents from Alessi & Koenig, LLC's collection file to the subject Property which is supported by the Affidavit of Custodian of Records, which is attached hereto as **Exhibit "J"** and Affidavit of Fredrick J. Biedermann, Esq. attached hereto as **Exhibit "V"**.



## IV.

**LEGAL STANDARD****A. LEGAL STANDARD FOR MOTION TO AMEND PURSUANT TO NRCP 52(b)**

Rule 52(b) provides, in pertinent part, "[u]pon a party's motion filed not later than 10 days after service of written notice of entry of judgment, the court may amend its findings or make additional findings and may amend the judgment accordingly." In applying Rule 52(b), the Nevada Supreme Court has stated, "findings of fact and conclusions of law must be upheld if supported by substantial evidence, and may not be set aside unless clearly erroneous." *Trident Constr. Corp. v. W. Elec. Inc.*, 105 Nev. 423, 426, 776 P.2d 1239, 1241 (1989) (citations omitted). *See also, Pace v. Linton*, 97 Nev. 103, 625 P.2d 84 (1981).

Under Eighth District Court Rule 2.24, a party is allowed to request that the Court reconsider a prior decision. *See* E.D.C.R. 2.24. Granting a motion for reconsideration is appropriate where (a) "substantially different evidence is subsequently introduced," or (b) the initial decision was "clearly erroneous." *See* *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486 (Nev. 1997) (affirming grant of reconsideration where court's prior decision was clearly erroneous as a matter of law); *Lorenz v. Beltio, Ltd.*, 114 Nev. 795, 802-03, 963 P.2d 488 (Nev. 1998) ("a district court's determinations . . . will not be set aside unless they are clearly erroneous"); *Harvey's Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 217-18, 606 P.2d 1095, 1097 (1980) (affirming district court's reconsideration of previously denied motion for summary judgment because "[a]lthough the facts and law were unchanged, the judge . . . was persuaded by the rationale of the newly cited authority."); *Geller v. McCown*, 64 Nev. 102, 108, 178 P.2d 380 (Nev. 1947) "there is reasonable probability that the court may have arrived at an erroneous conclusion.").

**B. LEGAL STANDARD FOR MOTION TO ALTER OR AMEND PURSUANT TO NRCP 59(e)**

NRCP Rule 59(e) requires a party to file a motion to alter or amend a judgment "no later than 10 days after service of written notice of entry of the judgment." "Among the basic grounds for a Rule 59(e) motion are correcting manifest errors of law or fact, newly discovered or previously unavailable evidence, the need to prevent manifest injustice, or a change in controlling law." *M Primo Builders. LLC v. Washington*, 126 Nev. Adv. Op. 53, 245 P.3d 1190, 1193 (2010)

(citations and internal alterations omitted). The Nevada Supreme Court has noted NRCP 59(e) echoes FRCP 59(e), which "has been interpreted ... as covering a broad range of motions, with the only real limitation on the type of motion permitted being that it must request a substantive alteration of the judgment, not merely correction of a clerical error, or relief of a type wholly collateral to the judgment." *Id.* (citations and internal alterations omitted).

As set forth below, reconsideration is appropriate here because of new authority established in *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. Adv. Op. 72 (Sept. 13, 2018) which controls the tender analysis and the outcome of this case, and because the Court made clearly erroneous findings which completely ignored critical evidence establishing the tender.

V.

### **LEGAL ARGUMENT**

#### **A. SUMMARY JUDGMENT IN FAVOR OF NATIONSTAR IS APPROPRIATE UNDER BANK OF AMERICA BASED UPON THE FULL TENDER WHICH EXTINGUISHED THE HOA'S SUPER-PRIORITY LIEN**

##### **1. Payment Of The Super-Priority Lien Preserved The Deed Of Trust**

Nationstar is entitled to judgment because the record holder and servicer of the Deed of Trust tendered a check to pay off the full super-priority amount of the HOA's lien, using the monthly/quarterly assessment information provided by the HOA's agent, prior to the HOA Sale. NRS 116.3116(1) gives a homeowner's association a lien against its homeowners' properties when they fail to pay monthly assessments. But, only a portion of an association's lien has priority over a first deed of trust. As the Nevada Supreme Court explained in *SFR Investments*:

As to first deeds of trust, NRS 116.3116(2) . . . splits an HOA lien into two pieces, a super-priority piece and a subpriority piece. The super- priority piece, consisting of the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges, is "prior to" a first deed of trust. The subpriority piece, consisting of all other HOA fees or assessments, is subordinate to a first deed of trust.

*SFR Inv. Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 411 (Nev. 2014).

The Nevada Supreme Court acknowledged in *SFR* that a lender may preserve its interest by determining the super-priority amount and paying that amount in advance of the sale. *Id.* at 418.

2. **BAC's Tender Of \$207.00 Was The Correct Amount To Discharge The Super-Priority Portion Of The HOA's Lien**

The Nevada Supreme Court has confirmed that an association's super-priority lien is limited to nine months of delinquent assessments. *Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, 373 P.3d 66, 73 (2016) ("[W]e conclude the superpriority lien ... is limited to an amount equal to the common expense assessments due during the nine months before foreclosure.") In *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, the Supreme Court stated that a mortgagee's pre-foreclosure tender of the super-priority amount prevents the deed of trust from being extinguished. 334 P.3d 408, 414 ("[A]s junior lienholder, [the holder of the first deed of trust] could have paid off the [HOA] lien to avert loss of its security[.]"); *Id.*, at 413 ("[S]ecured lenders will most likely pay the [9] months' assessments demanded by the association rather than having the association foreclose on the unit.") (emphasis added).

The super-priority portion of the lien includes maintenance and nuisance abatement charges and assessments "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). The Nevada Supreme Court explained that recordation of the notice of delinquent assessment lien constitutes the "institution of an action to enforce the lien" in *Gray Eagle Way* when it held that: "[u]nder the foreclosure statutes, no action can be taken unless and until the HOA provides a notice of delinquent assessments pursuant to NRS 116.31162(1)(a). As such, a party has instituted "proceedings to enforce the lien" ....when it provides the notice of delinquent assessment. This interpretation conforms to our decision in *SFR*, where we stated that "[t]o initiate foreclosure under NRS 116.31162 through NRS 116.31168, a Nevada HOA must notify the owner of the delinquent assessments." *Saticoy Bay Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 133 Nev. Adv. Op. 3, 388 P.3d 66, 226, 231 (2017). Accordingly, a party has instituted "an action to enforce the lien" for purposes of NRS 116.3116(6) when it provides the notice of delinquent assessment. *Gray Eagle Way* at 231.

Here, the HOA recorded its First HOA Lien notice on May 7, 2008 seeking \$957.00 of which \$620.00 were collection costs, attorney's fees and interest, leaving outstanding assessments of no more than \$337.00. See **Exhibit "D"**. The monthly assessments were \$23.00 per month so 9 months

1 of assessments equaled \$207.00. *Id.* See also **Exhibit “T”**. The HOA was also charging a late  
2 charge of \$10.00 per month which was not included in the super-priority lien amount. *Id.* The  
3 relevant time period for calculation of the super-priority portion of the HOA's lien is the 9 months  
4 preceding the recordation of the Notice of Delinquent Assessment Lien, or in this case August 2007  
5 through May 2008. **The Court correctly found in its FFCL that the “tender of \$207.00 was the  
6 proper amount of the super-priority lien, as it was nine months of assessments under NRS  
7 116.3116(2).”** See FFCL at 10:16-18.

8 **3. The Second Notice of Lien Does Not Trigger A New Super-Priority Lien**

9 The fact that the HOA released its First HOA Lien on November 30, 2010 (after  
10 receiving the tender), and recorded the Second HOA Lien on September 11, 2013, does not change  
11 the fact that the HOA's super-priority lien was discharged through the tender described above. The  
12 Nevada Supreme Court recently clarified that NRS 116.3116 does not limit an HOA to one lien  
13 enforcement action or one super-priority lien per property forever. See *Property Plus Investments,*  
14 *LLC v. Mortgage Electronic Registration Systems Inc.*, 401 P.3d 728, 730-732, 133 Nev. Ad. Op. 62  
15 (2017). However, under *Property Plus* to trigger a new super-priority lien, the HOA must commence  
16 a new enforcement action. This can occur in two ways: (1) by completing a prior enforcement action  
17 through foreclosure, or (2) by recording a rescission of a prior lien. *Id.* *Property Plus* states,  
18 “[t]herefore, when an HOA rescinds a superpriority lien on a property, the HOA may subsequently  
19 assert a separate superpriority lien on the same property based on monthly HOA dues, and any  
20 maintenance and nuisance abatement charges, accruing after the rescission of the previous  
21 superpriority lien.” *Id.* at 732-733 (emphasis added). The *Property Plus* Court clearly held that “[a]n  
22 HOA cannot simply reject payment and release the lien, only to turn around and record another lien  
23 based on the same unpaid assessments in order to safeguard the superpriority status.” See *Id.* at 9.  
24 Yet, that is precisely what occurred in this case.

25 Based on the undisputed facts, it is clear that Alessi rescinded the May 7, 2008 First HOA  
26 Lien after rejecting the tender payment in order to safeguard the super-priority status of its lien. On  
27 September 28, 2010, Miles Bauer delivered a check to Alessi to satisfy the super-priority lien. That  
28 check was wrongfully rejected. On November 30, 2010, Alessi recorded the Release of Lien. On

1 September 11, 2012, the HOA recorded the Second HOA Lien which included all of the assessments,  
2 late fees, interest, collection costs and balance included in the First HOA Lien. *See* Second HOA  
3 Lien and HOA Ledger at **Exhibit “M”**.

4 Based on the HOA’s records, it is clear that the Second HOA Lien’s balance of \$6,448.00  
5 included the entire balance from the First HOA as evidenced by Alessi’s demand statement that was  
6 to Miles Bauer on September 13, 2010 and by Shadow Mountain’s account ledgers. Accordingly, the  
7 HOA’s release of lien was accomplished to safeguard the superpriority status of the lien, in violation  
8 of *Property Plus*. There can be no dispute the amount paid was sufficient to fully discharge the  
9 super-priority portion of the HOA’s lien and the payment was wrongfully rejected by Alessi. This  
10 tender discharged the super-priority portion of the HOA’s lien, which carried over to the Second  
11 HOA Lien.

12 **4. BAC’s Tender Discharged The HOA’s Full Super-Priority Lien**

13 In *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. Adv. Op. 72  
14 (Sept. 13, 2018), the Nevada Supreme Court held that “a first deed of trust holder’s unconditional  
15 tender of the superpriority amount due results in the buyer at foreclosure taking the property subject  
16 to the deed of trust.” *Bank of America* at 2.

17 In particular, the Nevada Supreme Court stated in *Bank of America* that:

18 A valid tender of payment operates to discharge a lien. *Power Transmission Equip.*  
19 *Corp. v. Beloit Corp.*, 201 N.W.2d 13, 16 (Wis. 1972) (“Common-law and statutory  
20 liens continue in existence until they are satisfied or terminated by some manner  
21 recognized by law. A lien may be lost by . . . payment or tender of the proper  
amount of the debt secured by the lien.”); *see also* 74 Am. Jur. 2d Tender § 41  
(2012). Valid tender requires payment in full.

22 *Bank of America* at 3-4. In this case, as in the *Bank of America* case, the HOA refused to accept the  
23 tender because it did not satisfy both the superpriority and subpriority portions of the lien and  
24 collection costs. *Id.* at 4. However, this Court has already determined that the \$207.00 tender was  
25 the proper amount to satisfy the superpriority lien. *See Exhibit “A”* at 10:7-17. As the full super-  
26 priority amount was tendered, it operated to discharge the HOA’s super-priority lien. *Bank of*  
27 *America* at 3-4.

1 SFR contends that there is insufficient evidence the tender was delivered, because David  
2 Alessi testified he did not see any mention of a tender on his firm's status report. However, Mr.  
3 Alessi also testified if the tender check was in his file that would evidence it was received. *See*  
4 Deposition of David Alessi at 24:21-25:25 attached herein as **Exhibit "T"**. Nationstar provided the  
5 following irrefutable prove that the tender was sent to Alessi & Koenig by BAC's attorneys at the  
6 Miles Bauer law firm; which the Court either failed to consider or rejected by applying an incorrect  
7 legal standard. In either event, the following facts and law render the Court's decision clearly  
8 erroneous.

9 First, the Alessi & Koenig collection file contains both the tender letter and a copy of the  
10 tender check. *See Exhibits "J" and "S"*. This cannot be contested or refuted, as the Alessi &  
11 Koenig collection file produced under David Alessi's custodial affidavit contains a copy of the tender  
12 check. David Alessi clearly testified that if his file contained the check, he would believe it had been  
13 received. *See Deposition of David Alessi at 24:21-25:25 attached herein as Exhibit "T"*.

14 Second, the Affidavit of the Miles Bauer records custodian, Doug Miles, established that the  
15 tender letter and tender check had been sent to Alessi & Koenig. *See Exhibits "F" and "F-5"*. The  
16 Court decided that this evidence was inadmissible because Doug Miles had not been identified as a  
17 witness, by name in Nationstar's NRCP 16.1 disclosures. *See Exhibit "A"* at 4:10-17. This  
18 conclusion is wrong both factually and legally. NRCP 16.1(a) cannot be read as requiring a party to  
19 guess at the identity of who Miles Bauer might use as its corporate representative to testify about its  
20 corporate records. Nationstar correctly disclosed both the Miles Bauer law firm and Doug Miles  
21 when Nationstar made the following supplemental disclosure pursuant to NRCP 16.1(a) on June 1,  
22 2018:

23 20. Corporate Representative and/or 30(b) Witness for Miles, Bauer, &  
24 Winters, LLP  
25 575 Anton Road, Suite 300  
Costa Mesa, CA 92626  
Telephone: (714) 432-6503

26 This witness and/or these witnesses are expected to testify regarding Miles Bauer's  
27 knowledge of the HOA's foreclosure and all facts related thereto, including, without  
28 limitation, the payment of the super-priority Miles Bauer performed and/or attempted  
on U.S. Bank's and Nationstar's behalf. **On information and belief, Doug Miles is  
likely to testify as the corporate representative, person most knowledgeable, and**

**Rule 30(b)(6) witness for Miles Bauer, and his address is provided in this disclosure.** Nationstar reserves the right to call other corporate representatives, persons most knowledgeable, and Rule 30(b)(6) witnesses for Miles Bauer on the topics stated herein, including, without limitation, Rock K. Jung, Esq.

See **Exhibit “S”** at pages 5-6. Thus, the Court erred as a matter of law in excluding the Affidavit of Doug Miles, as the corporate representative of the Miles Bauer law firm. Doug Miles is specifically identified in the 06/01/2018 Supplemental Disclosures as the person most likely to be used by this firm as its corporate representative. Mr. Miles Affidavit demonstrated the tender was sent to Alessi & Koenig, was not contested by any admissible evidence.

Finally, the Court completely ignored the Affidavit of Rock Jung, Esq. that was attached to the Reply in rebuttal to SFR’s argument that the Doug Miles Affidavit was somehow insufficient. Rock Jung testified that he personally had sent the tender letter and tender check to Alessi & Koenig. See **Exhibit “G”**. Mr. Jung is also properly disclosed as a witness in Nationstar’s 06/01/2018 Supplemental Disclosure. See **Exhibit “S”** at page 4. Mr. Jung’s Affidavit is not contested by any admissible evidence.

Thus, all of the admissible evidence presented to the Court is consistent in demonstrating that BAC, through Miles Bauer and Rock Jung, Esq. specifically, tendered \$207.00 in full satisfaction of the super-priority portion of the HOA’s lien. This tender extinguished the lien. See *Bank of America* at 3 (“a valid tender of payment operates to discharge a lien”). It was clear error for the Court to ignore the (i) actual evidence that the tender check was contained in the Alessi & Koenig collection file, (ii) the Affidavit of the properly disclosed Miles Bauer records custodian, and (iii) the Affidavit of the properly disclosed witness Rock Jung, Esq., the person who authored the tender letter and sent the tender check to Alessi & Koenig.

##### **5. BAC’s Tender To The HOA Trustee Was Valid and Unconditional**

SFR has argued that even if the tender was made, the letter accompanying the tender made the tender conditional and thus the tender did not extinguish the super-priority lien. The Supreme Court soundly rejected this argument in *Bank of America*. The Supreme Court stated:

In addition to payment in full, valid tender must be unconditional, or with conditions on which the tendering party has a right to insist. 74 Am. Jur. 2d *Tender* § 22 (2012). “The only legal conditions which may be attached to a valid tender are either a receipt for full payment or a surrender of the obligation.” *Heath v. L.E. Schwartz & Sons, Inc.*,

203 Ga. App. 91, 416 S.E.2d 113, 114-15 (Ga. Ct. App. 1992); *see also Stockton Theatres, Inc. v. Palermo*, 179 Cal. App. 2d 323, 3 Cal. Rptr. 767, 768 (Ct. App. 1960) (tender of entire judgment with request for satisfaction of judgment was not conditional); *cf. Steward v. Yoder*, 86 Ill. App. 3d 223, 408 N.E.2d 55, 57, 41 Ill. Dec. 709 (Ill. App. Ct. 1980) (concluding tender with request for accord and satisfaction was conditional, but not unreasonable).”

*See Bank of America* at 5-6; *see also Bank of America, N.A. v. Ferrell Street Trust*, Case No. 70299, pg. 1-2 (April 27, 2018, Nev.) (unpublished order).

The tender facts in this case are virtually identical to the facts in *Bank of America*. The letters sent along with the tender check in both cases “stated that the HOA’s acceptance would be an “express agreement that [Bank of America]’s financial obligations towards the HOA in regards to the [Property] have now been ‘paid in full.’”” *See Bank of America* at 2; compare **Exhibit “F-5”**. In both cases, the HOA rejected the payment and sold the property at foreclosure to SFR.

With respect to the language included in the last full paragraph of BAC’s letter to Alessi & Koenig, the Supreme Court rejected SFR’s argument that this language rendered the tender conditional by stating:

Although Bank of America's tender included a condition, it had a right to insist on the condition. Bank of America's letter stated that acceptance of the tender would satisfy the superiority portion of the lien, preserving Bank of America's interest in the property. Bank of America had a legal right to insist on this. SFR's claim that this made the tender impermissibly conditional because the payment required to satisfy the superpriority portion of an HOA lien was legally unsettled at the time is unpersuasive.

Nevada’s federal courts have also held that BAC’s Miles Bauer tenders are unconditional tenders that extinguish an association’s super-priority lien. *U.S. Bank, N.A. v. SFR Investments Pool I, LLC*, 2016 WL 4473427 at \*6 (D. Nev. Aug. 24, 2016) (rejecting the foreclosure-sale purchaser’s argument that Bank of America’s tender was conditional, explaining that “a reasonable jury could not interpret the evidence that way.”); *U.S. Bank, N.A. v. Bacara Ridge Assoc.*, 2016 WL 5334655 at \*3 (D. Nev. Sep. 22, 2016) (same); *U.S. Bank, N.A. v. Emerald Ridge Landscape Maintenance Ass’n*, 2:15-cv-00117-MMD-PAL (D. Nev. Sep. 30, 2016). In *Emerald Ridge*, the court explained that the Miles Bauer tender letter was not conditional because accepting the tender did not require the association or its collection agent to “take any actions or waive any rights,” explaining:

The language Miles Bauer included with their cashier’s check states that Miles Bauer, and presumably their client, will understand endorsement of the check to mean they have fulfilled their obligations. It simply delineates how the tenderer will interpret the



1 action of the recipient (which also turned out to be the correct interpretation of the law).  
2 It does not require [the association's trustee] to take any actions or waive any rights.  
3 And it does not depend on an uncertain event or contingency.

4 *Emerald Ridge*, 2:15-cv-00117-MMD-PAL, at 7. Because BAC's super-priority tender was  
5 unconditional, the *Emerald Ridge* Court held the tender "was proper," meaning the tender extinguished  
6 the super-priority portion of the association's lien. *Id.*

7 Under controlling Nevada law, the tender was not conditional.

8 **6. The HOA Trustee Was Not Justified In Rejecting BAC's Tender**

9 SFR argued that Alessi was justified in rejected the tender because it believed BAC was  
10 required to pay the entire lien amount. In its FFCL, the Court agreed with SFR despite the fact that the  
11 Nevada Supreme Court soundly rejected that argument in the unreported case *BAC Home Loans*  
12 *Servicing, LLP v. Aspinwall Court Trust*, Case No. 69885 (July 20, 2018), citing that this basis for the  
13 HOA's agent to reject such a tender was not justifiable "in light of the explanations contained in the  
14 letters sent by BAC's agent setting forth BAC's legal position."

15 In *Bank of America*, the Nevada Supreme Court again soundly rejected the argument that the  
16 HOA's good-faith rejection because of a belief that BAC needed to tender the entire amount of the  
17 lien, is a valid defense to the tender. In particular the Nevada Supreme Court stated:

18 Bank of America first contacted the HOA for assistance in determining the property's  
19 monthly assessment fee so it could pay the superpriority portion of the lien. The HOA  
20 responded with a demand that Bank of America pay the entire HOA lien to halt the  
21 foreclosure proceedings. Bank of America then tendered nine months of the property's  
22 assessment fees, along with a statutory analysis explaining that the amount was  
23 sufficient. The HOA returned the check a few weeks later and continued with  
24 foreclosure proceedings, giving no explanation for its rejection.

25 SFR did not present its good-faith rejection argument to the district court. . . . [However]  
26 **[t]he authorities it cites to this court for that proposition do not support it.** We  
27 therefore reject SFR's claim that the HOA's asserted "good faith" in rejecting Bank of  
28 America's tender allowed the HOA to proceed with the sale, thereby extinguishing Bank  
of America's first deed of trust.

*See Bank of America* at 7-8 (emphasis added).

Here BAC, through Miles Bauer, attempted to learn the amount of the HOA's super-priority  
lien through a letter. Alessi responded by stating the full amount of the lien, but refused to provide the  
super-priority amount of its lien. BAC made a full tender of the super-priority portion of the lien, and

1 Alessi & Koenig improperly rejected the valid tender because its standard policy was to reject tenders  
2 that did not include the full amount of the HOA lien and all collection costs. *See Exhibit "T" at 53:6-*  
3 **54:23**. There is no likewise no evidence Alessi rejected the tender after consulting with the HOA about  
4 whether to accept the tender, Alessi simply rejected the tender because it was Alessi's standard policy  
5 to reject checks from Miles Bauer as these checks did not include the entire lien amount and the  
6 collection costs. Alessi's unjustifiable rejection of BAC's tender was in direct violation of NRS  
7 Chapter 116 based upon both *Bank of America* and *Ikon*.

8           **7.       The Nevada Supreme Court Confirmed That BAC Was Not Required To Record**  
9           **Its Tender Or Provide Notice To Bidders Like SFR**

10           SFR further attempted to invalidate BAC's tender by asking the Court to impose an  
11 obligation on BAC to record some type of lien satisfaction or release following its tender. This Court  
12 improperly determined that BAC was required to record its tender under Nevada law to protect itself  
13 from third-party purchasers. *See, Exhibit "A" at 10:27-11:4*. The Supreme Court in *Bank of America*  
14 rejected SFR's argument, adopted by this Court. In rejecting SFR's argument, the Supreme Court held  
15 that:

16           SFR argues that Bank of America was required to record its tender under either NRS  
17 111.315 or NRS 106.220. . . .

18           NRS 111.315 states that "[e]very conveyance of real property, and every instrument of  
19 writing setting forth an agreement to convey any real property, or whereby any real  
20 property may be affected, proved acknowledged and certified in the manner prescribed  
21 in this chapter . . . shall be recorded . . . ." NRS 111.010 defines conveyance as "every  
instrument in writing, except a last will and testament . . . by which any estate or interest  
in lands is created, alienated, assigned or surrendered." Thus, when an interest in land is  
created, alienated, assigned, or surrendered, the instrument documenting the transaction  
must be recorded.

22           By its plain text, NRS 111.315 does not apply to Bank of America's tender. Tendering  
23 the superpriority portion of an HOA lien does not create, alienate, assign, or surrender  
24 an interest in land. Rather, it preserves a pre-existing interest, which does not require  
25 recording. See Baxter Dunaway, *Interests and Conveyances Outside Acts—Recordable*  
*Interests*, 4 L. of Distressed Real Est. § 40:8 (2018) ("[D]ocuments which do not create  
26 or transfer interests in land are often held to be nonrecordable; the records, after all, are  
27 not a public bulletin board."). **SFR's argument that the tender was an instrument**  
**affecting real property is unpersuasive**. NRS 111.315 pertains to written instruments  
28 "setting forth an agreement . . . whereby any real property may be affected . . . *in the*  
*manner prescribed in this chapter . . .*" (Emphasis added.) NRS Chapter 111 governs  
the creation, alienation, assignment, or surrendering of property interests, and their  
subsequent recording. Bank of America did not bring about any of these

actions, and therefore did not affect the property as prescribed in NRS Chapter 111. Accordingly, NRS 111.315 did not require Bank of America to record its tender.

NRS 106.220 provides that "[a]ny instrument by which any mortgage or deed of trust of, lien upon or interest in real property is subordinated or waived as to priority, must ... be recorded . . . ." The statute further states that "[t]he instrument is not enforceable under this chapter or chapter 107 of NRS unless and until it is recorded." NRS Chapter 106 does not define instrument as used in NRS 106.220, but Black's Law Dictionary defines the term as "[a] written legal document that defines rights, duties, entitlements, or liabilities, such as a statute, contract, will, promissory note, or share certificate." *Instrument, Black's Law Dictionary* (10th ed. 2014). Thus, NRS 106.220 applies when a written legal document subordinates or waives the priority of a mortgage, deed of trust, lien, or interest in real property.

The changes in the lien priority caused by Bank of America's tender do not invoke NRS 106.220's recording requirements. Generally, the creation and release of a lien cause priority changes in a property's interests as a result of a written legal document. But Bank of America's tender cured the default and prevented foreclosure as to the superpriority portion of the HOA's lien by operation of law. *See* NRS 116.3116; 53 C.J.S. Liens § 14 (2017) ("A statutory lien is created and defined by the legislature. The character, operation and extent of a statutory lien are ascertained solely from the terms of the statute."). NRS Chapter 116's statutory scheme allows banks to tender the payment needed to satisfy the superpriority portion of the HOA lien and maintain its senior interest as the first deed of trust holder. (Citations omitted). Thus, under the split-lien scheme, tender of the superpriority portion of an HOA lien satisfies that portion of the lien by operation of law. Because the lien is not discharged by using an instrument, NRS Chapter 106 does not apply.

This Court's determination, that BAC was required to record its tender of the super-priority lien amount to protect SFR, is erroneous as a matter of law under *Bank of America*.

**8. SFR's Putative BFP Status Is Irrelevant As The HOA Sale Was Void**

Defects in the exercise of the statutory authority requisite to hold a non-judicial foreclosure sale can be categorized as *void*, *voidable* or *inconsequential*. "Some defects are so substantial that they render the sale *void*. In this situation, neither legal nor equitable title transfers to the sale purchaser or subsequent grantees, except perhaps by adverse possession." 1 Grant S. Nelson, Dale A. Whitman, Ann M. Burkhart & R. Wilson Freyermuth, *Real Estate Finance Law* § 7:21 (6<sup>th</sup> ed. 2014). **The sale is void where the trustee proceeds without authorization (such as when a tender has already satisfied the super-priority lien amount), or where "the mortgagee or trustee**

1 did not give statutorily-required notice”.<sup>3</sup> *Id.* (emphasis added). Other examples of defects rendering  
2 a sale void are, fraud, incapacity or failing to properly appoint a trustee or a successor trustee. *Id.*

3 An inherent feature of a voidable sale (as opposed to one that is void) is that all rights  
4 to set aside the sale will be cut off if the land passes into the hands of a bona fide  
5 purchaser for value. When this occurs, the purchaser’s title is immune from attack and  
6 an action for damages against the foreclosing mortgagee or trustee may be the aggrieved  
7 party’s only remedy. This is the critical difference between void and voidable  
8 foreclosures, because in the former event bona fide purchasers are subject to the risk of  
9 having the sale set aside.

10 Grant S. Nelson and Dale A. Whitman, *Reforming Foreclosure: The Uniform Nonjudicial*  
11 *Foreclosure Act* Duke Law Journal Vol. 53 at 1501-1502 (March 2004). In *7912 Limbwood*  
12 *Court Trust v. Wells Fargo Bank, N.A.*, 2:13-CV-00506-APG-GWF (D. Nev. 2015), the United  
13 States District Court for the District of Nevada held that under Nevada law, when a sale is void  
14 no title passes to a purchaser, even if the purchaser is a bona fide purchaser. The *Limbwood*  
15 Court stated that:

16 When a sale is void, it is ‘ineffectual.’ *Deep v. Rose*, 364 S.E.2d 228, 232 (Va.  
17 1988). No title, legal or equitable, passes to the purchaser. *Id.*; see, e.g., *Gilroy v.*  
18 *Ryberg*, 667 N.W.2d 544, 554 (Neb. 2003) (stating ‘**when a sale is void, ‘no title, legal**  
19 **or equitable, passes to the sale purchaser or subsequent grantee’ even if the**  
20 **property is bought by a bona fide purchaser** (quoting 1 Grant S. Nelson & Dale A.  
21 Whitman, *Real Estate Finance Law* § 7.20 (3d ed. 1993) & citing 12 Thompson on Real  
22 Property, *supra*, § 101.04(c)(2)(ii) at 403 (David A. Thomas ed. 1994). Consequently,  
23 no title passed to the plaintiff via the HOA’s foreclosure sale.

24 *7912 Limbwood*, at 6-7 (emphasis added). *Accord Gibson v. Westoby*, 115 Cal. App.2d 273, 277-78  
25 (1953); (citing *Bryce v. O’Brien*, 5 Cal.2d 615, 616, 55 P.2d 488 (1950)) (“A void conveyance passes  
26 no title and cannot be made the foundation of good title even under the equitable doctrine of bona  
27 fide purchase”); *Lucero v. Bank of America Home Loans*, 2:11-cv-1326-RCJ-RJJ (D. Nev. 2012)  
28 (Plaintiff properly stated a claim to set aside trustee’s sale and have it declared void based upon  
defect in the foreclosure process).

These authorities were confirmed by the Nevada Supreme Court in *Bank of America* when the  
Court held that:

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<sup>3</sup> Citation to the 11 cases referenced in the 1 Grant S. Nelson treatise in support of this statement are not listed. The Grant S. Nelson treatise has been extensively cited by the Nevada Supreme Court, including in the *Bank of America*, *Shadow Wood* and *Stone Hollow* decisions and it provides a clear statement of the distinction between void and voidable title.

1 **A party's status as a BFP is irrelevant when a defect in the foreclosure proceeding**  
2 **renders the sale void.** *See Henke v. First S. Props., Inc.*, 586 S.W.2d 617, 620 (Tex.  
3 App. 1979) ("[T]he doctrine of good faith purchaser for value without notice does not  
4 apply to a purchaser at the void foreclosure sale."); *see also* Baxter Dunaway,  
5 *Trustee's Deed: Generally*, 2 L. of Distressed Real Est. § 17:16 (2018) ("A void deed  
6 carries no title on which a bona fide purchaser may rely . . . ."). Because a trustee  
7 [\*\*16] has no power to convey an interest in land securing a note or other obligation  
8 that is not in default, a purchaser at a foreclosure sale of that lien does not acquire title  
9 to that property interest. *See id.*; *cf. Deep v. Rose*, 234 Va. 631, 364 S.E.2d 228, 4 Va.  
10 Law Rep. 1601 (Va. 1988) (when defect renders a sale wholly void, "Enlo title, legal  
11 or equitable, passes to the purchaser").

12 **A foreclosure sale on a mortgage lien after valid tender satisfies that lien is void,**  
13 **as the lien is no longer in default.** *See* 1 Grant S. Nelson, Dale A. Whitman, Ann M.  
14 Burkhardt & R. Wilson Freyermuth, *Real Estate Finance Law* § 7:21 (6th ed. 2014).

15 *Bank of America* at 13 (emphasis added). Accordingly, the full tender of the super-priority  
16 lien amount extinguished the super-priority lien and rendered the subsequent HOA Sale void. As no  
17 title passed to SFR, SFR's putative status as a bona fide purchaser is legally irrelevant, and the Deed  
18 of Trust remains as a valid first priority lien against the Property.

19 **C. THE FORECLOSURE SALE IS INVALID BECAUSE THE SALES PRICE WAS**  
20 **GROSSLY INADEQUATE AND THE SALE WAS PATENTLY UNFAIR**

21 The decision of the Nevada Supreme Court in *Shadow Wood. v. NYCB*, 366 P.3d 1105,  
22 (Nev. 2016), examined the issue of commercial reasonableness and provides that a grossly  
23 inadequate purchase price compared to the fair market value at the time of the HOA Sale can be  
24 sufficient to set aside a sale when coupled with unfairness. The *Shadow Wood* decision recognized  
25 the Restatement (Third) of Property: Mortgages § 8.3 ant. b (1997) position that while "[g]ross  
26 inadequacy cannot be precisely defined in terms of a specific percentage of fair market value,  
27 (generally ... a court is warranted in invalidating a sale where the price is less than 20 percent of fair  
28 market value and, absent other foreclosure defects, is usually not warranted in invalidating a sale that  
yields in excess of that amount."

The Nevada Supreme Court recently confirmed that to hold that an association's foreclosure  
sale did not extinguish a senior deed of trust on equitable grounds, there "must [ ] be a showing of  
fraud, unfairness, or oppression." *See Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227*

1 *Shadow Canyon*, 133 Nev. Adv. Op. 91, 405 P.3d 641, 642 (2017). The Nevada Supreme Court made  
2 clear that the foreclosure-sale price is a highly relevant factor, explaining that "very slight additional  
3 evidence of unfairness" is all that is needed if the price "inadequacy is palpable and great". It is  
4 universally recognized that inadequacy of price is a circumstance of greater or lesser  
5 weight to be considered in connection with other circumstances impeaching the fairness of the  
6 transaction as a cause of vacating it, and that, where the inadequacy is palpable and great, very slight  
7 additional evidence of unfairness or irregularity is sufficient to authorize the granting of the relief  
8 sought. *Id.* (emphasis added) (internal citation omitted).

9 In *Shadow Wood*, the Nevada Supreme Court explained that a foreclosure-sale price below  
10 20% of fair market value is "obviously inadequate." *See Shadow Wood*, 366 P.3d at 1116. If  
11 construed as a super-priority foreclosure, then the HOA's sale of the Property for \$3,665.00 did not  
12 extinguish the Deed of Trust because it was both oppressive and unfair. A sale price of \$59,000.00 is  
13 a mere 19.2% of the Property's fair market value of \$306,000.00 as of the sale date. *See Exhibit*  
14 **"R"**. Thus, the Property sold below the 20% threshold, rendering the sale price grossly inadequate.

15 These facts are not in dispute, as SFR has not provided any evidence that the purchase price  
16 was greater than 20 percent of the fair market value of the Property at the time of the HOA Sale. In  
17 light of this "palpabl[y] and great[ly]" inadequate sales price, "very slight evidence of unfairness" is  
18 all that is needed to show the sale did not extinguish the Deed of Trust on equitable grounds. *See*  
19 *Nationstar*, 405 P.3d at 658. There is more than enough evidence to satisfy that standard here where  
20 the tender made by BAC, which satisfied the HOA's superpriority lien, rendered the sale void, and  
21 the HOA had no authority to proceed with the sale, but did so anyway. The HOA Sale price was  
22 perfectly reasonable for a property subject to the Deed of Trust, but was grossly inadequate if  
23 attempting to extinguish the Deed of Trust, and the lender had no reason to attend the sale and bid an  
24 amount to protect its lien because it had already done so with the tender. As a result, the actions of  
25 the HOA in proceeding with a sale of the super-priority lien, when that lien had been extinguished,  
26 resulted in the grossly inadequate price.

**D. THE BONA FIDE PURCHASER DOCTRINE IS IRRELEVANT BECAUSE THE FORECLOSURE SALE IS VOID**

This Court determined that SFR was a bona fide purchaser and that this status protected it from the Deed of Trust and the tender. *See Exhibit “A” at 11.* However, this determination was a clear error of law as SFR’s status as an alleged bona fide purchaser is completely irrelevant in this matter. The HOA Sale was either void, resulting in no Property interest being transferred to SFR, or the sale was subject to the Deed of Trust. Under either scenario a bona fide purchaser defense is legally irrelevant.

The sale is void where the trustee proceeds without authorization (such as when a tender has already satisfied the super-priority lien amount), or where “the mortgagee or trustee did not give statutorily-required notice”. 1 Grant S. Nelson, Dale A. Whitman, Ann M. Burkhardt & R. Wilson Freyermuth, *Real Estate Finance Law* § 7:21 (6<sup>th</sup> ed. 2014). This was confirmed by the Nevada Supreme Court in *Bank of America* when the Court stated:

**A party's status as a BFP is irrelevant when a defect in the foreclosure proceeding renders the sale void.**

*Bank of America* at 13.

Consequently, SFR is not a bona fide purchaser because the sale was void, and thus cannot attempt to shield itself from the effect of BAC’s super-priority-plus tender.

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V.

**CONCLUSION**

WHEREFORE, for the foregoing reasons, Nationstar Mortgage, LLC respectfully requests that this Court grant the instant Motion for Reconsideration and/or to Alter / Amend Judgment, and vacate its prior order granting SFR Investments Pool 1, LLC's Motion for Summary Judgment, and enter a declaration that Shadow Mountain Ranch Community Association's foreclosure sale held on May 7, 2014 was void, or in the alternative, the HOA sale must be set aside under equitable principles.

Dated this 14<sup>th</sup> day of January, 2019.

**GERRARD COX LARSEN**

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of GERRARD COX LARSEN, and that on the 14<sup>th</sup> day of January, 2019, I served a copy of the **MOTION FOR RECONSIDERATION AND/OR TO ALTER/AMEND JUDGMENT**, by e-serving a copy on all parties *listed in the Master Service List pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.*

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Diane Cline Ebron, Esq.

Jacqueline A. Gilbert, Esq.

Karen L. Hanks, Esq.

**KIM GILBERT EBRON**

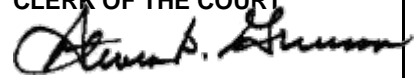
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC,

Plaintiff,

v.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL, AS  
TRUSTEE FOR THE JBWNO REVOCABLE  
LIVING TRUST, a trust; U.S. BANK, N.A., a  
national banking association; NATIONSTAR  
MORTGAGE, LLC, a foreign limited liability  
company; REPUBLIC SILVER STATE  
DISPOSAL, INC., DBA REPUBLIC SERVICES, a  
domestic government entity; DOE INDIVIDUALS I  
through X, inclusive; and ROE CORPORATIONS  
XI through XX inclusive.

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Counter-Defendant.

Case No.: A-14-705563-C

Dept. No.: XVII

**APPENDIX OF EXHIBITS FOR  
NATIONSTAR MORTGAGE, LLC'S  
MOTION FOR RECONSIDERATION  
AND/OR TO ALTER/AMEND  
JUDGMENT PURSUANT TO E.D.C.R.  
2.27**

U.S. BANK, N.A.,  
  
Third Party Plaintiff,  
  
v.  
  
SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company; INDIVIDUAL DOES I  
through X, inclusive; and ROE CORPORATIONS  
I through X, inclusive.  
  
Third Party Defendants.

**APPENDIX OF EXHIBITS FOR NATIONSTAR MORTGAGE, LLC'S  
MOTION FOR RECONSIDERATION AND/OR TO ALTER/AMEND JUDGMENT  
PURSUANT TO E.D.C.R. 2.27**

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<b>B</b>	Grant Bargain Sale Deed - Gotera	017-019
<b>C</b>	Deed of Trust, recorded November 21, 2005	020-046
<b>D</b>	Notice of Delinquent Assessment Lien, May 7, 2008	047-048
<b>E</b>	Notice of Default and Election To Sell -	049-050
<b>F</b>	Affidavit of Douglas Miles	051-056
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<b>F-2</b>	Alessi & Koenig, LLC Facsimile Cover Letter w/ Ledger	066-072
<b>F-3</b>	Miles Bauer Letter w/ Tendered Check dated September 30, 2010	073-076
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<b>G</b>	Affidavit of Rock K. Jung, Esq.	081-084
<b>H</b>	Release of Notice of Delinquent Assessment Lien	085-086
<b>I</b>	Shadow Mountain Ranch HOA's Account Ledger - 12/31/08 to 06/14/2011	087-089
<b>J</b>	Affidavit of Custodian of Record - David Alessi	090-092

<b>K</b>	Notice of Trustee's Sale	093-094
<b>L</b>	Assignment of Deed of Trust	095-097
<b>M</b>	Shadow Mountain Ranch HOA's Account Ledger - 06/01/2011 to 06/01/2013  (Second) Notice of Delinquent Assessment Lien September 11, 2012	098-101
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<b>O</b>	Assignment of Deed of Trust - October 1, 2013	104-106
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<b>V</b>	Affidavit of Fredrick J. Biedermann, Esq.	200-201

DATED this 14<sup>th</sup> day of January, 2019.

**GERRARD COX LARSEN**

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of GERRARD COX LARSEN, and that on the 14<sup>th</sup> of January, 2019, I served a copy of the **APPENDIX OF EXHIBITS FOR NATIONSTAR MORTGAGE, LLC'S MOTION FOR RECONSIDERATION AND/OR TO ALTER/AMEND JUDGMENT PURSUANT TO E.D.C.R. 2.27**, by e-serving a copy on all parties listed in the Master Service List pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

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Fredrick J. Biedermann, an employee of  
GERRARD COX LARSEN

# EXHIBIT “A”

*Steven D. Grierson*

☐ Voluntary Dismissal  
☐ Involuntary Dismissal  
☐ Stipulated Dismissal  
☐ Motion to Dismiss by Defendant(s)  
☒ Summary Judgment  
☐ Stipulated Judgment  
☐ Default Judgment  
☐ Judgment of Arbitration

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**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF CLARK**

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Plaintiff,

vs.

Case No. A-14-705563-C

Dept. No. 17

STACY MOORE, an individual; MAGNOLIA GOTERA, an individual; KRISTIN JORDAL, AS TRUSTEE FOR THE JBWNO REVOCABLE LIVING TRUST, a trust; U.S. BANK, N.A., a national banking association; NATIONSTAR MORTGAGE, LLC, a foreign limited liability company; REPUBLIC SILVER STATE DISPOSAL, INC., DBA REPUBLIC SERVICES, a domestic governmental entity; DOE INDIVIDUALS I through X, inclusive; and ROE CORPORATIONS XI through XX inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Counter-Defendant.

U.S. BANK, N.A.,

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; INDIVIDUAL DOES I through X, inclusive; and ROE CORPORATIONS I through X, inclusive,

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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Third-Party Defendant(s).

SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company,

Third-Party Counterclaimant/Cross-Claimant,

vs.

U.S. BANK, N.A.; NATIONSTAR  
MORTGAGE, LLC, foreign limited liability  
company; KRISTEN JORDAL, as Trustee for  
the JBWNO REVOCABLE LIVING TRUST, a  
Trust; STACY MOORE, an individual; and  
MAGNOLIA GOTERA, an individual,

Counter-Defendants/Cross-Defendants.

This matter came before the Court on August 15, 2018 on SFR Investments Pool 1, LLC's ("SFR") Motion for Summary Judgment, Nationstar Mortgage, LLC's ("Nationstar") Motion for Summary Judgment and U.S. Bank, N.A.'s ("U.S. Bank") (collectively referred to as "Bank") Joinder to Nationstar's Motion for Summary Judgment. Jason G. Martinez, Esq. appeared on behalf of SFR. Douglas D. Gerrard, Esq. appeared on behalf of Nationstar. Donna Wittig, Esq. appeared on behalf of Nationstar and U.S. Bank.

Having reviewed and considered the full briefing and arguments of counsel, for the reasons stated on the record and in the pleadings, and good cause appearing, this Court makes the following findings of fact and conclusions of law.<sup>1</sup>

**FINDINGS OF UNDISPUTED FACT**

1. In 1991, Nevada adopted the Uniform Common Interest Ownership Act as NRS 116, including NRS 116.3116(2).

2. On June 21, 2000, Shadow Mountain Ranch Community Association (the "Association") perfected and gave notice of its lien by recording its Declaration of Covenants, Conditions, and Restrictions ("CC&Rs") in the Official Records of the Clark County Recorder in Book No. 20000621 as Instrument No. 01735.

3. On November 21, 2005, a Grant, Bargain, Sale Deed was recorded in the Official

<sup>1</sup> Any findings of fact that are more appropriately conclusions of law shall be so deemed. Any conclusions of law that are more appropriately findings of fact shall be so deemed.



1 Records of the Clark County Recorder as Instrument No. 20051121-0005566, transferring real  
2 property located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-  
3 007 (the "Property") to Magnolia Gotera ("Gotera").

4 4. On November 21, 2005, a Deed of Trust listing Countrywide Home Loans, Inc.  
5 ("Countrywide" or "Lender") as lender, with Mortgage Electronic Registration Systems, Inc.  
6 ("MERS") as beneficiary, was recorded in the Official Records of the Clark County Recorder as  
7 Instrument No. 20051121-0005567 ("DOT").

8 5. The DOT contained a Planned Unit Development Rider that allowed the Lender to  
9 pay the Gotera association assessments and add that amount to the Gotera debt to Lender.

10 6. The DOT also included language that allowed the lender to "do and pay for  
11 whatever is reasonable or appropriate to protect [its] interest in the Property ... [including]  
12 but...not limited to: (a) paying any sums secured by a lien which has priority over [the DOT]; (b)  
13 appearing in court; and (c) paying reasonable attorney's fees to protect its interest."

14 7. On May 27, 2011, a Grant Deed transferring the Property to JBWNO Revocable  
15 Living Trust was recorded in the Official Records of the Clark County Recorder as Instrument  
16 No. 201105270004010.

17 8. On May 27, 2011, a Grant Deed transferring the Property to Stacy Moore  
18 ("Moore") was recorded in the Official Records of the Clark County Recorder as Instrument No.  
19 201105270004011.

20 9. On November 2, 2011, an Assignment of Deed of Trust purportedly transferring  
21 the DOT from MERS to U.S. Bank was recorded in the Official Records of the Clark County  
22 Recorder as Instrument No. 201111020000754.

23 10. On September 11, 2012, the Association, through its agent, Alessi & Koenig, LLC  
24 ("Alessi"), recorded a Notice of Delinquent Assessment Lien ("NODA") against the Property in  
25 the Official Records of the Clark County Recorder as Instrument No. 201209110002023.

26 11. Pursuant to NRS 116.31162(1)(a), the NODA states the cumulative amount of  
27 assessments and other sums due, describes the unit which the lien is imposed, and names the  
28 record owner of the unit.

12. Pursuant to NRS 116.31162(1)(a), the NODA was mailed to Moore.

13. Pursuant to NRS 116.31162(b), after more than 30 days elapsed from the date of mailing the NODA, on July 5, 2013, the Association recorded its Notice of Default in the Official Records of the Clark County Recorder as Instrument No. 201307050000950 ("NOD"). The NOD contains the same information as the NODA, and describes the deficiency, states the name and address of the person authorized to enforce the lien, and contains in 14-point bold type: WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

14. U.S. Bank admits it received the NOD.

15. The Bank proffered a letter dated September 2, 2010, executed by Rock K. Jung, Esq. of the law firm of Miles, Bauer, Bergstrom & Winters ("Miles Bauer") and addressed to the Association and Alessi and the Bank proffered a letter dated September 28, 2010, enclosing a check for \$207.00, also addressed to the Association and Alessi. The Bank sought to authenticate these records through the affidavit of Doug Miles. However, the Court finds that because Doug Miles was never disclosed and his affidavit contains defects as alleged by SFR, these records are inadmissible. Therefore, Nationstar/U.S. Bank failed to provide admissible evidence to establish delivery of the check, or admissible evidence that the check was rejected without explanation.

16. On October 1, 2013, an Assignment of Deed of Trust purportedly transferring the DOT from Bank of America, N.A. to Nationstar was recorded in the Official Records of the Clark County Recorder as Instrument No. 201310010002401.

17. Pursuant to NRS 116.311635, after expiration of 90 days, on December 10, 2013, the Association recorded a Notice of Trustee's Sale in the Official Records of the Clark County Recorder as Instrument No. 201307150002689 ("Notice of Sale"). Pursuant to NRS 116.311635(3), the Notice of Sale contains the amount necessary to satisfy the lien and contains 14-bold type: WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL ALESSI &

1 KOENIG AT 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE  
2 FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE  
3 DIVISION, AT 1-877-829-9907 IMMEDIATELY.

4 18. Pursuant to NRS 116.311635, the Notice of Sale was posted on the Property in a  
5 conspicuous place. The Notice of Sale was posted at three public places within Clark County for  
6 20 consecutive days. The Notice of Sale was published in the Nevada Legal News for three  
7 consecutive weeks.

8 19. The Notice of Sale was mailed to all requisite parties, and others, including, but  
9 not limited to, U.S. Bank, Bank of America, Nationstar, MERS, Moore and the Ombudsman.

10 20. On January 8, 2014, Alessi held a public non-judicial foreclosure auction for the  
11 Property and SFR placed the highest cash bid of \$59,000.00. As the Notice of Sale references the  
12 NODA, the Association's lien included assessments pursuant to NRS 116.3116. and, therefore,  
13 included amounts that constituted the super-priority portion of the lien.

14 21. The Association sale met all the requirements of NRS 116.31164.

15 22. There were multiple bidders in attendance at the sale.

16 23. Pursuant to NRS 116.31164(3)(a), after SFR paid the money to Alessi, Alessi  
17 made, executed, and delivered a deed to SFR, which vested title in SFR.

18 24. The Trustee's Deed Upon Sale was recorded in the Official Records of the Clark  
19 County Recorder as Instrument No. 201401130001460 ("Foreclosure Deed").

20 25. As recited in the Foreclosure Deed, "[a]ll requirements of law regarding the  
21 mailing of copies of notices and the posting and publication of the copies of the Notice of Sale  
22 have been complied with."

23 26. Prior to the Association sale, no release of the super-priority portion of the lien  
24 was recorded against the Property.

25 27. Prior to the Association sale, no lis pendens was recorded against the Property.

26 28. SFR's agent, Christopher Hardin, stated in his declaration that SFR had no reason  
27 to doubt the recitals in the Foreclosure Deed that all noticing requirements were satisfied in  
28 compliance with NRS 116 *et seq.* The recitals regarding default and noticing have been supported

1 by evidence of mailings and remain undisputed.

2 29. Mr. Hardin declared that neither he nor SFR had any relationship with the  
3 Association besides owning property within the community. There was no evidence presented to  
4 the draw this assertion into question.

5 30. Mr. Hardin declared that neither he nor SFR had any relationship with A&K, the  
6 Association's agent, beyond attending auctions, bidding, and occasionally purchasing properties  
7 at publicly-held auctions. There was no evidence presented to draw this assertion into question.

8 31. Default against Stacy Moore was entered on June 27, 2018.

9 32. Default against Magnolia Gotera was entered June 27, 2018.

10 CONCLUSIONS OF LAW

11 A. Summary judgment is appropriate "when the pleadings and other evidence on file  
12 demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is  
13 entitled to a judgment as a matter of law.'" *Wood v. Safeway*, 121 Nev. 724, 729, 121 P.3d 1026,  
14 1029 (2005). Additionally, "[t]he purpose of summary judgment 'is to avoid a needless trial when  
15 an appropriate showing is made in advance that there is no genuine issue of fact to be tried, and  
16 the movant is entitled to judgment as a matter of law.'" *McDonald v. D.P. Alexander & Las Vegas*  
17 *Boulevard, LLC*, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005) quoting *Coray v. Hom*, 80 Nev.  
18 39, 40-41, 389 P.2d 76, 77 (1964). Moreover, the non-moving party "must, by affidavit or  
19 otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have  
20 summary judgment entered against [it]." *Wood*, 121 Nev. at 732, 121 P.3d at 1031. The non-  
21 moving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and  
22 conjecture." *Id.* Rather, the non-moving party must demonstrate specific facts as opposed to  
23 general allegations and conclusions. *LaMantia v. Redis*, 118 Nev. 27, 29, 38 P.3d 877, 879  
24 (2002); *Wayment v. Holmes*, 112 Nev. 232, 237, 912 P.2d 816, 819 (1996). Though inferences  
25 are to be drawn in favor of the non-moving party, an opponent to summary judgment, must show  
26 that it can produce evidence at trial to support its claim or defense. *Van Cleave v. Kietz-Mill Minit*  
27 *Mart*, 97 Nev. 414, 417, 633 P.2d 1220, 1222 (1981).

28 B. While the moving party generally bears the burden of proving there is no genuine

1 issue of material fact, in this case, there are a number of presumptions that this Court must  
2 consider in deciding the issues, including:

3 1. Recorded title is presumed valid. *See Brellant v. Preferred Equities Corp.*,  
4 112 Nev. 663, 670, 918 P.2d 314, 319 (1996)("[T]here is a presumption in favor of the  
5 record titleholder.")

6 2. Foreclosure sales and the resulting deeds are presumed valid. NRS  
7 47.250(16)-(18) (stating that there are disputable presumptions "[t]hat the law has been  
8 obeyed[,] "[t]hat a trustee or other person, whose duty it was to convey real property to  
9 a particular person, has actually conveyed to that person, when such presumption is  
10 necessary to perfect the title of such person or a successor in interest[,] "[t]hat private  
11 transactions have been fair and regular[,] and "[t]hat the ordinary course of business has  
12 been followed.").

13 3. A foreclosure deed issued pursuant to NRS 116.31164 that "recit[es]  
14 compliance with notice provisions of NRS 116.31162 through NRS 116.31168 "is  
15 conclusive" as to the recitals "against the unit's former owner, his or her heirs and assigns  
16 and all other persons" unless a party like Nationstar can establish that it is entitled to  
17 equitable relief from a defective sale. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132  
18 Nev. Adv. Op. 5, 1105 (2016); *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev.  
19 Adv. Op. 75, 334 P.3d 408, 411-412 (2014) (citing NRS 116.31166(2)).

20 4. That "[i]f the trustee's deed recites that all statutory notice requirements  
21 and procedures required by law for the conduct of the foreclosure have been satisfied, a  
22 rebuttable presumption arises that the sale has been conducted regularly and properly; this  
23 presumption is conclusive as to a bona fide purchaser." *Moeller v. Lien*, 30 Cal. App. 4th  
24 822, 831-32, 30 Cal. Rptr. 777, 783 (1994)(emphasis added); *see also* 4 Miller & Starr,  
25 Cal. Real Estate (3d ed. 2000) Deeds of Trust and Mortgages § 10:211, pp. 647-652; 2  
26 Bernhardt, Cal. Mortgage and Deed of Trust Practice (Cont.Ed.Bar 2d ed. 1990) § 7:59,  
27 pp. 476-477).

28 C. These presumptions "not only fix[] the burden of going forward with evidence, but

1 it also shifts the burden of proof." *Yeager v. Harrah's Club, Inc.*, 111 Nev. 830, 835, 897 P.2d  
2 1093, 1095 (1995)(citing *Vancheri v. GNLV Corp.*, 105 Nev. 417, 421, 777 P.2d 366, 368 (1989)).  
3 "These presumptions impose on the party against whom it is directed the burden of proving that  
4 the nonexistence of the presumed fact is more probable than its existence." *Id.* at 842 (citing NRS  
5 47.180).

6 D. Thus, Bank bore the burden of proving it was more probable than not that the  
7 Association sale and the resulting Foreclosure Deed were invalid. This burden has been confirmed  
8 in the recent case of *Nationstar Mortgage, LLC v. Saticoy Bay Series 2227 Shadow Canyon*, 133  
9 Nev. \_\_\_, \_\_\_, 405 P.3d 641, 646 (2017) ("...Nationstar has the burden to show that that the sale  
10 should be set aside in light of Saticoy Bay's status as the record title holder[.]" (citing *Breliant*,  
11 112 Nev. at 669, 918 P.2d at 318; NRS 47.250(16); NRS 116.31166(10-(2); and *Shadow Wood*  
12 *Homeowners Ass'n, Inc. v. New York Community Bankcorp, Inc.*, 132 Nev. \_\_\_, \_\_\_, 366 P.3d  
13 1105, 1111 (noting that NRS 107.030(8) provided the language in NRS 116.31166)).

14 E. Bank failed to meet its burden of proving it was more probable than not that the  
15 Association sale and the resulting Foreclosure Deed were invalid.

16 F. Pursuant to *SFR*, NRS 116.3116(2) gives associations a true super-priority lien,  
17 the non-judicial foreclosure of which extinguishes a first deed of trust. *SFR*, 334 P.3d at 419.

18 G. A properly conducted foreclosure sale conducted pursuant to NRS 116.31162-  
19 NRS 116.31168, like all foreclosure sales, extinguishes the title owner's interest in real property  
20 and all junior liens and encumbrances, including deeds of trust.

21 H. The Association foreclosure sale vested title in SFR "without equity or right of  
22 redemption." *SFR*, 334 P.3d at 412 (citing NRS 116.31166(3)).

23 I. These sales vest the purchaser with absolute title. *In re Grant*, 303 B.R. 205, 209  
24 (Bankr. D. Nev. 2003).

25 J. If the sale is properly, lawfully and fairly carried out, <sup>the Bank</sup>~~the Bank~~ cannot unilaterally  
26 create a right of redemption in [itself]. *Golden v. Tomiyasu*, 79 Nev. 503, 518 (1963).

27 K. Here, the sale was a non-judicial foreclosure sale conducted pursuant to NRS  
28 116.31166(2). The COURT FINDS the sale vested in SFR title without equity or right of

1 redemption and title must be quieted in favor of SFR.

2 L. *Shadow Wood* holds that the deed recitals are conclusive, unless a party like the  
3 Bank can establish that it is entitled to equitable relief from a defective sale. *Shadow Wood HOA*  
4 *v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 1105 (2016). Here, ~~the Bank~~ <sup>Nationstar</sup> has not established  
5 that this was a defective sale. As the purchaser at the Association foreclosure sale, SFR need only  
6 show the Trustee's Deed Upon Sale to be entitled to quiet title free and clear of the deed of trust  
7 since there was no defective sale. The COURT FINDS the deed recitals are conclusive.

8 M. The Bank is not entitled to equitable relief. The Nevada Supreme Court stated that  
9 when a BFP has no notice of a pre-sale dispute, such as an attempted tender, equity cannot be  
10 granted to the tendering party, who could defeat any BFP status by giving notice of an attempt to  
11 pay. Equitable relief cannot be granted to a party who ignored earlier remedies and allowed a BFP  
12 to purchase the property, when the relief would be to the detriment to the BFP. Here, the Bank  
13 failed to adequately protect its interest. It failed to try for earlier remedies and allowed a BFP to  
14 purchase the property. The COURT FINDS equitable relief is no longer available to the Bank.

15 N. The Foreclosure Deed and Sale are Presumed Valid. SFR contends that the Bank  
16 cannot overcome the presumptions that (1) the Association and its agent obeyed the law, (2) the  
17 property was conveyed to SFR, (3) the Association foreclosure sale was fair and regular, and  
18 conducted in the ordinary course of business. The COURT FINDS the DOT was extinguished by  
19 the Association foreclosure sale and since the property was conveyed to SFR, SFR is entitled to  
20 summary judgment on its claim for quiet title and permanent injunction. The Bank has not  
21 overcome the conclusive presumption that the foreclosure sale and resulting deed are valid, and  
22 SFR can rely on the conclusive recitals in the foreclosure deed.

23 O. To prevail on a claim for unjust enrichment, U.S. Bank must show that it conferred  
24 a benefit on SFR, that SFR appreciated such benefit, and there was acceptance and retention by  
25 [SFR] of such benefit under circumstances such that it would be inequitable for [SFR] to retain  
26 the benefit without payment of the value thereof. *Unionamerica Mtg. v. McDonald*, 97 Nev. 210  
27 212 (1981). Under NRCP 16.1(a)(1)(C), a party is required to produce, without awaiting a  
28 discovery request . . . [a] computation of any category of damages claimed. U.S. Bank contends



1 that SFR has benefited from U.S. Bank's payment of taxes, insurance, and homeowner s  
2 association assessments since the time of the HOA sale. However, U.S. Bank has not proven this  
3 to be true nor produced evidence that any such payments were made. Further, U.S. Bank has never  
4 disclosed any special damages under NRCP 16.1 on this issue. There being no evidence that U.S.  
5 Bank paid any monies toward the property or that SFR benefited from these payments, therefore,  
6 the COURT FINDS U.S. Bank's claim for unjust enrichment fails as a matter of law.

7 P. ~~The Bank~~ <sup>Nationstar</sup> contends a proper tender was made on 9/2/10 for the amount of \$207.00  
8 which represented the statutory super-priority amount of the HOA s lien at \$23.00 per month for  
9 months, thereby discharging the super priority lien in dispute. The Nevada Supreme Court held  
10 in *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. Adv. Op 35, 373 P.3d 66 (2016) that the  
11 superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees and  
12 foreclosure costs incurred; rather it is limited to an amount equal to the common expense  
13 assessments due during the nine months before foreclosure. While this Court acknowledges that  
14 in *Horizons at Seven Hills v. Ikon*, the association in question did not foreclose, the Nevada  
15 Supreme Court's in depth review of legislative history and statutory interpretation indicates the  
16 superpriority portion in question does not include fees and costs. *Id.* at 70. Therefore, the COURT  
17 FINDS said tender of \$207.00 was the proper amount of the superpriority lien, as it was nine  
18 months of assessments under NRS 116.3116(2).

19 Q. The question then hinges on whether this tender precludes SFR from taking said  
20 property free and clear of the DOT, or whether SFR takes said property subject to the DOT. The  
21 Court looks to whether refusal of the tender was grounded on an honest belief that the tender was  
22 insufficient. See, 59 C.J.S. Mortgages 582 (2016); *Bank of Am., N.A. v. Rugged Oaks Investments,*  
23 *LLC*, 68504, 2016 WL 5219841, at \*1 (Nev. Sept. 16, 2016)( It has been held... that a good and  
24 sufficient tender on the day when payment is due will relieve the property from the lien of the  
25 mortgage, except where the refusal [of payment] was... grounded on an honest belief that the  
26 tender was insufficient. ). ~~The Bank's~~ <sup>Nationstar's</sup> tender of the past due assessments in the amount of \$207.00  
27 occurred on 9/2/10, which was rejected by the HOA Trustee. However, SFR did not have  
28 knowledge of this tender, either by inquiry notice or constructive notice. ~~The Bank~~ <sup>Nationstar</sup> has failed to



1 set forth sufficient information that proper notice of the tender was provided, such that individuals  
2 or entities would be put on notice of the same. The Association rejected the payment in good faith.  
3 ~~The Bank~~ <sup>Nationstar</sup> failed to record its performance so as to protect itself from third-party purchasers as  
4 required by NV law. David Alessi testified that Alessi & Koenig did not receive the letter with  
5 the check. If Alessi & Koenig never received the purported tender there was nothing to reject. All  
6 the Bank has is a copy of the purported check and a screenshot, neither of which are properly  
7 admissible. Further, Doug Miles was not disclosed and has defects in his affidavit. The Bank is  
8 lacking admissible evidence to establish the delivery of the check, or admissible evidence that the  
9 check was rejected without explanation. Thus, SFR was a bona fide purchaser ("BFP"). A  
10 subsequent purchaser is bona fide purchaser under common-law principles if it takes the property  
11 for a valuable consideration and without notice of the prior equity, and without notice of facts  
12 which upon diligent inquiry would be indicated and from which notice would be imputed to him,  
13 if he failed to make such inquiry. *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947)  
14 (emphasis omitted); see also *Moore v. De Bernardi*, 47 Nev. 33, 54, 220 P. 544, 547 (1923) (The  
15 decisions are uniform that the bona fide purchaser of a legal title is not affected by any latent  
16 equity founded either on a trust, [e]ncumbrance, or otherwise, of which he has no notice, actual  
17 or constructive.). The Nevada Supreme Court has further held, that [w]here the complaining party  
18 has access to all the facts surrounding the questioned transaction and merely makes a mistake as  
19 to the legal consequences of his act, equity should normally not interfere, especially where the  
20 rights of third parties might be prejudiced thereby. *Shadow Wood*, 366 P.3d at 1116 (quoting  
21 *Nussbaumer v. Sup. Ct. in & for Yuma Cty.*, 107 Ariz. 504, 489 P.2d 843, 846 (1971)). In *Shadow*  
22 *Wood*, the Nevada Supreme Court held that [c]onsideration of harm to potentially innocent third  
23 parties is especially pertinent where [the lender] did not use the legal remedies available to it to  
24 prevent the property from being sold to a third party, such as by seeking a temporary restraining  
25 order and preliminary injunction and filing a lis pendens on the property. *Shadow Wood*, 366 P.3d  
26 at 1114 fn. 7. Here, ~~the Bank~~ <sup>Nationstar</sup> was in the position to take any number of simple steps to avoid a  
27 BFP issue and simply failed to take such action. The Bank has failed to offer any evidence to  
28 refute that SFR had no knowledge of a prior equity and paid valuable consideration. Lastly, in the

1 Hardin declaration, SFR provided evidence of being a BFP The COURT FINDS Nationstar failed  
2 to protect its interest in said property, and SFR is a BFP.

3 R. <sup>Nationstar</sup> ~~The Bank~~ contends the sales price at the HOA foreclosure sale was grossly  
4 inadequate and was commercially unreasonable. To set aside an association foreclosure sale on a  
5 theory of commercial unreasonableness there must be a showing of grossly inadequate price, plus,  
6 fraud, unfairness, or oppression. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op.  
7 5, 366 P.3d 1105, 1112 (2016) (citing *Long v. Towne*, 98 Nev. 11, 13, 639, P.2d 528, 530 (1982));  
8 *See also Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL 1122449, at \*1 (Nev. Mar.  
9 18, 2016)(unpublished Order Vacating and Remanding)(Holding a low sales price is not a basis  
10 for voiding a foreclosure sale absent fraud, unfairness, oppression...); *See also Golden v.*  
11 *Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963) (stating that, while a power-of-sale  
12 foreclosure may not be set aside for mere inadequacy of price, it may be if the price is grossly  
13 inadequate and there is in addition proof of some element of fraud, unfairness, or oppression  
14 (internal quotation omitted))). The Supreme Court of Nevada recently clarified that in Nevada,  
15 courts retain the power to grant equitable relief from a defective [association] foreclosure sale  
16 when appropriate .... *Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc.*,  
17 366 P.3d 1105, 1110 (Nev.2016) (en banc). [D]emonstrating that an association sold a property  
18 at its foreclosure sale for an inadequate price is not enough to set aside a foreclosure sale; there  
19 must also be a showing of fraud, unfairness, or oppression. *Id.* (citing *Long*, 98 Nev. 11, 639 P.2d  
20 530). In considering whether equity supports setting aside the sale in question, the Court is to  
21 consider any other factor bearing on the equities, including actions or inactions of both parties  
22 seeking to set aside the sale and the impact on a bona fide purchaser for value. *Id.* at 1114 (finding  
23 courts must consider the entirety of the circumstances that bear upon the equities). Here, <sup>Nationstar</sup> ~~the Bank~~  
24 contends that the sale should be set aside under equitable principles because the sale of the  
25 Property for less than 20% of its fair market value is grossly inadequate. The Court, however,  
26 does not find this argument to be persuasive. The analysis for finding fraud, unfairness, or  
27 oppression applies to the seller (HOA) and purchaser, not whatever mistake may have occurred  
28 by the HOA in rejecting tender or accepting payments from the Borrower. *See Golden v.*

1 *Tomiyasu*, 79 Nev. 503, 513, 387 P.2d 989, 994 (reviewing fraud and collusion between the  
2 foreclosing trustee and bidders, not fraud, unfairness, or oppression in the underlying trustee's  
3 substantive actions). *See also Centeno v. JP Morgan Chase Bank, N.A.*, 67365, 2016 WL  
4 1122449, at \*1 (Nev. Mar. 18, 2016)(unpublished Order Vacating and Remanding)(Holding a  
5 low sales price is not a basis for voiding a foreclosure sale absent fraud, unfairness, oppression...  
6 Because the Bank failed to set forth material issues of fact demonstrating some fraud, unfairness,  
7 or oppression with the actual sale to demonstrate commercial unreasonableness, the COURT  
8 FINDS the sale in question was commercially reasonable.

9 S. On 8/31/15, Nationstar recorded a lis pendens against the property. NRS 14.015  
10 sets forth the requirements for maintaining a lis pendens on a property. Here, when Nationstar  
11 recorded the lis pendens, it did not have a pending action that was for (1) foreclosure or (2) that  
12 affected title or possession of the property and still has no pending claims against SFR today. The  
13 NRCP30(b)(6) deposition of U.S. Bank and Nationstar, concedes that Nationstar only services  
14 the loan and that it does not have an interest in the promissory note or deed of trust. Because  
15 Nationstar lacked any basis to record the lis pendens against the property in the first place and  
16 still lacks basis to maintain it, SFR is entitled to a judgment from this Court on its slander of title  
17 claim against Nationstar and that the lis pendens be expunged.

18 T. Pursuant to NRS 116.31166(2), when SFR made the highest bid and purchased the  
19 property at the Association sale, it obtained the title of the unit's owner without equity or right of  
20 redemption. Thus, any interest Moore and/or Gotera could claim in the property was extinguished.  
21 On 6/27/18 default was entered against Moore and Gotera for failing to answer SFR's complaint.

22 U. As a result of the Association's non-judicial foreclosure sale, the DOT was  
23 extinguished. As such, SFR is entitled to summary judgment on its claim for quiet title and a  
24 permanent injunction.

25 V. Any attempt to foreclose on the DOT by the Bank would be invalid as the DOT  
26 was extinguished by the Association sale.

27 W. Any assignment, sale, or transfer of the DOT by the Bank has no legal effect  
28 because the DOT was extinguished by the Association sale.

1 X. Any attempt to take or maintain possession of the Property by the Bank would be  
2 invalid because its interest in the Property, if any, was extinguished by the Association sale.

3 **ORDER**

4 **IT IS ORDERED, ADJUDGED, AND DECREED** that SFR's Motion for Summary  
5 Judgment is **GRANTED**.

6 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Nationstar's  
7 Motion for Summary Judgment is **DENIED**.

8 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that U.S. Bank's Joinder  
9 to Nationstar's Motion for Summary Judgment is **DENIED**.

10 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Association's  
11 non-judicial foreclosure sale relating to real property located at 5327 Marsh Butte Street, Las  
12 Vegas, Nevada 89148; Parcel No. 163-30-312-007 extinguished the DOT recorded against the  
13 Property in the Official Records of the Clark County Recorder as Instrument No. 20051121-  
14 0005567.

15 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Nationstar has no  
16 further right, title, or interest in real property located at 5327 Marsh Butte Street, Las Vegas,  
17 Nevada 89148; Parcel No. 163-30-312-007, and is hereby permanently enjoined from taking any  
18 further action to cloud SFR's title to the Property or enforce the now extinguished DOT, including  
19 but not limited to initiating, or continuing to initiate, foreclosure proceedings and from selling or  
20 transferring the Property.

21 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that U.S. Bank has no  
22 further right, title, or interest in real property located at 5327 Marsh Butte Street, Las Vegas,  
23 Nevada 89148; Parcel No. 163-30-312-007, and is hereby permanently enjoined from taking any  
24 further action to cloud SFR's title to the Property or enforce the now extinguished DOT, including  
25 but not limited to initiating, or continuing to initiate, foreclosure proceedings and from selling or  
26 transferring the Property.

27 ...

28 ...

1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that title to real property  
2 located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-007 is  
3 hereby quieted in favor of SFR.

4 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that JUDGMENT be  
5 entered in favor of SFR pursuant to this ORDER.

6 **IT IS SO ORDERED.**

7 DATED this 26 day of Nov, 2018.


8  
9   
DISTRICT COURT JUDGE  
10 Jm

11 Respectfully Submitted By:

Approved as to Form and Content By:

12 **KIM GILBERT EBRON**

**AKERMAN LLP**

13   
14 DIANA S. EBRON, ESQ.  
Nevada Bar No. 10580  
15 JACQUELINE A. GILBERT, ESQ.  
Nevada Bar No. 10593  
16 KAREN L. HANKS, ESQ.  
Nevada Bar No. 9578  
17 JASON G. MARTINEZ, ESQ.  
Nevada Bar No. 13375  
18 7625 Dean Martin Drive, Suite 110  
19 Las Vegas, Nevada 89139  
20 *Attorneys for SFR Investments Pool 1, LLC*

Competing Order to be Submitted  
DARREN T. BRENNER, ESQ.  
Nevada Bar No. 8386  
DONNA WITTIG, ESQ.  
Nevada Bar No. 11015  
1635 Village Center Circle, Suite 200  
Las Vegas, Nevada 89134  
*Attorneys for U.S. Bank, N.A. and Nationstar  
Mortgage, LLC*

21 Approved as to Form and Content By:

22 **GERRARD COX LARSEN**

23 Competing Order to be Submitted  
DOUGLAS D. GERRARD, ESQ.  
Nevada Bar No. 4613  
24 FREDERICK J. BIEDERMANN, ESQ.  
Nevada Bar No. 11918  
25 2450 Saint Rose Parkway, Suite 200  
26 Henderson, Nevada 89074  
27 *Attorneys for Nationstar Mortgage, LLC*  
28

# EXHIBIT “B”


  
20051121-0005566

RECORDING REQUESTED BY:  
Fidelity National Title Agency of Nevada  
Escrow No. 05-191253-TH  
Title Order No. 00191253

When Recorded Mail Document  
and Tax Statement To:

Ms. Magnolia Gotera

1090 Twin Creeks Drive  
Salinas, CA. 93905

RPTT: 2,728.50  
APN: 163-30-312-007

Fee: \$15.00 RPTT: \$2,728.50  
N/C Fee: \$0.00

11/21/2005 14:38:39  
T20050211957

Requestor:

FIDELITY NATIONAL TITLE

Frances Deane JSB  
Clark County Recorder Pgs: 2

### GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That Wei Hong Yang, An Unmarried Woman

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do(es) hereby Grant, Bargain, Sell and

Convey to Magnolia Gotera, A Single Woman

all that real property situated in the Clark County, State of Nevada, bounded and described as follows:

Lot 7 in Block 1 of Final Map of Section 30 R2-60/70 No. 5, as shown by map thereof on file in Book 102 of Plats, Page 28 in the Office of the County Recorder of Clark County, Nevada.

SUBJECT TO: 1. Taxes for the fiscal year 2005-06  
2. Covenants, Conditions, Reservations, Rights, Rights of Way and Easements now of record.

Together with all and singular tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

DATED: November 14, 2005

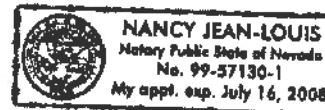
STATE OF NEVADA  
COUNTY OF Clark

This instrument was acknowledged before me  
on November 14, 2005  
by Wei Hong Yang

Signature Nancy Jean-Louis  
Notary Public

My Commission Expires: 7/16/08

Wei Hong Yang  
Wei Hong Yang



# STATE OF NEVADA DECLARATION OF VALUE

## 1. Assessor Parcel Number(s)

a) 163-30-312-007

b) \_\_\_\_\_

c) \_\_\_\_\_

d) \_\_\_\_\_

## 2. Type of Property:

a) ☐ Vacant Landb) ☒ Single Fam. Res.c) ☐ Condo/Twnhsed) ☐ 2 - 4 Plexe) ☐ Apt. Bldg.f) ☐ Comm'l/Ind'lg) ☐ Agriculturalh) ☐ Mobile Home☐ Other \_\_\_\_\_

## FOR RECORDER'S OPTIONAL USE ONLY

Document/Instrument #: \_\_\_\_\_

Book: \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

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

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

\$ 535,000.00

Deed in Lieu of Foreclosure Only (Value of Property) (

Transfer Tax Value:

\$ 535,000.00

Real Property Transfer Tax Due

\$ 2,728.50

## 4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section 0

b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: 100%

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

Signature Wei Hong Yang Capacity Grantor

Signature \_\_\_\_\_ Capacity \_\_\_\_\_

SELLER (GRANTOR) INFORMATION  
(REQUIRED)BUYER (GRANTEE) INFORMATION  
(REQUIRED)Print Name: Wei Hong YangPrint Name: Magnolia GoteraAddress: 7201 Mission Hill DrAddress: 1090 Twin Creeks Dr.City, State, Zip: Las Vegas NV 89103City, State, Zip: Salinas, CA 93905

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

Print Name: Fidelity National Title Agency of NevadaEscrow #: 05-191253-THAddress: 5597 W. Spring Mountain RoadCity, State and Zip: Las Vegas, NV 89102

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

(declval.wpd)(04 05)



# EXHIBIT “C”

20051121-0005567

Assessor's Parcel Number:  
16330312007  
After Recording Return To:  
COUNTRYWIDE HOME LOANS, INC.

Fee: \$39.00  
N/C Fee: \$0.00

11/21/2005 14:38:39  
T20050211957

Requestor:  
FIDELITY NATIONAL TITLE

Frances Deane JSB  
Clark County Recorder Pgs: 26

MS SV-79 DOCUMENT PROCESSING  
P.O.Box 10423  
Van Nuys, CA 91410-0423  
Prepared By:  
APRIL MESA  
Recording Requested By:  
J. KEPHART

COUNTRYWIDE HOME LOANS, INC.

650 WHITE DRIVE, STE 280  
LAS VEGAS  
NV 89119

[Space Above This Line For Recording Data]

0519191253 00012143406811005  
[Escrow/Closing #] [Doc ID #]

## DEED OF TRUST

MIN 1000157-0006127350-0

### DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated NOVEMBER 10, 2005, together with all Riders to this document.

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

VMP-6A(NV) (0307) CHL (07/03)(d)

Page 1 of 16

VMP Mortgage Solutions - (800)521-7291

Initials: 

Form 3029 1/01



\* 2 3 9 9 1 \*



\* 1 2 1 4 3 4 0 6 8 0 0 0 0 1 0 0 6 A \*

NATIONSTAR00086

(B) "Borrower" is  
MAGNOLIA GOTERA, A SINGLE WOMAN

Borrower is the trustor under this Security Instrument.

(C) "Lender" is  
COUNTRYWIDE HOME LOANS, INC.

Lender is a  
CORPORATION

organized and existing under the laws of NEW YORK  
P.O. Box 10219

Van Nuys, CA 91410-0219

(D) "Trustee" is  
CTC REAL ESTATE SERVICES

400 COUNTRYWIDE WAY, MSN SV-88, SIMI VALLEY, CA 93065 , ,

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

(F) "Note" means the promissory note signed by Borrower and dated NOVEMBER 10, 2005

The Note states that Borrower owes Lender  
FIVE HUNDRED EIGHT THOUSAND TWO HUNDRED FIFTY and 00/100

Dollars (U.S. \$ 508,250.00 ) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than DECEMBER 01, 2035

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

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

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

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

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

Initials:

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

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

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

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

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

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

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

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

#### TRANSFER OF RIGHTS IN THE PROPERTY

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

DOC ID #: 00012143406811005

irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY of

[Type of Recording Jurisdiction]

CLARK

[Name of Recording Jurisdiction]

LOT 7 IN BLOCK 1 OF FINAL MAP OF SECTION 30 R2-60/70 NO. 5,  
AS SHOWN BY MAP THEREOF ON FILE IN BOOK 102 OF PLATS, PAGE 28  
IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.  
ASSESSOR'S PARCEL NO: 163-30-312-007

which currently has the address of

5327 MARSH BUTTE STREET, LAS VEGAS

[Street/City]

Nevada 89148-4669 ("Property Address"):

[Zip Code]

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

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

Initials: 

VMP -6A(NV) (0307) CHL (07/03)

Page 4 of 16

Form 3029 1/01

NATIONSTAR00089

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is

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

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

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

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

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

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

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive

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from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**15. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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

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

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

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

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

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

**19. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees,

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property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

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

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

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

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

Initials: 

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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

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

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

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

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

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

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

Initials *Mej*

DOC ID #: 00012143406811005

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

Witnesses:



  
MAGNOLIA GOTERA

(Seal)  
-Borrower

(Seal)  
-Borrower

(Seal)  
-Borrower

(Seal)  
-Borrower

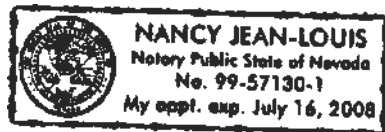


STATE OF NEVADA  
COUNTY OF

*Clark*

This instrument was acknowledged before me on November 15, 2005 by

*Magnolia Gotera*



*Nancy Jean-Louis*

Mail Tax Statements To:  
TAX DEPARTMENT SV3-24

450 American Street  
Simi Valley CA, 93065

**ADJUSTABLE RATE RIDER**  
(PayOption MTA Twelve Month Average Index - Payment Caps)

0519191253                      00012143406811005  
[Escrow/Closing #]                      [Doc ID #]

THIS ADJUSTABLE RATE RIDER is made this Tenth day of  
NOVEMBER, 2005, 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 ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to  
COUNTRYWIDE HOME LOANS, INC.

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

5327 MARSH BUTTE STREET  
LAS VEGAS, NV 89148-4669  
[Property Address]

THE NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE  
MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY  
PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD  
BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE  
MAXIMUM LIMIT STATED IN THE NOTE.

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

**A. INTEREST RATE AND MONTHLY PAYMENT CHANGES**

The Note provides for changes in the interest rate and the monthly payments, as follows:

▪ PayOption MTA ARM Rider  
1E310-XX (12/04)(d)

Page 1 of 6



**NATIONSTAR00102**

**2. INTEREST****(A) Interest Rate**

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 3.000 %. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of the Note.

**(B) Interest Rate Change Dates**

The interest rate I will pay may change on the first                      day of JANUARY, 2006, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

**(C) Index**

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

**(D) Calculation of Interest Rate Changes**

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding THREE & 75/1000 percentage point(s) (3.075 %) ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.950 %. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

**3. PAYMENTS****(A) Time and Place of Payments**

I will make a payment every month.

I will make my monthly payments on the FIRST day of each month beginning on January, 2006. I will make these payments every month until I have paid all the Principal and interest and any other charges described below that I may owe under the Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on DECEMBER 01, 2035, I still owe amounts under the Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at  
P.O. Box 10219, Van Nuys, CA 91410-0219

or at a different place if required by the Note Holder.

**(B) Amount of My Initial Monthly Payments**

Each of my initial monthly payments until the first Payment Change Date will be in the amount of U.S. \$ 2,142.80 , unless adjusted under Section 3 (F).

**(C) Payment Change Dates**

My monthly payment may change as required by Section 3(D) below beginning on the first day of JANUARY, 2007 , and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment. The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

**(D) Calculation of Monthly Payment Changes**

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment effective on a Payment Change Date, will not increase by more than 7.5% of my prior monthly payment. This 7.5% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and interest payment and does not apply to any escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the Limited Payment and the Full Payment. I also have the option to pay the Full Payment for my monthly payment.

**(E) Additions to My Unpaid Principal**

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3(D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3(A).

**(F) Limit on My Unpaid Principal; Increased Monthly Payment**

My unpaid Principal can never exceed the Maximum Limit equal to ONE HUNDRED FIFTEEN percent ( 115 %) of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the 7.5% Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

**(G) Required Full Payment**

On the fifth Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

**(H) Payment Options**

After the first Interest Rate Change Date, Lender may provide me with up to three (3) additional payment options that are **greater** than the Minimum Payment, which are called "Payment Options." I may be given the following Payment Options;

(i) **Interest Only Payment:** the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.

(ii) **Fully Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) at the Maturity Date in substantially equal payments.

(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

These Payment Options are only applicable if they are greater than the Minimum Payment.

## **B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER**

Section 18 of the Security Instrument entitled "Transfer of the Property or a Beneficial Interest in Borrower" is amended to read as follows:

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

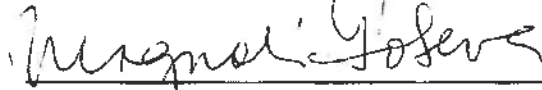
To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by

DOC ID #: 00012143406811005

this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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



MAGNOLIA GOTERA

-Borrower

-Borrower

-Borrower

-Borrower

• PayOption MTA ARM Rider  
1E310-XX (12/04)

Page 6 of 6

**NATIONSTAR00107**

## PLANNED UNIT DEVELOPMENT RIDER

After Recording Return To:  
COUNTRYWIDE HOME LOANS, INC.  
MS SV-79 DOCUMENT PROCESSING  
P.O.Box 10423  
Van Nuys, CA 91410-0423

PARCEL ID #:  
16330312007

Prepared By:  
APRIL MESA

0519191253                      00012143406811005  
[Escrow/Closing #]                      [Doc ID #]

THIS PLANNED UNIT DEVELOPMENT RIDER is made this Tenth day of  
NOVEMBER, 2005, 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

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

VMP® -7R (0411)

CHL (11/04)(d)

Page 1 of 4

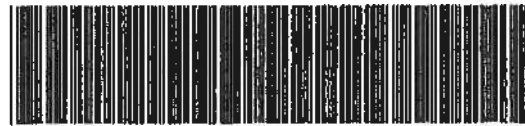
Initials *AM*

VMP Mortgage Solutions, Inc. (800)521-7291

Form 3150 1/01



\* 2 3 9 9 1 \*



\* 1 2 1 4 3 4 0 6 8 0 0 0 0 1 0 0 7 R \*

NATIONSTAR00108



DOC ID #: 00012143406811005

undersigned (the "Borrower") to secure Borrower's Note to  
COUNTRYWIDE HOME LOANS, INC.

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

5327 MARSH BUTTE STREET  
LAS VEGAS, NV 89148-4669  
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with  
other such parcels and certain common areas and facilities, as described in  
THE COVENANTS, CONDITIONS, AND RESTRICTIONS FILED OF RECORD  
THAT AFFECT THE PROPERTY

(the "Declaration"). The Property is a part of a planned unit development known as  
SPRING VALLEY SECTION 30

[Name of Planned Unit Development]

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

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

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

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

Initials Uy.

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

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

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

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

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

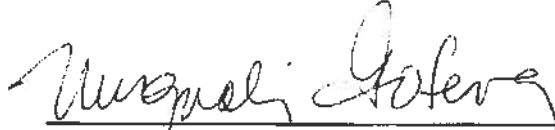
**E. Lender's Prior Consent.** Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial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

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

Initials: 

DOC ID #: 00012143406811005

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



MAGNOLIA GOTERA

(Seal)

- Borrower

(Seal)

- Borrower

(Seal)

- Borrower

(Seal)

- Borrower

# EXHIBIT “D”


  
20080507-0001731

Fee: \$14.00

N/C Fee: \$0.00

05/07/2008

12:02:42

T20080081618

Requestor:

NORTH AMERICAN TITLE COMPANY

Debbie Conway

JJF

Clark County Recorder Pgs: 1

When recorded return to:

ALESSI TRUSTEE CORPORATION

9500 W. Flamingo Rd., Suite 100

Las Vegas, Nevada 89147

Phone: (702) 222-4033

www.alessitrustee.com

LND

A.P.N. 163-30-312-007

Trustee Sale # SMR-5327-N

### NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) recorded on **Pending**, as Instrument No: **pending**, of the official records of Clark County, Nevada, **Shadow Mountain Ranch HOA** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **5327 Marsh Butte St. , Las Vegas, NV 89148** and more particularly legally described as: **Lot 7 Block 1 Book 102 Page 28** in the County of **Clark**.

The owner(s) of record as reflected on the public record as of today's date is (are): **Magnolia Gotera**

The mailing address(es) is: **1090 Twin Creeks Dr., Salinas, CA 93905**

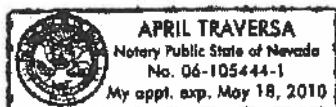
The total amount due through today's date is: **\$957.00**. Of this total amount **\$570.00** represent Collection and/or Attorney fees and **\$50.00** represent collection costs, late fees, service charges and interest. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **April 15, 2008**

By:


  
Aileen Ruiz - Trustee Sale Officer
Alessi Trustee Corporation, on behalf of **Shadow Mountain Ranch**SUBSCRIBED and SWORN before me **April 15, 2008**

(Seal)



(Signature)


  
NOTARY PUBLIC

# EXHIBIT “E”

Inst #: 201007010000190

Fees: \$14.00

N/C Fee: \$0.00

07/01/2010 08:33:21 AM

Receipt #: 409704

Requestor:

JUNES LEGAL SERVICES

Recorded By: DXI Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC  
9500 West Flamingo Rd., Ste 100  
Las Vegas, Nevada 89147  
Phone: 702-222-4033

A.P.N. 163-30-312-007

Trustee Sale No. SMR-5327-N

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN**

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!** You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is **\$3,140.00** as of **June 28, 2010** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **Shadow Mountain Ranch, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 100, Las Vegas, NV 89147.**

THIS NOTICE pursuant to that certain Assessment Lien, recorded on **May 7, 2008** as document number **20080507-01731**, of Official Records in the County of **Clark**, State of Nevada. Owner(s): **Magnolia Gotera**, of **Lot 7 Block 1**, as per map recorded in **Book 102, Pages 28**, as shown on the Condominium Plan, Recorded on as document number **pending** as shown on the Subdivision map recorded in Maps of the County of **Clark**, State of Nevada. PROPERTY ADDRESS: **5327 Marsh Butte St., Las Vegas, NV 89148**. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. **REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT** The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated **May 7, 2008**, executed by **Shadow Mountain Ranch** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: **June 28, 2010**  
Milro Jetic, Alessi & Koenig, LLC on behalf of Shadow Mountain Ranch

# EXHIBIT “F”



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**MILES, BERGSTROM & WINTERS LLP BORROWER LETTER AFFIDAVIT**

---

State of California     }  
                                      }ss.  
Orange County         }

Affiant being first duly sworn, deposes and says:

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

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

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

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

Loan Number: 121434068

Borrower(s): Magnolia Gotera

Property Address: 5327 Marsh Butte Street, Las Vegas, NV 89148

{40660665\_1.docx}  
Page 1 of 2

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

6. Based on Miles Bauer's business records, attached as **Exhibit 1** is a copy of a September 2, 2010 letter from Rock K. Jung, Esq., an attorney with Miles Bauer, to Magnolia Carter.

FURTHER DECLARANT SAYETH NOT.

Date: 2/3/17



Declarant Douglas E. Miles

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

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this 3<sup>rd</sup> day of February, 2017,

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

the person who appeared before me.

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



---

**MILES, BERGSTROM & WINTERS, LLP AFFIDAVIT**

---

State of California     }  
                                      }ss.  
Orange County         }

Affiant being first duly sworn, deposes and says:

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

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

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

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Borrower(s): Magnolia Gotera

Property Address: 5327 Marsh Butte Street, Las Vegas, NV 89148

{40660669\_1.doc}

Page 1 of 3

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

6. Based on Miles Bauer's business records, attached as **Exhibit 1** is a copy of a September 2, 2010 letter from Rock K. Jung, Esq., an attorney with Miles Bauer, to Shadow Mountain Ranch, care of The Alessi & Koenig, LLC.

7. Based on Miles Bauer's business records, attached as **Exhibit 2** is a copy of a Statement of Account from Alessi & Koenig dated September 13, 2010 and received by Miles Bauer in response to the letter identified above.

8. Based on Miles Bauer's business records, attached as **Exhibit 3** is a copy of a September 30, 2010 letter from Mr. Jung to Alessi & Koenig, LLC enclosing a check for \$207.00.

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9. Based on Miles Bauer's business records, attached as **Exhibit 4** is a copy of a September 8, 2010 letter from Alessi & Koenig, LLC indicating the \$207.00 would be rejected. A copy of a screenshot containing the relevant case management note confirming the check was rejected is attached as **Exhibit 5**.

FURTHER DECLARANT SAYETH NOT.

Date: 2/3/17



Declarant Douglas E. Miles

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

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this 3<sup>rd</sup> day of February, 2017,  
by Douglas E. Miles, proved to me on the basis of satisfactory evidence to be  
(Name of Signer)

the person who appeared before me.

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



# EXHIBIT 1

DOUGLAS E. MILES \*  
Also Admitted in Nevada and Illinois  
RICHARD J. BAUER, JR.\*  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
FRED TIMOTHY WINTERS\*  
KEENAN E. MCCLANAHAN\*  
MARK T. DOMEYER\*  
Also Admitted in District of  
Columbia & Virginia  
TAMI S. CROSBY\*  
L. BRYANT JAQUEZ \*  
DANIEL L. CARTER \*  
GINA M. CORENA  
WAYNE A. RASH \*  
ROCK K. JUNG  
VY T. PHAM \*  
KRISTA J. NIELSON  
MARK S. BRAUN  
Also Admitted in Iowa & Missouri  
HADI R. SEYED-ALI \*  
ROSEMARY NGUYEN \*  
JORY C. GARABEDIAN  
THOMAS M. MORLAN  
Admitted in California  
KRISTIN S. WEBB \*  
BRIAN H. TRAN \*  
ANNA A. GHAMJAR \*



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

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

\* CALIFORNIA OFFICE  
1231 E. DYER ROAD  
SUITE 100  
SANTA ANA, CA 92705  
PHONE (714) 481-9100  
FACSIMILE (714) 481-9141

September 2, 2010

Magnolia Gotera  
5327 Marsh Butte Street  
Las Vegas, NV 89148

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 5327 Marsh Butte Street, Las Vegas, NV 89148*  
*MBBW File No. 10-H1641*

Ms. Gotera:

This letter is written in response to the attached Notice of Default your HOA caused to be issued and recorded as a result of you allegedly neglecting to timely pay your required HOA assessments on the above described real property. This firm represents the interests of MERS as nominee for BAC Home Loans Servicing, LP aka Countrywide Home Loans, Inc. (hereinafter "BAC") with regard to these issues. As you know, BAC is the beneficiary/servicer of the first deed of trust loan secured by the property.

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

The association has a lien on a unit for:

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

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

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

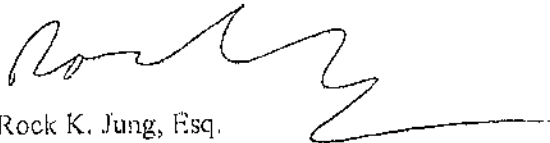
The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

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

Please be advised that, in the event you do not immediately bring your HOA account current by paying all sums past due, BAC *may* advance the sums necessary to protect *its lien interest* on the property. If BAC does in fact advance said sums, those sums may be added on to the balance you owe on the first position note and deed in trust you executed. BAC may do this per Nevada law and per the express terms of the note and deed of trust you executed. Further, BAC may add the attorney's fees and costs that are being incurred as a result of this matter to your loan. BAC may also do this per Nevada law and per the express terms of the note and deed of trust you executed. Please note that the HOA foreclosure sale may still occur despite any advancement of sums made by BAC in order to protect its lien interest on the property. Thus, we strongly advise that you contact your HOA and/or Alessi & Koenig, LLC immediately and make the necessary arrangements to bring your HOA account current. If you have already brought your HOA account current or are currently working with Alessi & Koenig, LLC to do so, then please disregard this letter.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Rock K. Jung, Esq.



7113 8257 1474 3965 2623

Inst #: 201007010000190

Fees: \$14.00

N/C Fee: \$0.00

07/01/2010 08:33:21 AM

Receipt #: 409704

Requestor:

JUNES LEGAL SERVICES

Recorded By: DXI Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

FORECLOSURE#6

JUL 14 2010

RECEIVED

When recorded mail to:

THE ALESSI & KOENIG, LLC  
9500 West Flamingo Rd., Ste 100  
Las Vegas, Nevada 89147  
Phone: 702-222-4033

A.P.N. 163-30-312-007

Trustee Sale No. SMR-5327-N

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!** You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is \$3,140.00 as of June 28, 2010 and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: Shadow Mountain Ranch, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 100, Las Vegas, NV 89147.

THIS NOTICE pursuant to that certain Assessment Lien, recorded on May 7, 2008 as document number 20080507-01731, of Official Records in the County of Clark, State of Nevada. Owner(s): Magnolia Gotera, of Lot 7 Block 1, as per map recorded in Book 102, Pages 28, as shown on the Condominium Plan, Recorded on as document number pending as shown on the Subdivision map recorded in Maps of the County of Clark, State of Nevada. PROPERTY ADDRESS: 5327 Marsh Butte St., Las Vegas, NV 89148. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated May 7, 2008, executed by Shadow Mountain Ranch to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.  
Dated: June 28, 2010

Miro Jetric, Alessi & Koenig, LLC on behalf of Shadow Mountain Ranch



107#6601

Alessi & Koenig, LLC  
PO Box 9075  
Temecula, CA 92589-9075



PRESORT  
First-Class Mail  
U.S. Postage and  
Fees Paid  
WSO

7113 8257 1474 3965 2623

Return Receipt (Electronic)

*Send Payments to:*  
Alessi & Koenig, LLC  
9500 W. Flamingo Rd.  
Suite 100  
Las Vegas, NV 89147

*Send Correspondence to:*  
Alessi & Koenig, LLC  
9500 W. Flamingo Rd.  
Suite 100  
Las Vegas, NV 89147

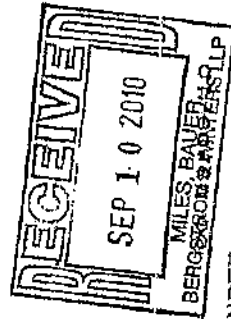
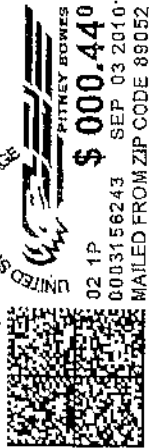
20100707-96  
NOD

|||||  
Countrywide Home Loans, Inc.  
Min 1000157-0006127350-0  
PO Box 515503  
Los Angeles, CA 90051-6803



1103-v5

UNITED STATES POSTAGE  
MILES, BAUER,  
BERGSTROM & WINTERS, LLP  
ATTORNEYS AT LAW  
2203 Paseo Verde Parkway, Suite 250  
Henderson, Nevada 89052



NIXIE 891 DC 1  
RETURN TO SENDER  
ATTEMPTED - NOT KNOWN  
UNABLE TO FORWARD  
BC: 890520270450 \*0294-03257-08-39

Magnolia Gotera  
5327 Marsh Butte Street  
Las Vegas, NV 89148

Re: Property Address: 5327 Marsh Butte Street, Las V.  
MRRW File No 10-H1641

8905202704

Cotery

# EXHIBIT 1

DOUGLAS E. MILES \*  
 Also Admitted in Nevada and Illinois  
 RICHARD J. BAUER, JR. \*  
 JEREMY T. BERGSTROM  
 Also Admitted in Arizona  
 FRED TIMOTHY WINTERS \*  
 KEENAN E. MCLENAHAN \*  
 MARIC T. DOMEYER \*  
 Also Admitted in District of  
 Columbia & Virginia  
 TAMI S. CROSBY \*  
 L. BRYANT JAQUEZ \*  
 DANIEL L. CARTER \*  
 GINA M. CORENA  
 WAYNE A. RASH \*  
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 KRISTA J. NIELSON  
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 JORY C. GARABEDIAN  
 THOMAS M. MORLAN  
 Admitted in California  
 KRISTIN S. WEBB \*  
 BRIAN H. TRAN \*  
 ANNA A. GHAJAR \*



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

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

\* CALIFORNIA OFFICE  
 1231 E. DYER ROAD  
 SUITE 100  
 SANTA ANA, CA 92705  
 PHONE (714) 481-9100  
 FACSIMILE (714) 481-9141

September 2, 2010

Shadow Mountain Ranch  
 c/o THE ALESSI & KOENIG, LLC  
 9500 West Flamingo Rd., Ste 100  
 Las Vegas, NV 89147

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 5327 Marsh Butte Street, Las Vegas, NV 89148*  
*MBBW File No. 10-H1641*

Dear Sirs:

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

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

The association has a lien on a unit for:

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

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

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

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

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

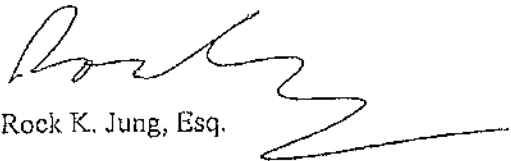
Based on Section 2(b), a portion of your HOA lien is arguably senior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated June 28, 2010. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BAC should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

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

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

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Rock K. Jung, Esq.

# EXHIBIT 2

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

\* Admitted to the California Bar

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

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



*A Multi-Jurisdictional Law Firm*

9500 W. Flamingo Road, Suite 100  
 Las Vegas, Nevada 89147  
 Telephone: 702-222-4033  
 Facsimile: 702-222-4043  
 www.alessikoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA  
 PHONE: 818-735-9600

RENO NV  
 PHONE: 775-626-2323  
 &  
 DIAMOND BAR CA  
 PHONE: 909-861-8300

**FACSIMILE COVER LETTER**

To:	Alex Bhame	Re:	5327 Marsh Butte St./HO #6601
From:	Aleen Ruiz	Date:	Monday, September 13, 2010
Fax No.:		Pages:	1, including cover
		HO #:	6601

Dear Alex Bhame:

This cover will serve as an amended demand on behalf of Shadow Mountain Ranch for the above referenced escrow; property located at 5327 Marsh Butte St., Las Vegas, NV. The total amount due through October, 15, 2010 is \$3,554.00. The breakdown of fees, interest and costs is as follows:

Notice of Intent To Lien -- Nevada	\$95.00
Notice of Delinquent Assessment Lien -- Nevada	\$345.00
Notice of Default	\$395.00
9/13/2010 Demand Fee	\$100.00
<b>Total</b>	<b>\$935.00</b>
1. Attorney and/or Trustees fees:	\$935.00
2. Costs (Notary, Recording, Copies, Mailings, Publication and Posting)	\$550.00
3. Assessments Through October 15, 2010	\$1,284.00
4. Late Fees Through September 13, 2010	\$10.00
5. Fines Through September 13, 2010	\$0.00
6. Interest Through September 13, 2010	\$0.00
7. RPIR-GI Report	\$85.00
8. Title Research (10-Day Mailings per NRS 116.31163)	\$240.00
9. Management Company Audit Fee	\$200.00
10. Management Document Processing & Transfer Fee	\$250.00
11. Progress Payments:	\$0.00
<b>Sub-Total:</b>	<b>\$3,554.00</b>
<b>Less Payments Received:</b>	<b>\$0.00</b>
<b>Total Amount Due:</b>	<b>\$3,554.00</b>

Please have a check in the amount of \$3,554.00 made payable to the Alessi & Koenig, LLC and mailed to the below listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

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



Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

Magnolia Gotera  
1090 Twin Creeks Dr  
Salinas, CA 93905

Property Address: 5327 Marsh Butte St.  
Account #: 28100

Code	Date	Amount	Balance	Check#	Memo
FN	8/24/2009	100.00	100.00		
FN	8/31/2009	100.00	200.00		
FN	9/15/2009	100.00	300.00		
FN	9/29/2009	100.00	400.00		
FN	9/30/2009	100.00	500.00		
FN	10/14/2009	100.00	600.00		
FN	10/14/2009	100.00	700.00		
FN	10/26/2009	100.00	800.00		
FN	11/5/2009	100.00	900.00		
FN	11/5/2009	100.00	1,000.00		
FN	12/3/2009	100.00	1,100.00		
FN	12/3/2009	100.00	1,200.00		
FN	12/3/2009	100.00	1,300.00		
FN	12/3/2009	100.00	1,400.00		
FN	12/3/2009	100.00	1,500.00		
FN	12/3/2009	100.00	1,600.00		
FN	12/17/2009	100.00	1,700.00		
FN	12/17/2009	100.00	1,800.00		
FN	1/8/2010	100.00	1,900.00		
FN	1/8/2010	100.00	2,000.00		
FN	1/27/2010	100.00	2,100.00		
FN	1/27/2010	100.00	2,200.00		
FN	2/5/2010	100.00	2,300.00		
FN	2/5/2010	100.00	2,400.00		
FN	2/18/2010	100.00	2,500.00		
FN	2/18/2010	100.00	2,600.00		

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149

Make check payable to: Shadow Mountain Ranch Homeowners Association

9/13/2010

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

FN	3/11/2010	100.00	2,700.00
FN	3/11/2010	100.00	2,800.00
FN	3/11/2010	100.00	2,800.00
FN	3/11/2010	100.00	3,000.00
FN	3/11/2010	100.00	3,100.00
FN	3/18/2010	100.00	3,200.00
FN	3/24/2010	100.00	3,300.00
FN	4/6/2010	100.00	3,400.00
FN	4/6/2010	100.00	3,500.00
FN	4/26/2010	100.00	3,600.00
FN	4/26/2010	100.00	3,700.00
FN	4/26/2010	100.00	3,800.00
FN	4/26/2010	100.00	3,900.00
FN	5/6/2010	100.00	4,000.00
FN	5/6/2010	100.00	4,100.00
FN	5/19/2010	100.00	4,200.00
FN	5/19/2010	100.00	4,300.00
FN	5/19/2010	100.00	4,400.00
FN	5/19/2010	100.00	4,500.00
Fine	6/7/2010	100.00	4,600.00
Fine	6/7/2010	100.00	4,700.00
Fine	6/7/2010	100.00	4,800.00
Fine	6/7/2010	100.00	4,900.00
Fine	6/17/2010	100.00	5,000.00
Fine	6/17/2010	100.00	5,100.00
Fine	6/17/2010	100.00	5,200.00
Fine	6/17/2010	100.00	5,300.00
Fine	7/9/2010	100.00	5,400.00
Fine	7/9/2010	100.00	5,500.00
Fine	7/9/2010	100.00	5,600.00
Fine	7/9/2010	100.00	5,700.00
Fine	7/9/2010	100.00	5,800.00
Fine	7/9/2010	100.00	5,900.00
Fine	7/9/2010	100.00	6,000.00
Fine	7/9/2010	100.00	6,100.00
Fine	7/22/2010	100.00	6,200.00
Fine	7/22/2010	100.00	6,300.00

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149  
Make check payable to: Shadow Mountain Ranch Homeowners Association

9/13/2010

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

Fine	7/22/2010	100.00	6,400.00	
Fine	7/22/2010	100.00	6,500.00	
Fine	8/4/2010	100.00	6,600.00	
Fine	8/4/2010	100.00	6,700.00	
Fine	8/18/2010	100.00	6,800.00	
Fine	8/18/2010	100.00	6,900.00	
Fine	8/18/2010	100.00	7,000.00	
Fine	8/18/2010	100.00	7,100.00	
Fine	8/18/2010	100.00	7,200.00	
Fine	8/18/2010	100.00	7,300.00	
Fine	8/20/2010	100.00	7,400.00	06/02/10: Maintenance & Repair
Fine	9/9/2010	100.00	7,500.00	
Fine	9/9/2010	100.00	7,600.00	
Fine	9/9/2010	100.00	7,700.00	
Fine	9/9/2010	100.00	7,800.00	
Fine	9/9/2010	100.00	7,900.00	
Fine	9/9/2010	100.00	8,000.00	
Fine	9/9/2010	100.00	8,100.00	06/02/10: Maintenance & Repair
Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance: 8,100.00
1,400.00	800.00	1,200.00	4,900.00	

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149  
Make check payable to: Shadow Mountain Ranch Homeowners Association

9/13/2010

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

Magnolia Gotera  
1090 Twin Creeks Dr  
Salinas, CA 93905

Property Address: 5327 Marsh Butte St.  
Account #: 21103

Code	Date	Amount	Balance	Check#	Memo
Beg Bal	12/31/2008	588.00	588.00		Begin Balance
MA	1/1/2009	23.00	611.00		Monthly Assessment
LF	1/15/2009	10.00	621.00		
MA	2/1/2009	23.00	644.00		Monthly Assessment
LF	2/15/2009	10.00	654.00		
MA	3/1/2009	23.00	677.00		Monthly Assessment
MA	4/1/2009	23.00	700.00		Monthly Assessment
LF	4/16/2009	10.00	710.00		Late Fee Processed
MA	5/1/2009	23.00	733.00		Monthly Assessment
LF	5/16/2009	10.00	743.00		Late Fee Processed
MA	6/1/2009	23.00	766.00		Monthly Assessment
LF	6/16/2009	10.00	776.00		Late Fee Processed
MA	7/1/2009	23.00	799.00		Monthly Assessment
LF	7/16/2009	10.00	809.00		Late Fee Processed
MA	8/1/2009	23.00	832.00		Monthly Assessment
LF	8/16/2009	10.00	842.00		Late Fee Processed
MA	9/1/2009	23.00	865.00		Monthly Assessment
LF	9/16/2009	10.00	875.00		Late Fee Processed
MA	10/1/2009	23.00	898.00		Monthly Assessment
LF	10/16/2009	10.00	908.00		Late Fee Processed
MA	11/1/2009	23.00	931.00		Monthly Assessment
LF	11/16/2009	10.00	941.00		Late Fee Processed
MA	12/1/2009	23.00	964.00		Monthly Assessment
LF	12/16/2009	10.00	974.00		Late Fee Processed
MA	1/1/2010	23.00	997.00		Monthly Assessment
LF	1/16/2010	10.00	1,007.00		Late Fee Processed

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149  
Make check payable to: Shadow Mountain Ranch Homeowners Association

9/13/2010

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

MA	2/1/2010	23.00	1,030.00	Monthly Assessment
LF	2/16/2010	10.00	1,040.00	Late Fee Processed
MA	3/1/2010	23.00	1,063.00	Monthly Assessment
LF	3/16/2010	10.00	1,073.00	Late Fee Processed
MA	4/1/2010	23.00	1,096.00	Monthly Assessment
LF	4/16/2010	10.00	1,106.00	Late Fee Processed
MA	5/1/2010	23.00	1,129.00	Monthly Assessment
LF	5/16/2010	10.00	1,139.00	Late Fee Processed
MA	6/1/2010	23.00	1,162.00	Monthly Assessment
Late Fee	6/16/2010	10.00	1,172.00	Late Fee Processed
Monthly Assessment	7/1/2010	23.00	1,195.00	Monthly Assessment
Late Fee	7/16/2010	10.00	1,205.00	Late Fee Processed
Monthly Assessment	8/1/2010	23.00	1,228.00	Monthly Assessment
Late Fee	8/16/2010	10.00	1,238.00	Late Fee Processed
Monthly Assessment	9/1/2010	23.00	1,261.00	Monthly Assessment
Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance: 1,261.00
33.00	33.00	33.00	1,162.00	

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149  
Make check payable to: Shadow Mountain Ranch Homeowners Association

9/13/2010

# EXHIBIT 3

DOUGLAS E. MILES \*  
 Also Admitted in Nevada and Illinois  
 RICHARD J. BAUER, JR.\*  
 JEREMY T. BERGSTROM  
 Also Admitted in Arizona  
 FRED TIMOTHY WINTERS\*  
 KEENAN E. McCLENNAN\*  
 MARK T. DOMEYER\*  
 Also Admitted in District of  
 Columbia & Virginia  
 TAMI S. CROSBY\*  
 L. BRYANT JAQUEZ\*  
 DANIEL L. CARTER\*  
 GINA M. CORENA  
 WAYNE A. RASH\*  
 ROCK K. JUNG  
 VY T. PHAM\*  
 KRISTA J. NIELSON  
 MARK S. BRAUN  
 Also Admitted in Iowa & Missouri  
 HADI R. SEYED-ALI\*  
 ROSEMARY NGUYEN\*  
 JORY C. GARABEDIAN  
 THOMAS M. MORLAN  
 Admitted in California  
 KRISTIN S. WEBB\*  
 BRIAN H. TRAN\*  
 ANNA A. GHIAJAR\*



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

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

\* CALIFORNIA OFFICE  
 1231 E. DYER ROAD  
 SUITE 100  
 SANTA ANA, CA 92705  
 PHONE (714) 481-9100  
 FACSIMILE (714) 481-9141

September 30, 2010

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

Re: *Property Address:* 5327 Marsh Butte Street  
 HO #: 6601  
 LOAN #: 121434068  
*MBBW File No.* 10-H1641

Dear Sir/Madame:

As you may recall, this firm represents the interests of BAC Home Loans Servicing, LP (aka Countrywide Home Loans, Inc. (hereinafter "BAC")) with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by in regards to the above-referenced address shows a full payoff amount of \$3,554.00. BAC is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

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

The association has a lien on a unit for:

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

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

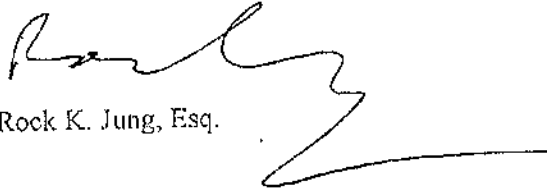
Based on Section 2(b), a portion of your HOA lien is arguably prior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n).

Our client has authorized us to make payment to you in the amount of \$207.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$207.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BAC's financial obligations towards the HOA in regards to the real property located at 5327 Marsh Butte Street have now been "paid in full".

Thank you for your prompt attention to this matter. If you have any questions or concerns, I may be reached by phone directly at (702) 942-0412.

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*

  
Rock K. Jung, Esq.



Miles, Bauer, Bergstrom & Winters, LLP Trust Acct  
 Payee: Alessi & Koenig, LLC  
 10-H1641  
 Check #: 5169  
 Date: 9/28/2010  
 Amount: 207.00  
 Initials: TLC

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
9/28/2010	6601	To Cure HOA Deficiency	207.00			

Miles, Bauer, Bergstrom & Winters, LLP  
 Trust Account

1231 E. Dyer Road, #100  
 Santa Ana, CA 92705  
 Phone: (714) 481-9100

Bank of America  
 1100 N. Green Valley Parkway  
 Henderson, NV 89074

16-66/1220  
 1020  
 10-H1641

Loan # 121434068

5169

Date: 9/28/2010

Amount \$\*\*\*\* 207.00

Check Void After 90 Days

Pay \$\*\*\*\*\*Two Hundred Seven & No/100 Dollars  
 to the order of

Alessi & Koenig, LLC

Security Features. Details on back.

⑈ 5169 ⑈ ⑆ 122400724 ⑆ 501006878973 ⑈

# EXHIBIT 4

DAVID ALESSI\*  
THOMAS BAYARD\*  
ROBERT KOENIG\*\*  
RYAN KERBOW\*\*\*

\* Admitted to the California Bar  
\*\* Admitted to the California, Nevada  
and Colorado Bar  
\*\*\* Admitted to the California and Nevada Bar



*A Multi-Jurisdictional Law Firm*

9500 West Flamingo Road, Suite 100  
Las Vegas, Nevada 89147  
Telephone: 702-222-4033  
Facsimile: 702-222-4043  
[www.alessikoenig.com](http://www.alessikoenig.com)

GoKra 1641  
ADDITIONAL OFFICES

AGOURA HILLS, CA  
PHONE: 818- 735-9600

RENO NV  
PHONE: 775-626-2323  
&  
DIAMOND BAR CA  
PHONE: 909-843-6590

Nevada Licensed Qualified Collection Manager  
AMANDA LOWER

September 8, 2010

Miles, Bauer, Bergstrom & Winters  
2200 Paseo Verde Parkway, Suite 250  
Henderson, NV 89052

Re: Rejection of Partial Payments

Gentlepersons,

This letter will serve to inform you that we are unable to accept the partial payments offered by your clients as payment in full. While we understand how you read NRS 116.3116 as providing a super priority lien only with respect to 9 months of assessments, case authority exists which provides that the association's lien also includes the reasonable cost of collection of those assessments. (see *Korbel Family Trust v. Spring Mountain Ranch Master Association*, Case No. 06-A-523959-C.)

If the association were to accept your offer that only includes assessments, Alessi & Koenig would be left with a lien against the association for our substantial out-of-pocket expenses and fees generated. The association could end up having *lost* money in attempting to collect assessments from the delinquent homeowner.

If you would like to discuss these matters further, please do not hesitate to call.

Sincerely,

Ryan Kerbow, Esq.

# EXHIBIT 5

File Edit View Help

Client ID: 10-H1641

Client: BANK OF AMERICA, N.A. (BNF)

Date: 8/23/2014

Doc: 163-30312-007

General Notes Billing Contacts Mailings Events Inquiry Settlement Cnt Connect Info Custom Doc Info New Invoice

163-30312-007 8/23/2014

8/31/2010: EMF AWP re: New Federal

9/2/2010: RVO REFERRAL: OPENED 08/31/10

9/2/2010: 9/2 EMT CLIENT WITH INITIAL LETTERS ATTACHED:

9/2/2010: mMail letters re: 10-H1641 Golea.mog

9/22/2010: 9/22 EMT CLIENT HDA UPDATE WITH PO ATTACHED: FU

9/22/2010: Status Update re: 10-H1641 (1st) Golea.mog

9/23/2010: EMF Cnt re: wire submitted for 207.00 on 9/23

10/1/2010: 10/1 CHECK SENT TO HDA: FU 10/25 SEE IF CHECK WAS

10/6/2010: EMF HJJ re: Payoff Funds: 10-H1641, 5327 Marsh Bu

10/25/2010: 10/25 CHECK RETURNED: FU 10/14 MONITOR EX PARTE

10/25/2010: EMF RKJ re: Status of Payoff Funds (Rejected), 10-H1641, 5327 Marsh Bu

12/28/2010: LIEN HAS BEEN RELEASED: FU 1/4 COPY OF LIEN

1/6/2011: LIEN RELEASE RECORDED 11/30/10 FOR DIFFERENT LIEN;

1/31/2011: EMT CLT RE INVS

9/17/2012: 10-H1641 scanned file docs.PDF

12/6/2012: REJECTED FILE: FU 1/17 MONITOR

1/18/2013: REJECTED FILE: FU 3/1 MONITOR

3/4/2013: REJECTED FILE: FU 4/6 MONITOR

3/25/2013: EMF CL-Cloning Instructions

3/28/2013: EMT Lori Garcia w/group 2 Invoices

4/8/2013: EMF Matt Compton re: will work on closed market invoices this week.

# EXHIBIT “G”

1 **AFFT**  
Douglas D. Gerrard, Esq.  
2 Nevada Bar No. 4613  
[dgerrard@gerrard-cox.com](mailto:dgerrard@gerrard-cox.com)  
3 Fredrick J. Biedermann, Esq.  
Nevada Bar No. 11918  
4 [fbiedermann@gerrard-cox.com](mailto:fbiedermann@gerrard-cox.com)  
**GERRARD COX LARSEN**  
5 2450 Saint Rose Pkwy., Suite 200  
Henderson, Nevada 89074  
6 Phone: (702) 796-4000  
*Attorneys for Defendant Nationstar Mortgage, LLC*

7  
Melanie D. Morgan, Esq.  
8 Nevada Bar No. 8215  
Donna Whittig, Esq.  
9 Nevada Bar No. 11015  
1635 Village Center Circle, Suite 200  
10 Las Vegas, Nevada 89134  
Telephone: (702) 634-5000  
11 Facsimile: (702) 380-8572  
Email: [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)  
12 Email: [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)  
13 *Attorneys for Defendant Nationstar Mortgage, LLC*  
*and Defendant/Counterclaimant/Third-Party Defendant U.S. Bank,*  
14 *National Association, as Trustee for the Certificateholders of the LXS 2006-*  
*4N Trust Fund, erroneously pled as U.S. Bank, N.A.*

15  
16 **DISTRICT COURT**  
17 **CLARK COUNTY, NEVADA**

18 **ALESSI & KOENIG, LLC,**  
19 **Plaintiff,**  
20 **v.**

21 **STACY MOORE, an individual; MAGNOLIA**  
**GOTERA, an individual; KRISTIN JORDAL, AS**  
22 **TRUSTEE FOR THE JBWNO REVOCABLE**  
**LIVING TRUST, a trust; U.S. BANK, N.A., a**  
23 **national banking association; NATIONSTAR**  
**MORTGAGE, LLC, a foreign limited liability**  
24 **company; REPUBLIC SILVER STATE**  
**DISPOSAL, INC., DBA REPUBLIC SERVICES, a**  
25 **domestic government entity; DOE INDIVIDUALS**  
**I through X, inclusive; and ROE CORPORATIONS**  
26 **XI through XX inclusive.**

27 **Defendants.**  
28

Case No.: A-14-705563-C  
Dept. No.: XVII

**AFFIDAVIT OF ROCK K. JUNG,**  
**ESQ.**

1 U.S. BANK, N.A.,

2 Counterclaimant,

3 vs.

4 ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

5 Counter-Defendant.

6 U.S. BANK, N.A.,

7 Third Party Plaintiff,

8 v.

9 SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company; INDIVIDUAL DOES I  
10 through X, inclusive; and ROE CORPORATIONS  
I through X, inclusive.

11 Third Party Defendants.

12 **AFFIDAVIT OF ROCK K. JUNG, ESQ.**

13 STATE OF NEVADA )

14 COUNTY OF CLARK )

15 ) ss.

16 The Affiant being first duly sworn, deposes, and states as follows:

17 1. I am an attorney duly licensed to practice law in the State of Nevada.

18 2. I am a former associate attorney of the law firm of Miles, Bauer & Winters, LLP  
19 formerly known as Miles, Bauer, Bergstrom & Winters, LLP ("Miles Bauer") previously located in  
20 Henderson, Nevada.

21 3. I am over 18 years of age, of sound mind, and capable of making this affidavit.

22 4. I have personal knowledge of Miles Bauer's procedures for mailing and/or  
23 delivering checks to homeowner associations to pay off an association's super-priority lien.

24 5. I personally confirmed that the information in this Affidavit is accurate by reading  
25 the affidavit and confirming that the information in this Affidavit matches Miles Bauer's records  
26 available to me.

27 6. Mortgage Electronic Registration Systems, Inc. as nominee for BAC Home  
28 Loans Servicing, LP afka Countrywide Home Loans, Inc. ("BAC") retained Miles Bauer to tender



1 payments to homeowners associations to satisfy super-priority liens in connection with the following  
2 loan:

3 Loan Number: 121434068

4 Borrower: Magnolia Gotera

5 Property Address: 5327 Marsh Butte Street, Las Vegas, Nevada 89148

6 7. On or about September 2, 2010, I sent a letter to Alessi & Koenig, LLC ("Alessi"),  
7 trustee for Shadow Mountain Ranch Community Association (the "HOA") offering to tender the full  
8 super-priority lien amount of the HOA's lien to Alessi.

9 8. Alessi responded to the September 2, 2010 letter by sending a Facsimile Cover Letter  
10 dated September 13, 2010, which provided a breakdown of all of the fees and costs associated with the  
11 Borrower's delinquent assessments and an account ledger from the HOA.

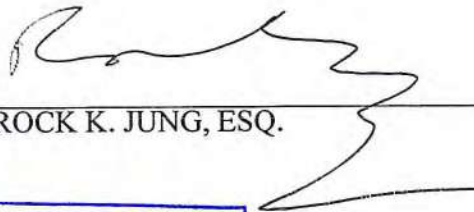
12 9. In order to determine a good-faith estimate of the HOA's super-priority lien amount, I  
13 used the HOA's account ledger provided by Alessi with the respect to the subject Property. Based on  
14 the account ledger, I determined that the HOA's monthly assessment to be \$23.00.

15 10. On or about September 30, 2010, I sent a second letter to Alessi along with a check in  
16 the amount of \$207.00, representing nine months' worth of assessments to satisfy the HOA's super-  
17 priority lien.

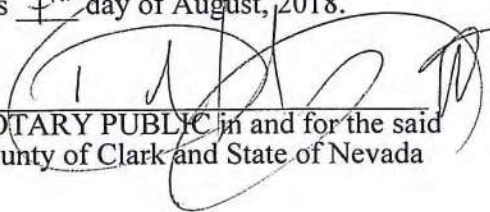
18 11. I declare under penalty of perjury under the law of the State of Nevada that the  
19 foregoing is true and correct.

20 FURTHER YOUR AFFIANT SAYETH NAUGHT.

21 DATED this 7 day of August, 2018.

22  
23   
ROCK K. JUNG, ESQ.

24 Subscribed and sworn to before me  
25 this 7th day of August, 2018.

26   
27 NOTARY PUBLIC in and for the said  
28 County of Clark and State of Nevada



# EXHIBIT “H”

Inst #: 201011300003315

Fees: \$14.00

N/C Fee: \$0.00

11/30/2010 01:50:42 PM

Receipt #: 594414

Requestor:

PASION TITLE SERVICES

Recorded By: ADF Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN # 163-30-312-007  
NAS # N54998  
Title Company: First American Title Nevada/NDTS  
Order #:

**RELEASE OF NOTICE DELINQUENT ASSESSMENT LIEN**


In accordance with Nevada Revised Statutes, the Notice of Delinquent Assessment Lien, recorded by Shadow Mountain Ranch, is satisfied and released. Said lien was recorded on January 12, 2010 as instrument number 0002157 Book 20100112, against the property legally described as: Section 30 R2 60 70 # 5, Plat Book 102, Page 28, Lot 7, Block 1 recorded in the County Recorder of Clark County, Nevada.

The owner(s) of record as reflected on said lien is (are):

Magnolia Gotera

Commonly referred to as: 5327 Marsh Butte Street, Las Vegas, NV 89148

Dated: November 24, 2010

  
By: Brenda Sherwood, of Nevada Association Services, Inc.  
on behalf of Shadow Mountain Ranch  
STATE OF NEVADA )  
COUNTY OF CLARK )

On November 24, 2010, before me, Heather Hendershot, personally appeared Brenda Sherwood, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.  
WITNESS my hand and seal.

(Signature)

(Seal)

  
When Recorded Mail To:  
Nevada Association Services, Inc.  
6224 W. Desert Inn Road, Suite A  
Las Vegas, NV 89146



# EXHIBIT “I”

# Shadow Mountain Ranch Community Association

c/o Level Property Management

8966 Spanish Ridge Ave #100

Las Vegas, NV 89148

702.433.0149

www.levelprop.com

702.444.2416 Fax

Magnolia Gotera  
1090 Twin Creeks Dr  
Salinas, CA 93905

Property Address: 5327 Marsh Butte St.

Account #: 21103

Code	Date	Amount	Balance	Check#	Memo
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MA	9/1/2009	23.00	865.00		Monthly Assessment
LF	9/16/2009	10.00	875.00		Late Fee Processed
MA	10/1/2009	23.00	898.00		Monthly Assessment
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LF	11/16/2009	10.00	941.00		Late Fee Processed
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MA	1/1/2010	23.00	997.00		Monthly Assessment
LF	1/16/2010	10.00	1,007.00		Late Fee Processed
MA	2/1/2010	23.00	1,030.00		Monthly Assessment
LF	2/16/2010	10.00	1,040.00		Late Fee Processed
MA	3/1/2010	23.00	1,063.00		Monthly Assessment
LF	3/16/2010	10.00	1,073.00		Late Fee Processed
MA	4/1/2010	23.00	1,096.00		Monthly Assessment
LF	4/16/2010	10.00	1,106.00		Late Fee Processed

Include your account number and make checks payable to:

Shadow Mountain Ranch Community Association

PO Box 64114

Phoenix, AZ 85082

12/19/2012

Page 1 of 2

**NATIONSTAR00214**

**088**

# Shadow Mountain Ranch Community Association

c/o Level Property Management

8966 Spanish Ridge Ave #100

Las Vegas, NV 89148

702.433.0149

www.levelprop.com

702.444.2416 Fax

Code	Date	Amount	Balance	Check#	Memo
MA	5/1/2010	23.00	1,129.00		Monthly Assessment
LF	5/16/2010	10.00	1,139.00		Late Fee Processed
MA	6/1/2010	23.00	1,162.00		Monthly Assessment
Late Fee	6/16/2010	10.00	1,172.00		Late Fee Processed
Monthly Assessment	7/1/2010	23.00	1,195.00		Monthly Assessment
Late Fee	7/16/2010	10.00	1,205.00		Late Fee Processed
Monthly Assessment	8/1/2010	23.00	1,228.00		Monthly Assessment
Late Fee	8/16/2010	10.00	1,238.00		Late Fee Processed
Monthly Assessment	9/1/2010	23.00	1,261.00		Monthly Assessment
Late Fee	9/16/2010	10.00	1,271.00		Late Fee Processed
Monthly Assessment	10/1/2010	23.00	1,294.00		Monthly Assessment
Legal Fees	10/6/2010	575.00	1,869.00		Legal Fees for Compliance & Demand Lette
Late Fee	10/16/2010	10.00	1,879.00		Late Fee Processed
Monthly Assessment	11/1/2010	23.00	1,902.00		Monthly Assessment
Nuisance Abatement	11/1/2010	395.00	2,297.00		Nuisance abatement-landscaping
Nuisance Abatement	11/1/2010	225.00	2,522.00		Nuisance abatement-pigeon clean up/contro
Late Fee	11/16/2010	10.00	2,532.00		Late Fee Processed
Monthly Assessment	12/1/2010	23.00	2,555.00		Monthly Assessment
Late Fee	12/16/2010	10.00	2,565.00		Late Fee Processed
Late Fee	12/31/2010	2.42	2,567.42		Late Fee Processed
Monthly Assessment	1/1/2011	23.00	2,590.42		Monthly Assessment
Late Fee	1/16/2011	10.00	2,600.42		Late Fee Processed
Interest	1/31/2011	2.52	2,602.94		Late Fee Processed
Monthly Assessment	2/1/2011	23.00	2,625.94		Monthly Assessment
Late Fee	2/16/2011	10.00	2,635.94		Late Fee Processed
Interest	2/28/2011	2.72	2,638.66		Late Fee Processed
Monthly Assessment	3/1/2011	23.00	2,661.66		Monthly Assessment
Late Fee	3/16/2011	10.00	2,671.66		Late Fee Processed
Interest	3/31/2011	2.72	2,674.38		Late Fee Processed
Monthly Assessment	4/1/2011	23.00	2,697.38		Monthly Assessment
Waive Late Fee	4/14/2011	-2.52	2,694.86		Reverse interest per BOD
Waive Late Fee	4/14/2011	-2.72	2,692.14		Reverse interest per BOD
Waive Late Fee	4/14/2011	-2.72	2,689.42		Reverse interest per BOD
Late Fee	4/16/2011	10.00	2,699.42		Late Fee Processed
Monthly Assessment	5/1/2011	23.00	2,722.42		Monthly Assessment
Late Fee	5/16/2011	10.00	2,732.42		Late Fee Processed
Waive Late Fee	5/25/2011	-2.42	2,730.00		Reverse interest per BOD
Balance Transfer	6/14/2011	-2,730.00	0.00		

Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance:	0.00
0.00	0.00	0.00	0.00		

**Include your account number and make checks payable to:**

**Shadow Mountain Ranch Community Association**

**PO Box 64114**

12/19/2012

Phoenix, AZ 85082

Page 2 of 2

**NATIONSTAR00215**

**089**

# EXHIBIT “J”

I, DAVID ALESSI, do swear and affirm the following:

1. I am the holder and custodian of records for Alessi & Koenig, LLC and HOA Lawyers Group, and as such have access to the records and data maintained by these entities in the regular course of business.
2. Alessi & Koenig, LLC was licensed in the State of Nevada at the time the business records in this affidavit were created. Alessi & Koenig, LLC filed dissolution paperwork with the State of Nevada on or about September 28, 2016.
3. HOA Lawyers Group, LLC filed Articles of Organization with the State of Nevada on April 22, 2016.
4. I hereby certify that it was and is a regular practice of Alessi & Koenig, LLC and HOA Lawyers Group to make and keep records of the acts, events, conditions, and opinions of these entities in the ordinary course of its business, hereafter referred to as "collection files."
5. Alessi & Koenig, LLC has received a subpoena or other request calling for the production of the collection file.
6. I have examined the original collection file and have made or caused to be made a true and exact copy of them, and have placed or caused them to be in a "dropbox," consistent with the procedures established in Case No. BK-S-16-16593-ABL. I hereby certify that the documents in the "dropbox" are being provided in accordance with applicable law and discovery rules, are true and correct copies and uploads of all of the records in my files that pertain to the Case (except as set forth in a Privilege Log, if applicable) that are in my possession and control as a holder and custodian of such records. The documents in the "dropbox" have not been tampered with, destroyed, or otherwise altered by me or any person or party associated with me.
7. I further certify that the original collection file, from which the documents in the "dropbox" were uploaded as of the date the "dropbox" was created, were made by the



1 personnel of the above described entities at or near the time of the transactions, by or  
2 from information transmitted by, a person of knowledge of those matters.


3 8. I hereby declare under the penalty of perjury under the laws of the State of Nevada that  
4 the foregoing is true and correct.

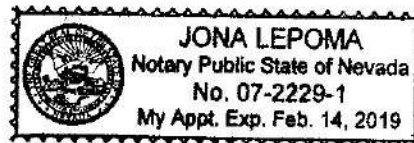
5 DATED this 7<sup>th</sup> day of September, 2017.

6  
7 By:   
8 DAVID ALESSI, ESQ.

9 STATE of NEVADA }  
10 } ss.  
11 COUNTY of CLARK }

12 SUBSCRIBED and SWORN to before me  
13 By: DAVID ALESSI, ESQ. this  
14 7<sup>th</sup> day of September, 2017

15   
16 NOTARY PUBLIC in and for said County and State  
17 My Commission Expires: 2/14/19



# EXHIBIT “K”

Inst #: 201101260002852  
Fees: \$14.00  
N/C Fee: \$0.00  
01/26/2011 09:05:00 AM  
Receipt #: 654197  
Requestor:  
ALESSI & KOENIG LLC (JUNES  
Recorded By: KXC Pgs: 1  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

When recorded mail to:  
Alessi & Koenig, LLC  
9500 West Flamingo Rd., Suite 100  
Las Vegas, NV 89147  
Phone: 702-222-4033

APN: 163-30-312-007

TSN SMR-5327-N

### NOTICE OF TRUSTEE'S SALE

**WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL The Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.**

**NOTICE IS HEREBY GIVEN THAT:**

On March 9, 2011, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on May 7, 2008, as instrument number 20080507-01731, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 4:00 P.M. at 930 S. 4th Street, Las Vegas Nevada 89101.

The street address and other common designation, if any, of the real property described above is purported to be: 5327 Marsh Butte St., Las Vegas, NV 89148. The owner of the real property is purported to be: Magnolia Gotera

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$5,757.00. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: December 16, 2010 

---

By: Branko Jettie on behalf of Shadow Mountain Ranch Community Association

# EXHIBIT “L”

Recording Requested By:  
Bank of America  
Prepared By: Cecilia Rodriguez  
888-603-9011  
When recorded mail to:  
CoreLogic  
450 E. Boundary St.  
Attn: Release Dept.  
Chapin, SC 29036



DocID# 14612143406815262

Tax ID: 163-30-312-007

Property Address:

5327 Marsh Butte St

Las Vegas, NV 89148-4669

NV0-ADT 14727720 10/26/2011

Inst #: 201111020000754

Fee: \$18.00

N/C Fee: \$25.00

11/02/2011 08:02:44 AM

Receipt #: 965446

Requestor:

CORELOGIC

Recorded By: MSH Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

This space for Recorder's use

MIN #: 1000157-0006127350-0

MERS Phone #: 888-679-6377

**ASSIGNMENT OF DEED OF TRUST**

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 3300 S.W. 34th Avenue, Suite 101 Ocala, FL 34474 does hereby grant, sell, assign, transfer and convey unto U.S. BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE LXS 2006-4N TRUST FUND whose address is 10350 PARK MEADOWS DR, LITTLETON, CO 80124 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: COUNTRYWIDE HOME LOANS, INC.

Made By: MAGNOLIA GOTERA, A SINGLE WOMAN

Trustee: CTC REAL ESTATE SERVICES

Date of Deed of Trust: 11/10/2005 Original Loan Amount: \$508,250.00

Recorded in Clark County, NV on: 11/21/2005, book N/A, page N/A and instrument number 20051121-0005567

I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons.

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on

10/27/11

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC.

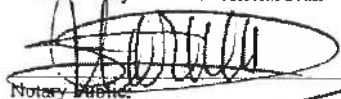
By: Christopher Herrera Assistant Secretary

State of California  
County of Ventura

On 10-27-2011 before me, Norma Rojas, Notary Public, personally appeared Christopher Hessera, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

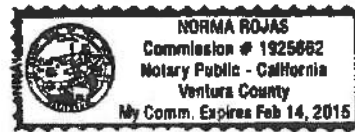
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
Notary Public:

My Commission Expires: \_\_\_\_\_

(Seal)



DocID# 14612143406815262

# EXHIBIT “M”

# Shadow Mountain Ranch Community Association

c/o Level Property Management

8966 Spanish Ridge Ave #100

Las Vegas, NV 89148

702.433.0149

www.levelprop.com

702.444.2416 Fax

Stacy Moore

5327 Marsh Butte St.

Las Vegas, NV 89148

**Property Address:** 5327 Marsh Butte St.

**Account #:** 31243

Code	Date	Amount	Balance	Check#	Memo
Monthly Assessment	6/1/2011	23.00	23.00		Monthly Assessment
Balance Transfer	6/14/2011	2,730.00	2,753.00		Balance from Prior Owner
Late Fee	6/16/2011	10.00	2,763.00		Late Fee Processed
Monthly Assessment	7/1/2011	23.00	2,786.00		Monthly Assessment
Late Fee	7/16/2011	10.00	2,796.00		Late Fee Processed
Monthly Assessment	8/1/2011	23.00	2,819.00		Monthly Assessment
Late Fee	8/16/2011	10.00	2,829.00		Late Fee Processed
Monthly Assessment	9/1/2011	23.00	2,852.00		Monthly Assessment
Late Fee	9/16/2011	10.00	2,862.00		Late Fee Processed
Monthly Assessment	10/1/2011	23.00	2,885.00		Monthly Assessment
Late Fee	10/17/2011	10.00	2,895.00		Late Fee Processed
Monthly Assessment	11/1/2011	23.00	2,918.00		Monthly Assessment
Late Fee	11/16/2011	10.00	2,928.00		Late Fee Processed
Monthly Assessment	12/1/2011	23.00	2,951.00		Monthly Assessment
Late Fee	12/16/2011	10.00	2,961.00		Late Fee Processed
Monthly Assessment	1/1/2012	23.00	2,984.00		Monthly Assessment
Late Fee	1/16/2012	10.00	2,994.00		Late Fee Processed
Monthly Assessment	2/1/2012	23.00	3,017.00		Monthly Assessment
Late Fee	2/16/2012	10.00	3,027.00		Late Fee Processed
Monthly Assessment	3/1/2012	23.00	3,050.00		Monthly Assessment
Late Fee	3/16/2012	10.00	3,060.00		Late Fee Processed
Monthly Assessment	4/1/2012	23.00	3,083.00		Monthly Assessment
Late Fee	4/16/2012	10.00	3,093.00		Late Fee Processed
Monthly Assessment	5/1/2012	23.00	3,116.00		Monthly Assessment
Late Fee	5/16/2012	10.00	3,126.00		Late Fee Processed
Monthly Assessment	6/1/2012	23.00	3,149.00		Monthly Assessment
Late Fee	6/16/2012	10.00	3,159.00		Late Fee Processed
Monthly Assessment	7/1/2012	23.00	3,182.00		Monthly Assessment
Late Fee	7/16/2012	10.00	3,192.00		Late Fee Processed
Monthly Assessment	8/1/2012	23.00	3,215.00		Monthly Assessment
Late Fee	8/16/2012	10.00	3,225.00		Late Fee Processed
Monthly Assessment	9/1/2012	23.00	3,248.00		Monthly Assessment

**Include your account number and make checks payable to:**

**Shadow Mountain Ranch Community Association**

**PO Box 64114**

**Phoenix, AZ 85082**

5/29/2013

Page 1 of 2

**NATIONSTAR00289**

**099**



# Shadow Mountain Ranch Community Association

c/o Level Property Management

8966 Spanish Ridge Ave #100

Las Vegas, NV 89148

702.433.0149

www.levelprop.com

702.444.2416 Fax

Code	Date	Amount	Balance	Check#	Memo
Late Fee	9/16/2012	10.00	3,258.00		Late Fee Processed
Monthly Assessment	10/1/2012	23.00	3,281.00		Monthly Assessment
Late Fee	10/16/2012	10.00	3,291.00		Late Fee Processed
Monthly Assessment	11/1/2012	23.00	3,314.00		Monthly Assessment
Late Fee	11/16/2012	10.00	3,324.00		Late Fee Processed
Late Fee	12/16/2012	10.00	3,334.00		Late Fee Processed
Monthly Assessment	1/1/2013	23.00	3,357.00		Monthly Assessment
Late Fee	1/16/2013	10.00	3,367.00		Late Fee Processed
Monthly Assessment	2/1/2013	23.00	3,390.00		Monthly Assessment
Late Fee	2/16/2013	10.00	3,400.00		Late Fee Processed
Monthly Assessment	3/1/2013	23.00	3,423.00		Monthly Assessment
Hearing Notice Fee	3/8/2013	10.00	3,433.00		Hearing Notice Fee
Late Fee	3/16/2013	10.00	3,443.00		Late Fee Processed
Monthly Assessment	4/1/2013	23.00	3,466.00		Monthly Assessment
Late Fee	4/16/2013	10.00	3,476.00		Late Fee Processed
Monthly Assessment	5/1/2013	23.00	3,499.00		Monthly Assessment
Late Fee	5/16/2013	10.00	3,509.00		Late Fee Processed
Monthly Assessment	5/1/2013	23.00	3,532.00		Monthly Assessment
Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance:	3,532.00
56.00	33.00	43.00	3,400.00		

Include your account number and make checks payable to:

Shadow Mountain Ranch Community Association

PO Box 64114

Phoenix, AZ 85082

5/29/2013

Page 2 of 2

**NATIONSTAR00290**

Inst #: 201209110002023  
Fees: \$17.00  
N/C Fee: \$0.00  
09/11/2012 08:05:52 AM  
Receipt #: 1302455  
Requestor:  
ALESSI & KOENIG LLC  
Recorded By: DXI Pgs: 1  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, LLC  
9500 W. Flamingo Rd., Suite 205  
Las Vegas, Nevada 89147  
Phone: (702) 222-4033

A.P.N. 163-30-312-007

Trustee Sale # SMR-5327-N

**NOTICE OF DELINQUENT ASSESSMENT (LIEN)**

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of **Clark** County, Nevada, **Shadow Mountain Ranch Community Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **5327 Marsh Butte St., Las Vegas, NV 89148** and more particularly legally described as: **SECTION 30 R2-60 70 #5 Lot 7 Block 1 Book 102 Page 28** in the County of **Clark**.

The owner(s) of record as reflected on the public record as of today's date is (are): **STACY MOORE**

The mailing address(es) is: **5327 MARSH BUTTE ST, LAS VEGAS, NV 89148**

The total amount due through today's date is: **\$6,448.00**. Of this total amount **\$5,823.00** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$625.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

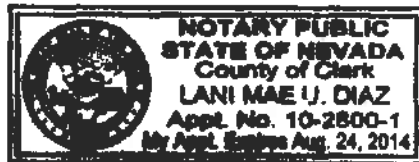
Date: **August 13, 2012**

By: \_\_\_\_\_

**Huong Lam, Esq. of Alessi & Koenig, LLC on behalf of Shadow Mountain Ranch Community Association**

State of Nevada  
County of Clark  
SUBSCRIBED and SWORN before me August <sup>23</sup>13, 2012

(Seal)



(Signature)

\_\_\_\_\_  
NOTARY PUBLIC

**NATIONSTAR00305**

# EXHIBIT “N”

Inst #: 201307050000850  
Fees: \$17.00  
N/C Fee: \$0.00  
07/05/2013 09:02:38 AM  
Receipt #: 1681415  
Requestor:  
ALESSI & KOENIG LLC  
Recorded By: MAT Pgs: 1  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC  
9500 West Flamingo Rd., Ste 205  
Las Vegas, Nevada 89147  
Phone: 702-222-4033

A.P.N. 163-30-312-007

Trustee Sale No. 6601  
28

**NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN**

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!** You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is \$6,631.41 as of the date of this notice and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: Shadow Mountain Ranch Community Association, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147, (702)222-4033.

THIS NOTICE pursuant to that certain Notice of Delinquent Assessment Lien, recorded on September 11, 2012 as document number 0002023, of Official Records in the County of Clark, State of Nevada. Owner(s): STACY MOORE, of SECTION 30 R2-60 70 #5 LOT 7 BLOCK 1, as per map recorded in Book 102, Pages 28, as shown on the Plan and Subdivision map recorded in the Maps of the County of Clark, State of Nevada. PROPERTY ADDRESS: 5327 MARSH BUTTE ST, LAS VEGAS, NV 89148-4669. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT Alessi & Koenig, LLC is appointed trustee agent under the above referenced lien, dated September 11, 2012, on behalf of Shadow Mountain Ranch Community Association to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from February 1, 2008 and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated:

JUL 01 2013

Huong Lam, Esq. of Alessi & Koenig, LLC on behalf of Shadow Mountain Ranch Community Association

**NATIONSTAR00318**

# EXHIBIT “O”

Recording Requested By:  
**Bank of America, N.A.**  
Prepared By: **Marcus Jones**

When recorded mail to:  
**CoreLogic**  
Mail Stop: **ASGN**  
1 CoreLogic Drive  
Westlake, TX 76262-9823



DocID# 18712143406842077

Tax ID: 163-30-312-007

Property Address:  
**5327 Marsh Butte St**  
**Las Vegas, NV 89148-4669**

NV0-ADT 25012666 7/1/2013 NS0630A

Inst #: 201310010002401

Fees: \$18.00

N/C Fee: \$0.00

10/01/2013 01:29:41 PM

Receipt #: 1794477

Requestor:

**CORELOGIC**

Recorded By: **MSH Pgs: 2**

**DEBBIE CONWAY**

**CLARK COUNTY RECORDER**

This space for Recorder's use

### ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is **1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063** does hereby grant, sell, assign, transfer and convey unto **NATIONSTAR MORTGAGE, LLC** whose address is **350 HIGHLAND DRIVE, LEWISVILLE, TX 75067** all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC.**

Made By: **MAGNOLIA GOTERA, A SINGLE WOMAN**

Trustee: **CTC REAL ESTATE SERVICES**

Date of Deed of Trust: **11/10/2005** Original Loan Amount: **\$508,250.00**

Recorded in **Clark County, NV** on: **11/21/2005**, book **N/A**, page **N/A** and instrument number **20051121-0005567**

I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons.

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on

7/1/13

**Bank of America, N.A.**

By:

**Kathleen Loera**

**Assistant Vice President**

**NATIONSTAR00299**

State of TX, County of **DALLAS**

On **JUL 01 2013**, before me, **Wilayat Ali Sajjani**, a Notary Public, personally appeared **Kathleen Loera**, **Assistant Vice President** of Bank of America, N.A. personally known to me to be the person(s) whose name(s) is/are subscribed to the within document and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the document the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

  
Notary Public: **Wilayat Ali Sajjani**  
My Commission Expires: **10-03-2016**



DocID# 18712143406842077

**NATIONSTAR00300**

# EXHIBIT “P”



Inst #: 201101260002852  
Fees: \$14.00  
N/C Fee: \$0.00  
01/26/2011 09:05:00 AM  
Receipt #: 554197  
Requestor:  
ALESSI & KOENIG LLC (JUNES  
Recorded By: KXC Pgs: 1  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

When recorded mail to:  
Alessi & Koenig, LLC  
9500 West Flamingo Rd., Suite 100  
Las Vegas, NV 89147  
Phone: 702-222-4033

APN: 163-30-312-007

TSN SMR-5327-N

**NOTICE OF TRUSTEE'S SALE**

**WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL The Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.**

**NOTICE IS HEREBY GIVEN THAT:**

On March 9, 2011, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on May 7, 2008, as instrument number 20080507-01731, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 4:00 P.M. at 930 S. 4th Street, Las Vegas Nevada 89101.

The street address and other common designation, if any, of the real property described above is purported to be: 5327 Marsh Butte St., Las Vegas, NV 89148. The owner of the real property is purported to be: Magnolia Gotera

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$5,757.00. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: December 16, 2010 

---

By: Branko Jettie on behalf of Shadow Mountain Ranch Community Association

# EXHIBIT “Q”

Inst #: 201401130001480  
Fees: \$17.00 N/C Fee: \$0.00  
RPTT: \$1619.80 Ex: #  
01/13/2014 01:10:44 PM  
Receipt #: 1899989  
Requestor:  
ALESSI & KOENIG, LLC  
Recorded By: SUO Pgs: 2  
DEBBIE CONWAY  
CLARK COUNTY RECORDER

When recorded mail to and  
Mail Tax Statements to:  
SFR Investments Pool 1, LLC  
5030 Paradise Road, B-214  
Las Vegas, NV 89119

A.P.N. No.163-30-312-007

TS No. 6601

### TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: SFR Investments Pool 1, LLC  
The Foreclosing Beneficiary herein was: Shadow Mountain Ranch Community Association  
The amount of unpaid debt together with costs: \$8,499.11  
The amount paid by the Grantee (Buyer) at the Trustee's Sale: \$59,000.00  
The Documentary Transfer Tax: \$1,519.80  
Property address: 5327 MARSH BUTTE ST, LAS VEGAS, NV 89148-4669  
Said property is in [ ] unincorporated area: City of LAS VEGAS  
Trustor (Former Owner that was foreclosed on): STACY MOORE

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded September 11, 2012 as instrument number 0002023, in Clark County, does hereby grant, without warranty expressed or implied to: SFR Investments Pool 1, LLC (Grantee), all its right, title and interest in the property legally described as: SECTION 30 R2-60 70 #5 LOT 7 BLOCK 1, as per map recorded in Book 102, Pages 28 as shown in the Office of the County Recorder of Clark County Nevada.

#### TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on January 8, 2014 at the place indicated on the Notice of Trustee's Sale.

Huong Lam, Esq.

Signature of AUTHORIZED AGENT for Alessi & Koenig, Llc.

State of Nevada )  
County of Clark )

SUBSCRIBED and SWORN before me JAN 13 2014 by Huong Lam

WITNESS my hand and official seal.  
(Seal)



(Signature)

NATIONSTAR00310

When recorded mail to and  
Mail Tax Statements to:  
SFR Investments Pool 1, LLC  
5030 Paradise Road, B-214  
Las Vegas, NV 89119

A.P.N. No.163-30-312-007

TS No. 6601

### TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: SFR Investments Pool 1, LLC  
The Foreclosing Beneficiary herein was: Shadow Mountain Ranch Community Association  
The amount of unpaid debt together with costs: \$8,499.11  
The amount paid by the Grantee (Buyer) at the Trustee's Sale: \$59,000.00  
The Documentary Transfer Tax: \$1,519.80  
Property address: 5327 MARSH BUTTE ST, LAS VEGAS, NV 89148-4669  
Said property is in [ ] unincorporated area: City of LAS VEGAS  
Trustor (Former Owner that was foreclosed on): STACY MOORE

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Huong Lam, Esq.

Signature of AUTHORIZED AGENT for Alessi & Koenig, LLC.

State of Nevada )  
County of Clark )

SUBSCRIBED and SWORN before me JAN 13 2014 by Huong Lam

WITNESS my hand and official seal.

(Seal)



(Signature)

NATIONSTAR00311

STATE OF NEVADA  
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 163-30-312-007

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

2. Type of Property:

- |  |   |
|--|---|
| a. <input type="checkbox"/> Vacant Land  | b. <input checked="" type="checkbox"/> Single Fam. Res. |
| c. <input type="checkbox"/> Condo/Twnhse | d. <input type="checkbox"/> 2-4 Plex                    |
| e. <input type="checkbox"/> Apt. Bldg    | f. <input type="checkbox"/> Comm'l/Ind'l                |
| g. <input type="checkbox"/> Agricultural | h. <input type="checkbox"/> Mobile Home                 |
| <input type="checkbox"/> Other           |   |

FOR RECORDERS OPTIONAL USE ONLY

Book \_\_\_\_\_ Page: \_\_\_\_\_

Date of Recording: \_\_\_\_\_

Notes: \_\_\_\_\_

3.a. Total Value/Sales Price of Property

\$ 59,000.00

b. Deed in Lieu of Foreclosure Only (value of property (\_\_\_\_\_))

c. Transfer Tax Value: \$ 297,577.00

d. Real Property Transfer Tax Due \$ 1,519.80

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section \_\_\_\_\_

b. Explain Reason for Exemption: \_\_\_\_\_

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature  Capacity: Grantor

Signature \_\_\_\_\_ Capacity: \_\_\_\_\_

SELLER (GRANTOR) INFORMATION  
(REQUIRED)

Print Name: Alessi & Koenig, LLC

Address: 9500 W. Flamingo Rd., Ste. 205

City: Las Vegas

State: NV

Zip: 89147

BUYER (GRANTEE) INFORMATION  
(REQUIRED)

Print Name: SFR Investments Pool 1, LLC

Address: 5030 Paradise Road, B-214

City: Las Vegas

State: NV

Zip: 89119

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Alessi & Koenig, LLC

Address: 9500 W. Flamingo Rd., Ste. 205

City: Las Vegas

Escrow # N/A Foreclosure

State: NV

Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

NATIONSTAR00312

# EXHIBIT “R”

1 **DECL**

2 Douglas D. Gerrard, Esq.

3 Nevada Bar No. 4613

4 [dgerrard@gerrard-cox.com](mailto:dgerrard@gerrard-cox.com)

5 Fredrick J. Biedermann, Esq.

6 Nevada Bar No. 11918

7 [fbiedermann@gerrard-cox.com](mailto:fbiedermann@gerrard-cox.com)

8 **GERRARD COX LARSEN**

9 2450 Saint Rose Pkwy., Suite 200

10 Henderson, Nevada 89074

11 Phone: (702) 796-4000

12 *Attorneys for Defendant Nationstar Mortgage, LLC*

13 Melanie D. Morgan, Esq.

14 Nevada Bar No. 8215

15 Donna Whittig, Esq.

16 Nevada Bar No. 11015

17 1635 Village Center Circle, Suite 200

18 Las Vegas, Nevada 89134

19 Telephone: (702) 634-5000

20 Facsimile: (702) 380-8572

21 Email: [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)

22 Email: [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

23 *Attorneys for Defendant Nationstar Mortgage, LLC*

24 *and Defendant/Counterclaimant/Third-Party Defendant U.S. Bank,*

25 *National Association, as Trustee for the Certificateholders of the LXS 2006-*  
26 *4N Trust Fund, erroneously pled as U.S. Bank, N.A.*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 ALESSI & KOENIG, LLC,

19 Plaintiff,

20 v.

21 STACY MOORE, an individual; MAGNOLIA  
22 GOTERA, an individual; KRISTIN JORDAL, AS  
23 TRUSTEE FOR THE JBWNO REVOCABLE  
24 LIVING TRUST, a trust; U.S. BANK, N.A., a  
25 national banking association; NATIONSTAR  
26 MORTGAGE, LLC, a foreign limited liability  
27 company; REPUBLIC SILVER STATE  
28 DISPOSAL, INC., DBA REPUBLIC SERVICES, a  
domestic government entity; DOE INDIVIDUALS  
I through X, inclusive; and ROE CORPORATIONS  
XI through XX inclusive.

Defendants.

Case No.: A-14-705563-C

Dept. No.: XVII

**DECLARATION OF R. SCOTT  
DUGAN, SRA**

1 U.S. BANK, N.A.,  
2 Counterclaimant,  
3 vs.  
4 ALESSI & KOENIG, LLC, a Nevada limited  
liability company,  
5 Counter-Defendant.

6 U.S. BANK, N.A.,  
7 Third Party Plaintiff,  
8 v.  
9 SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company; INDIVIDUAL DOES I  
10 through X, inclusive; and ROE CORPORATIONS  
I through X, inclusive.  
11 Third Party Defendants.

12 **DECLARATION OF R. SCOTT DUGAN, SRA**

13 I, R. SCOTT DUGAN, SRA, under penalty of perjury, declare as follows:

- 14 1. I am over 18 years of age, of sound mind, and capable of making this declaration.  
15 2. The statements in this declaration are true and correct and made on the basis of my  
16 personal knowledge.  
17 3. I have been retained as an expert to testify in the matter of *Alessi & Koenig, LLC,*  
18 *Plaintiff vs. Nationstar Mortgage, LLC, et al, Defendant(s)* filed in the Eighth Judicial District Court,  
19 State of Nevada, Case No. A-14-705563-C.  
20 4. I am a licensed Certified General Appraiser in the State of Nevada and Senior  
21 Managing Director of R. Scott Dugan Appraisal Company, Inc.  
22 5. I have conducted a retroactive appraisal analysis of the property located at 5327 Marsh  
23 Butte Street, Las Vegas, Nevada 89148 (the "Property"). The conclusions I reached are fully expressed  
24 in the Summary Appraisal Report, a true and correct copy of which is attached hereto as **Exhibit "1"**.  
25 6. I have determined that the fair market value of this Property on January 8, 2014 was  
26 \$306,000.00.  
27 7. All opinions, analysis, and conclusions expressed in my report fully comply with the  
28



1 Uniform Standard of Professional Appraisal Practice promulgated by the Appraisal Standards Board  
2 and of the Appraisal Foundation and the reporting requirements of the Appraisal Institute.

3 8. That I declare the opinions, analysis and conclusions are expressed in my report,  
4 attached hereto as **Exhibit "1"**, are true and correct.

5 9. That I incorporate into this Declaration my report in its entirety.

6 I declare under penalty of perjury that the foregoing is true and correct.

7 DATED this 28 day of June, 2018.



8  
9 R. SCOTT DUGAN, SRA  
10 Certified General Appraiser  
11 Lic. No. A.0000166-CG  
12  
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# EXHIBIT “1”

## APPRAISAL OF REAL PROPERTY



### LOCATED AT

5327 Marsh Butte Street  
Las Vegas, NV 89148  
Section 30 R2-60 70 #5 Plat Book 102 Page 28 Lot 7 Block 1

### FOR

Wright Finlay & Zak  
7785 W Sahara Avenue, Ste 200  
Las Vegas, NV 89117

### AS OF

January 08, 2014

### BY

R. Scott Dugan, SRA  
R. Scott Dugan Appraisal Company, Inc.  
8930 West Tropicana Avenue, Suite 1  
Las Vegas, NV 89147  
702-876-2000  
appraisals@rsdugan.com

R. Scott Dugan Appraisal Company, Inc.  
 8930 West Tropicana Avenue, Suite 1  
 Las Vegas, NV 89147  
 702-876-2000

February 16, 2017

Wright Finlay & Zak  
 7785 W Sahara Avenue, Ste 200  
 Las Vegas, NV 89117

Re: Property: 5327 Marsh Butte Street  
 Las Vegas, NV 89148  
 Borrower: N/A  
 File No.: 5327 Marsh Butte Street

Opinion of Value: \$ 306,000  
 Effective Date: January 08, 2014

As requested, we have prepared an analysis and valuation of the referenced property. The purpose of this assignment was to develop a value opinion based upon the assignment conditions and guidelines stated within the attached report. Our analysis of the subject property was based upon the property (as defined within the report) and the economic, physical, governmental and social forces affecting the subject property as of the effective date of this assignment.

The analysis and the report were developed and prepared within the stated Scope of Work and our Clarification of Scope of Work along with our comprehension of applicable Uniform Standards of Professional Appraisal Practice and specific assignment conditions provided by the client and intended user.

The findings and conclusions are intended for the exclusive use of the stated client and for the specific intended use identified within the report. The reader (or anyone electing to rely upon this report), should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions regarding the subject property.

The opinion assumes the date/time of value to be prior to the HOA lien transfer on the same date and assumes the property to be in average condition and professionally marketed under normal terms.

Use and reliance on this report by the client or any third party indicates the client or third party has read the report, comprehends the basis and guidelines employed in the analysis and conclusions stated within (including the assignment conditions) and has accepted same as being suitable for their decisions regarding the subject property.

The value opinion reported is as of the stated effective date and is contingent upon the Certification and Limiting Conditions attached. The Assumptions and Limiting Conditions along with the Clarification of Scope of Work provide specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

Thank you for the opportunity to service your appraisal needs.

Sincerely,



R. Scott Dugan, SRA  
 R. Scott Dugan Appraisal Company, Inc.  
 License or Certification #: A.0000166-CG  
 State: NV Expires: 05/31/2017  
 appraisals@rsdugan.com

Client	Wright Finlay & Zak				File No. 5327 Marsh Butte Street		
Property Address	5327 Marsh Butte Street						
City	Las Vegas	County	Clark	State	NV	Zip Code	89148
Owner	Magnolia Gotera/Stacy Moore						

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**File No.: 5327 Marsh Butte Street**

**GP RESIDENTIAL**  
**121**

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Form GPRES2 — "WinTOTAL" appraisal software by a la mode, inc. — 1-800-ALAMODE

WFZ00154/2007

RESIDENTIAL APPRAISAL REPORT

File No.: 5327 Marsh Butte Street

TRANSFER HISTORY

My research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s): GLVAR MLS & Clark County Public Records

1st Prior Subject Sale/Transfer

Analysis of sale/transfer history and/or any current agreement of sale/listing: No reported sales or transfers.

Date:

Price:

Source(s):

2nd Prior Subject Sale/Transfer

Date:

Price:

Source(s):

SALES COMPARISON APPROACH TO VALUE (if developed) ☐ The Sales Comparison Approach was not developed for this appraisal.

FEATURE	SUBJECT	COMPARABLE SALE # 1			COMPARABLE SALE # 2			COMPARABLE SALE # 3		
Address	5327 Marsh Butte Street Las Vegas, NV 89148	10029 Twilight Canyon Court Las Vegas, NV 89148			9731 Drayton Avenue Las Vegas, NV 89148			10129 W Mesa Vista Avenue Las Vegas, NV 89148		
Proximity to Subject		0.11 miles NE			0.48 miles E			0.11 miles SW		
Sale Price	\$			\$ 315,000			\$ 315,000			\$ 310,000
Sale Price/GLA	\$ /sq.ft.	\$ 119.14 /sq.ft.			\$ 120.83 /sq.ft.			\$ 117.25 /sq.ft.		
Data Source(s)	MLS-Pub Records	MLS-Public Records / DOM 26			MLS-Public Records / DOM 66			MLS-Public Records / DOM 81		
Verification Source(s)	Public Records	201312260:1661			201311080:1159			201306140:2445		
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION		+(-) \$ Adjust.	DESCRIPTION		+(-) \$ Adjust.	DESCRIPTION		+(-) \$ Adjust.
Sales or Financing Concessions		Traditional CONV \$0			Estate Sale CONV \$0			Traditional CASH \$0		
Date of Sale/Time		12/26/2013			11/08/2013			06/14/2013		
Rights Appraised	Fee Simple	Fee Simple			Fee Simple			Fee Simple		
Location	Section 30	Section 30			Providence Park			Section 30		
Site	7,539 SF/CDS	8,709 SF/CDS			7,700 SF/CDS			7,350 SF/Interior		
View	Residential	Residential			Residential			Residential		
Design (Style)	Ranch/1-Story	Ranch/1-Story			Ranch/1-Story			Ranch/1-Story		
Quality of Construction	Stucco	Stucco			Stucco			Stucco		
Age	11	13			13			11		
Condition	Average	Good		-13,200	Good		-13,000	Very Good		-26,400
Above Grade Room Count	Total Bdrms Baths	Total Bdrms Baths			Total Bdrms Baths			Total Bdrms Baths		
	7 3 2.5	7 3 2.5			7 3 2.5			7 3 2.5		
Gross Living Area	2,614 sq.ft.	2,644 sq.ft.			2,607 sq.ft.			2,644 sq.ft.		
Basement & Finished Rooms Below Grade	None	None			None			None		
Functional Utility	Average	Average			Average			Average		
Heating/Cooling	Central	Central			Central			Central		
Energy Efficient Items	Standard	Standard			Standard			Standard		
Garage/Carport	3 Car Garage	3 Car Garage			3 Car Garage			3 Car Garage		
Porch/Patio/Deck	L/S,C/Patio	L/S,C/Patio			L/S,C/Patio			L/S,C/Patio		
Pool Package	None	None			Pool/Spa		-15,750	None		
Contract Date	None	11/23/2013		+4,700	10/10/2013		+9,500	05/11/2013		+24,800
Rent/GRM	N/A	N/A			N/A			N/A		
Net Adjustment (Total)		<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$ -8,500		<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$ -19,250		<input type="checkbox"/> + <input checked="" type="checkbox"/> -	\$ -1,600	
Adjusted Sale Price of Comparables			\$ 306,500			\$ 295,750			\$ 308,400	
Summary of Sales Comparison Approach The comparables in this report range in gross living area (GLA) from 2,443 to 2,644 square feet, with three located in the subject project and one in a nearby competitive tract.										
The comparables required adjustments (rounded, unless otherwise stated) for variations in the following: condition of good and very good at \$5 and \$10 per square foot of gross living area (GLA), respectively, where all properties were recognized for better overall condition; GLA at \$70 per square foot; and pool/spa and pool each at 5% of sale price, with no evidence at this time that a pool/spa contributes more to value than a pool only. Comparables were adjusted for time at 1% percent per month of sale price from the date of contract, to reflect changes in market conditions over this period of time. This generally is considered consistent with price changes in this market segment. Cross comparison of the data did not support adjustments for minor variations in site, age, bath, or GLA. While these variations were noted, in most cases a consistent value difference indication between the sales could not be isolated.										
Minor value features, i.e., solar screens, storage sheds, etc., and or external factors lacking adjustment support, may not have been noted in the grid. If present, minor value features in the comparables were contrasted to the similar or offsetting items in the subject and factored into the reconciliation and final value opinion.										
In consideration of the above market transactions and current market conditions, greatest consideration is placed on the Sales Comparison Approach to Value. The value opinion is correlated at \$306,000. The package price per square foot of \$117 (rounded) includes land plus improvements. The closed comparable transactions indicate a package price from \$117 to \$123. The subject's package price is supported by the unadjusted sale price divided by gross living area of the comparables utilized which in the appraiser's determination would reasonably compete with the subject property. Comparable two sold as an estate sale and indicates a low sale. The adjusted range of comparable pricing brackets and supports the value conclusion. In the final analysis, the subject's central tendency is about \$304,000, with the final conclusion of value rounded up to \$306,000 as most weight is placed on the traditional transactions.										
Indicated Value by Sales Comparison Approach \$ 306,000										



RESIDENTIAL APPRAISAL REPORT

File No.: 5327 Marsh Butte Street

COST APPROACH

COST APPROACH TO VALUE (if developed)
☒ The Cost Approach was not developed for this appraisal.

Provide adequate information for replication of the following cost figures and calculations.

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value):
Not developed.

ESTIMATED
☐ REPRODUCTION OR
☐ REPLACEMENT COST NEW

Source of cost data:
Quality rating from cost service:
Effective date of cost data:
Comments on Cost Approach (gross living area calculations, depreciation, etc.):
The subject improvements and site were constructed with some degree of "economy of scale" (multiple units - single developer) as a subdivision.
The cost approach is based upon the theory of a buyer being able to "build a substitute property" as opposed to buying the subject property. In this case, a buyer would not have this option for several reasons: 1) economy of scale and 2) the inability to purchase a small finished building site in the same general location as the subject. These and other conditions render the cost approach unreliable.

OPINION OF SITE VALUE
= \$
DWELLING
Sq.Ft. @ \$
= \$
Sq.Ft. @ \$
= \$
Sq.Ft. @ \$
= \$
Sq.Ft. @ \$
= \$
Sq.Ft. @ \$
= \$
Garage/Carport
Sq.Ft. @ \$
= \$
Total Estimate of Cost-New
= \$
Less
Physical
Functional
External
Depreciation
= \$(
Depreciated Cost of Improvements
= \$
"As-is" Value of Site Improvements
= \$
= \$
= \$

Estimated Remaining Economic Life (if required):
N/A Years
INDICATED VALUE BY COST APPROACH
= \$

INCOME APPROACH

INCOME APPROACH TO VALUE (if developed)
☒ The Income Approach was not developed for this appraisal.

Estimated Monthly Market Rent \$
1,700
X Gross Rent Multiplier
N/A
= \$
N/A
Indicated Value by Income Approach

Summary of Income Approach (including support for market rent and GRM):
Area rentals mostly similar to the subject varied for GLA, gated project, etc., and represent a wide range of rents from about \$1,500 to \$2,300. Considering the assumed average condition of the subject and other variables, a rent estimate of \$1,700 for the subject is deemed reasonable. GRMs in the market area were limited, with data for the income approach insufficient to complete a reasonable value opinion via this approach.

PUD

PROJECT INFORMATION FOR PUDs (if applicable)
☒ The Subject is part of a Planned Unit Development.

Legal Name of Project:
Section 30
Describe common elements and recreational facilities:
Perimeter fencing and enforcement of CC&R's.

RECONCILIATION

Indicated Value by: Sales Comparison Approach \$
306,000
Cost Approach (if developed) \$
N/A
Income Approach (if developed) \$
N/A

Final Reconciliation
The cost and income approaches were not developed for the reasons stated. The value opinion is based upon sales comparison approach. The opinion considers a 30 to 90 day concurrent marketing and exposure period. The potential range of value was from about \$296,000 to \$308,000 with a final value \$306,000. The opinion assumes the date/time of value to be prior to the HOA lien transfer on the same date and assumes the property to be in average condition and professionally marketed under normal terms.

This appraisal is made
☒ "as is",
☐ subject to completion per plans and specifications on the basis of a Hypothetical Condition that the improvements have been completed,
☐ subject to the following repairs or alterations on the basis of a Hypothetical Condition that the repairs or alterations have been completed,
☐ subject to the following required inspection based on the Extraordinary Assumption that the condition or deficiency does not require alteration or repair:
This is a retrospective value opinion based upon a drive-by inspection and subject to the stated extraordinary assumption(s) elsewhere within this report along with the specific assignment conditions.
☒ This report is also subject to other Hypothetical Conditions and/or Extraordinary Assumptions as specified in the attached addenda.

Based on the degree of inspection of the subject property, as indicated below, defined Scope of Work, Statement of Assumptions and Limiting Conditions, and Appraiser's Certifications, my (our) Opinion of the Market Value (or other specified value type), as defined herein, of the real property that is the subject of this report is: \$
306,000
, as of:
January 08, 2014
, which is the effective date of this appraisal. If indicated above, this Opinion of Value is subject to Hypothetical Conditions and/or Extraordinary Assumptions included in this report. See attached addenda.

ATTACHMENTS


A true and complete copy of this report contains
24
pages, including exhibits which are considered an integral part of the report. This appraisal report may not be properly understood without reference to the information contained in the complete report.

Attached Exhibits:
☒ Letter of Transmittal
☒ Explanatory Comments
☒ Photos
☒ GP-Res CertsAddenda
☐ Extraordinary Assumptions
☒ Market Conditions/Graph(s)
☒ Assessor's Page(s)
☐ Additional Sales
☒ Map, Plat, Sketch Addenda
☒ Clarification of SOW

SIGNATURES

Client Contact:
Wright Finlay & Zak
Client Name:
Wright Finlay & Zak
E-Mail:
saslinger@wrightlegal.net
Address:
7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117

APPRaiser


Appraiser Name:
R. Scott Dugan, SRA
Company:
R. Scott Dugan Appraisal Company, Inc.
Phone:
702-876-2000
Fax:
702-253-1888
E-Mail:
appraisals@rsdugan.com
Date of Report (Signature):
February 16, 2017
License or Certification #:
A.0000166-CG
State:
NV
Designation:
SRA
Expiration Date of License or Certification:
05/31/2017
Inspection of Subject:
☐ Interior & Exterior
☒ Exterior Only
☐ None
Date of Inspection:
February 05, 2017

SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)

Supervisory or Co-Appraiser Name:
Company:
Phone:
Fax:
E-Mail:
Date of Report (Signature):
License or Certification #:
State:
Designation:
Expiration Date of License or Certification:
Inspection of Subject:
☐ Interior & Exterior
☐ Exterior Only
☐ None
Date of Inspection:

GP
RESIDENTIAL
123

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WFZ00156/2007



## **ADDITIONAL COMPARABLE SALES**

**File No.: 5327 Marsh Butte Street**

[illegible]

Explanatory Comments

File No. 5327 Marsh Butte Street

Client	Wright Finlay & Zak			
Property Address	5327 Marsh Butte Street			
City	Las Vegas	County	Clark	State NV Zip Code 89148
Owner	Magnolia Gotera/Stacy Moore			

EXTRAORDINARY ASSUMPTION:

USPAP provides the following definition for “extraordinary assumption”:

Defined as an assumption, directly related to a specific assignment, as of the effective date of the assignment results, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis. (USPAP, 2016-2017 Edition)

This report was completed without an interior inspection of the subject. External sources including, but not limited to, information from a drive-by street inspection, appraiser’s files, county records, and or multiple listing service data were relied upon for information used to describe the improvements and or condition of the subject.

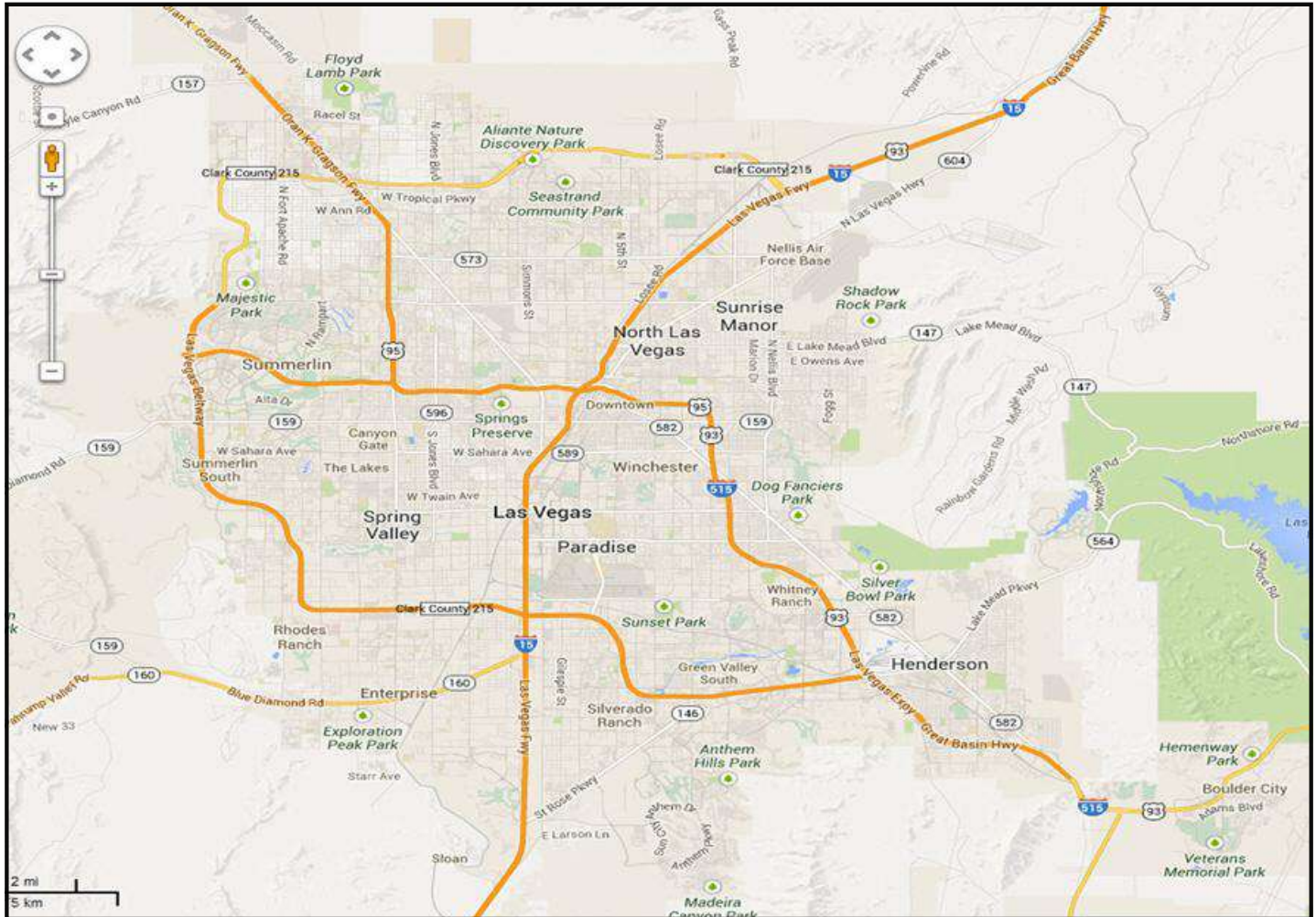
As indicated on page 1 of this report, if the assumptions invoked are found to be false, it could alter the value opinion and or other conclusions in this report. As such, the appraiser reserves the right to amend the value opinion and or conclusions based on new or revised information.

**Retrospective Value:** is generally defined as “A value opinion effective as of a specified historical date. The term does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., “retrospective market value opinion.” Source: Appraisal Institute, The Dictionary of Real Estate Appraisal, 6th ed. (Chicago: Appraisal Institute, 2015).

The final value within this appraisal assignment represents a "Retrospective" Market Value opinion as of the date of the HOA sale, January 8, 2014, the effective date of this report. The physical exterior inspection of the subject property was performed on February 5, 2017.

## Market Area Overview

Client	Wright Finlay & Zak				
Property Address	5327 Marsh Butte Street				
City	Las Vegas	County	Clark	State	NV
Owner	Magnolia Gotera/Stacy Moore				
Zip Code	89148				



**General Area Description:** The economy revolves around the Las Vegas Strip and Downtown Casino center along with key employment centers such as Nellis AFB, McCarran International Airport, numerous satellite retail, office and industrial districts that employ and service a base of 2-million people. The valley covers over 600+ square miles and includes parts of unincorporated Clark County, the cities of Las Vegas, North Las Vegas and Henderson. The unincorporated county areas within the valley have "Las Vegas" addresses and access to public services, making them transparent local to residents.

The valley is compact and can be crossed from any location in less than 1 hour. Buyer preferences are less dependent on location and more a function of personal choice, neighborhood attributes and housing types. The valley is divided into seven market areas (NW, NC, NE, SW, SC, SE and Henderson), each of which is further defined by political jurisdictions along with any number of master-planned communities a buyer would consider as a neighborhood, with emphasis on lifestyle, amenities and name recognition.

**Key Factors influencing Housing Market Trends in the area:** People buy or sell based on affordability, investment potential or relocation. From 2004-2007, the market was influenced by speculation. From 2007 through 2012, the market declined severely, influenced by REOs, short sales and investor activity. The market over-corrected from the peak to the bottom, creating an imbalance between "market value" and "economic value." Investors recognized the "economic imbalance" (the spread between the monthly payment vs. the monthly market rent for the same property) and used "all cash sales" to dominate the market for several years.

While investors remain active in the market, recently we are seeing "end users" (owner occupants) take a greater participation in the market. End users also include second homebuyers and long-term investors that purchase homes for rental and cash flow. Unlike investors that buy and flip homes over short periods, end users are more sensitive to shifts in financing.

As interest rates move up from their historically low levels, pricing (and therefore values) will adjust as the market attempts to sort itself out and find balance. Until normal market level balances are reached (relationship between rents and mortgage payments or economic value reaches sale price), it is likely the market will experience some fluctuation between similar units at the neighborhood level.

Key Housing Indicators - Market Conditions

Client	Wright Finlay & Zak					
Property Address	5327 Marsh Butte Street					
City	Las Vegas	County	Clark	State	NV	Zip Code 89148
Owner	Magnolia Gotera/Stacy Moore					

The key indicators below show the relationships between employment, housing prices, affordability and movement in the market. Effective housing demand is a combination of supply, price and monthly payment.

Las Vegas Valley Market Overview - December 2013						
	2008	2009	2010	2011	2012	2013 & YTD
Job Growth - Annual	-15,700	-85,400	-23,300	-4,600	15,400	16,600
SFR Median Sale Price	\$222,500	\$140,000	\$135,347	\$124,750	\$132,393	\$177,500
Interest Rate %	6.03	5.01	4.75	3.88	3.94	4.48
PI with 80% LTV - No MI	\$1,071	\$602	\$565	\$470	\$502	\$717
PI with 95% LTV - No MI	\$1,398	\$794	\$744	\$628	\$671	\$852
3 BR Metro Avg Apt Rent	\$1,105	\$1,014	\$977	\$964	\$934	\$952
Metro SFR Median Rent	\$1,250	\$1,195	\$1,113	\$1,115	\$1,095	\$1,100
GLVAR MLS SFR Annual Activity - 2013 is Year End / New Homes include all product types						
Listings Total Year - YTD	61,038	57,016	56,643	55,174	40,271	39,819
Listings W/O Offer Yr End - YTD		8,405	12,417	8,831	3,688	7,063
Sales Volume	24,924	38,127	34,434	38,153	36,609	32,756
Sales Volume - New Homes	9,017	4,924	4,786	1,220	5,544	7,303
List to Sale Ratio	41%	67%	61%	69%	91%	82%
Med List Price (Annual & YTD)	\$189,500	\$149,900	\$135,000	\$128,500	\$145,000	\$186,500
Med Sale Price (Annual)	\$222,500	\$140,000	\$135,347	\$124,750	\$132,393	\$177,500
Med Sale Price - New Homes (Annual)	\$258,888	\$211,115	\$201,035	\$221,075	\$218,114	\$298,601
Average DOM	68	61	64	72	69	52
Case Shiller Jan 2000 = 100	131.4	104.38	99.2	90.48	102.19	Oct 127.23

**Recent Trends:** There are many reports covering the Las Vegas MSA (Metropolitan Statistical Area) that simply compare period to period and not "apples to apples." Dynamics affecting this type of data are:

**2010:** The market was dominated by sales of REOs, "all cash" to investors and liquidated at price points significantly below economic value (affordability), often 35%+/- or more below value. Physical condition ranged from average to poor.

**2011:** There was a shift from a market dominated by REOs to one dominated by short sales. Many short sales were in better condition and unlike 2010; lenders took an active participation in negotiations, increasing prices closer to economic value.

**2012:** Short sales remained dominant and investors (due to a lack of REO inventory) shifted to short sales. Legislation made it difficult for lenders to foreclose and REO inventory was limited.

**2013:** Observers indicate lenders are holding REO inventory (from 40,000 to 60,000 units), in effect, creating a temporary shortage. The effect of the shortage has been to increase demand and current prices. Upward shifts in mortgage rates may have a negative effect on demand from end users and could cause some cancelations in the new and resale housing market

**2014:** In 2013, the market continued to correct and prices rose dramatically, by some accounts and in some submarkets, by 20% to 30% year over year. At the close of 2013 and heading into 2014, the market has slowed somewhat as prices reached short-term peaks and interest rose, affecting affordability. It appears we are seeing a short-term correction as asking prices significantly increased monthly home payments, while monthly rents increased moderately. The price gap between median new and resale continues to widen.

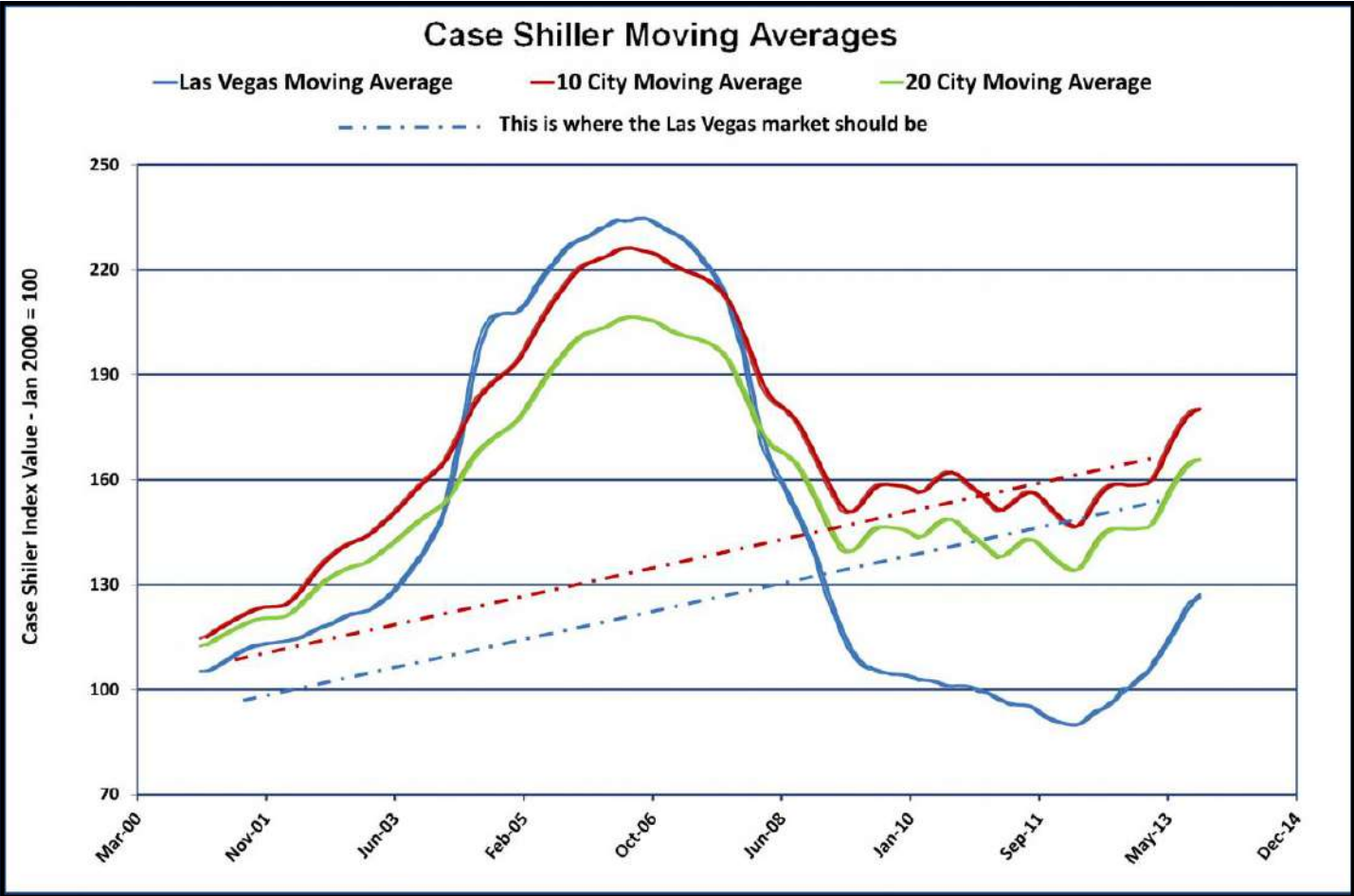
**Observations and Conclusions:** Statistical analysis and comparison of the current year to prior years are not reliable as the prior data reflects multiple sales of the same property (but in different condition), in the same year and or subsequent year and often, a disproportionate mix of highly dissimilar sales (condition). This will give the appearance of "appreciation", when in essence you are comparing "apples to oranges". In years past, or normal years, the sales volume reflects sales of a single property to end users as opposed to sale and resale of the same property. Economic correction requires a significant increase in employment. Rentals rates are soft and house prices (new and resale) have created a gap again, softening the market somewhat over the short term. As employment improves, the market will improve, however, over the short-term we can expect adjustments to demand and some price sensitivity and the general market seeks to recover.



Case Shiller - Market Conditions

Client	Wright Finlay & Zak			
Property Address	5327 Marsh Butte Street			
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Owner	Magnolia Gotera/Stacy Moore			

The Case Shiller Index compares Las Vegas to the 10 City and 20 City Averages. Historically, Las Vegas was below the 10 and 20 City Averages, however, during 2004-2007, Las Vegas exceeded these averages and the market correction began. By 2009, the Las Vegas market over-corrected as shown below and is now attempting to correct back to market norms.



Las Vegas still is well below the 10 City and 20 City averages and well below where it should be if the housing market did not spin out of control in the mid 2000's. The two trend lines (red for the composites and blue for Las Vegas) illustrate the normal relationship between Las Vegas and the 10 and 20 City Composites. What we are seeing (current market conditions), is the market's attempt to correct.

The gap between the current Las Vegas market average and the blue Las Vegas trend line show the over-correction in the Las Vegas housing prices (based on buyer affordability) and the market's or recognition of over-correction during 2012 (based upon median income and housing affordability). This is what investors recognized and why investors made significant purchases of REO and short-sale properties in the Las Vegas market over the past several years.

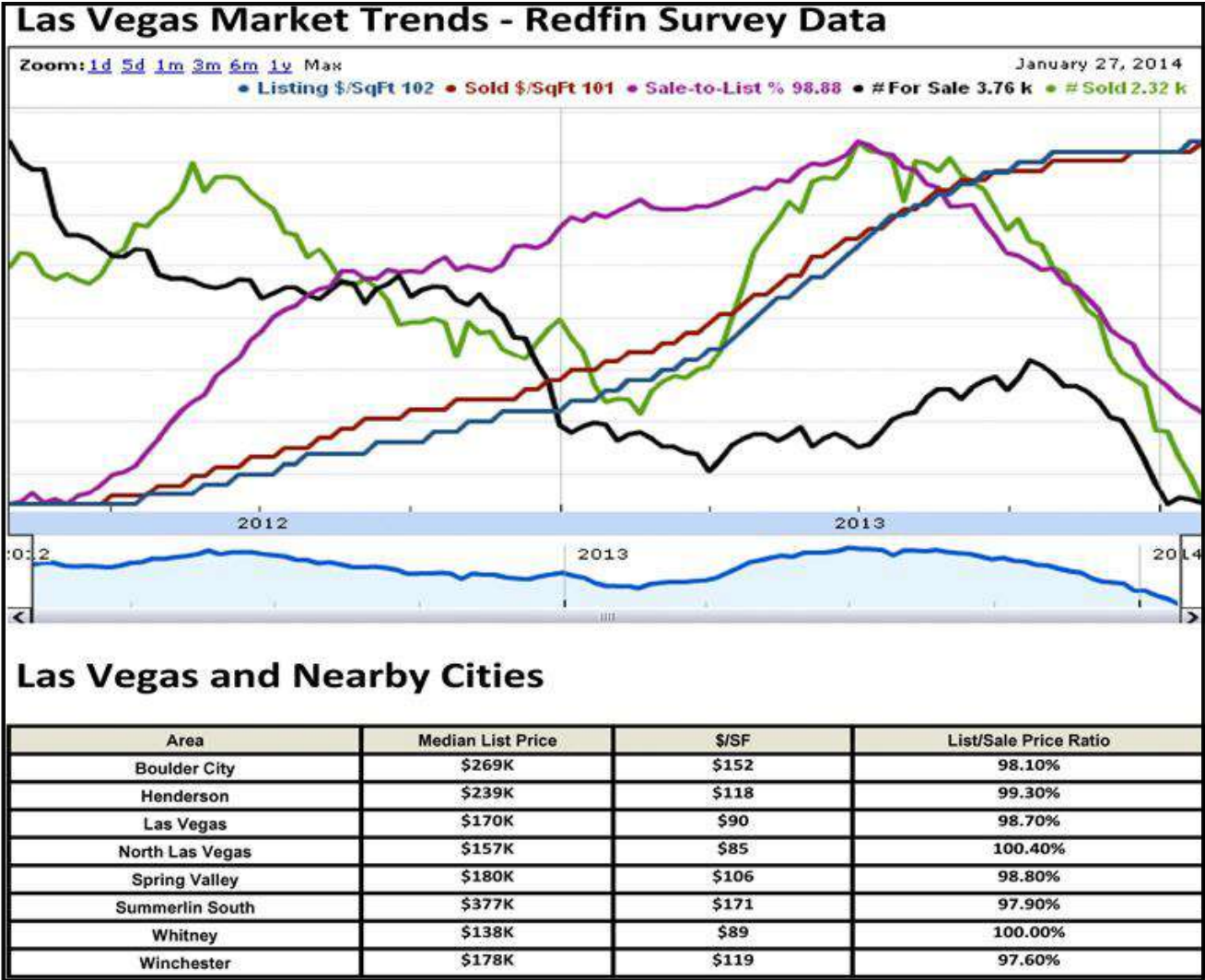
Investors dominated Las Vegas and other housing markets over the past several years because they realized what the rest of the market did not, housing in Las Vegas was "economically under-valued." This is changing as prices have continued an upward trend, slowing the market and reducing investor activity over the past year.

The Las Vegas housing market correction from 2006-2013, the excessive supply of homes (REO's and short sales) combined with unprecedented low interest rates, combined to create a buyer's market, essentially, conditions whereby buying a house is more affordable than renting one. The interest rates remain so low in fact, that an extra 10% increase in price is marginal in terms of additional monthly payment. We cannot project the sustainability of a market shift, only evidence an imbalance, to support a market conditions adjustment at this point.

Redfin - Las Vegas Market Overview - Market Conditions

Client	Wright Finlay & Zak			
Property Address	5327 Marsh Butte Street			
City	Las Vegas	County	Clark	State NV Zip Code 89148
Owner	Magnolia Gotera/Stacy Moore			

The chart below from Redfin contrasts listing and sale activity in the Las Vegas Valley over the past 12 months.



**Measuring and Reporting Market Conditions:** The appraiser's assignment is to identify the risk and place it into context of the market. It is the client's responsibility to measure and underwrite that risk. When reviewing the Las Vegas, NV market data, several things are clear. 1) Demand exceeds supply with demand bolstered by investors; 2) Purchasing power is greater than normal due to historically low interest rates; 3) Single family housing provides greater utility than apartments; and 4) Future supply is being held off the market.

This combination of factors acting in the market is creating a housing shortage and driving prices upwards, closing the gap between where we should have been and where we have been over the past few years. This is evident via multiple offers over list prices on many homes and shown in the Case-Shiller Index. The market is not in balance and therefore, this combination of influence (rates, investors, supply, demand) creates conditions that affect the market value criteria for the value opinion.

It is important to comprehend that a balanced market moves in concert, "all ships rise and fall with the tide". A correcting market however, will see rising segments first (where the most demand exists) until demand overflows onto a higher market tier. Therefore, while demand may be high for entry-level and lower move-up tiers, mid-range and upper tiers (below the luxury home market), may not be experiencing the same level of demand. This will continue until excess inventory is absorbed throughout the market.

The intended user or anyone relying upon the value opinion should consider these factors and take steps to understand and mitigate the risk associated with unknown future market conditions, the speculative activities and influence of investors in the marketplace along with "shadow inventory" (REOs held by lenders). The key factors that influence value are supply and demand, interest rates and jobs. There is a difference between market value and investment value. Investors are active in this market area and effect current market trends and "prices". Value influences could easily shift and market prices (and eventually values) will shift as well.

**Market movement and motivation:** During a correction, sales may not reflect the actions of the "collective market" (as required by the definition of "market value"). Until equilibrium is reached, the market is not acting collectively, therefore, over the short-term, market value (most probable price), is tied to the individual market segment and the subject property's position in that segment. Reliability of statistical housing trends is affected by short-term shifts in supply and demand, investor activity and lender liquidations. This translates to sales data that is less reliable than it would be under balanced market conditions.

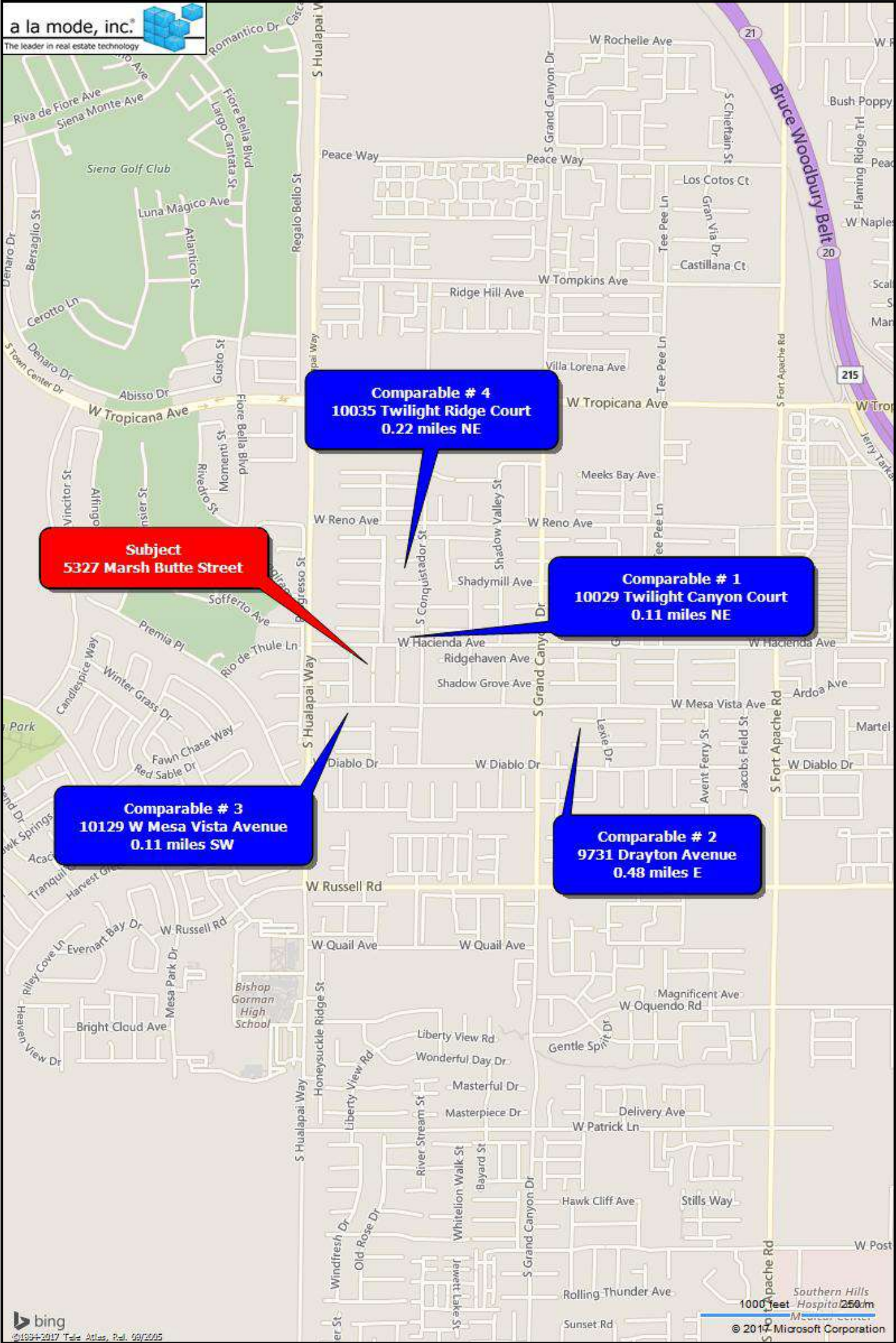






Location Map

Client	Wright Finlay & Zak			
Property Address	5327 Marsh Butte Street			
City	Las Vegas	County	Clark	State NV Zip Code 89148
Owner	Magnolia Gotera/Stacy Moore			











Subject Photo Page

Client	Wright Finlay & Zak				
Property Address	5327 Marsh Butte Street				
City	Las Vegas	County	Clark	State	NV      Zip Code    89148
Owner	Magnolia Gotera/Stacy Moore				



Subject Front

5327 Marsh Butte Street  
Sales Price  
Gross Living Area    2,614  
Total Rooms            7  
Total Bedrooms        3  
Total Bathrooms      2.5  
Location                Section 30  
View                      Residential  
Site                        7,539 SF/CDS  
Quality                   Stucco  
Age                        11



Subject Street

Comparable Photo Page

Client	Wright Finlay & Zak				
Property Address	5327 Marsh Butte Street				
City	Las Vegas	County	Clark	State	NV      Zip Code    89148
Owner	Magnolia Gotera/Stacy Moore				



Comparable 1

10029 Twilight Canyon Court	
Prox. to Subject	0.11 miles NE
Sales Price	315,000
Gross Living Area	2,644
Total Rooms	7
Total Bedrooms	3
Total Bathrooms	2.5
Location	Section 30
View	Residential
Site	8,709 SF/CDS
Quality	Stucco
Age	13



Comparable 2

9731 Drayton Avenue	
Prox. to Subject	0.48 miles E
Sales Price	315,000
Gross Living Area	2,607
Total Rooms	7
Total Bedrooms	3
Total Bathrooms	2.5
Location	Providence Park
View	Residential
Site	7,700 SF/CDS
Quality	Stucco
Age	13



Comparable 3

10129 W Mesa Vista Avenue	
Prox. to Subject	0.11 miles SW
Sales Price	310,000
Gross Living Area	2,644
Total Rooms	7
Total Bedrooms	3
Total Bathrooms	2.5
Location	Section 30
View	Residential
Site	7,350 SF/Interior
Quality	Stucco
Age	11

Comparable Photo Page

Client	Wright Finlay & Zak				
Property Address	5327 Marsh Butte Street				
City	Las Vegas	County	Clark	State	NV      Zip Code    89148
Owner	Magnolia Gotera/Stacy Moore				



Comparable 4

10035 Twilight Ridge Court	
Prox. to Subject	0.22 miles NE
Sales Price	300,000
Gross Living Area	2,443
Total Rooms	7
Total Bedrooms	3
Total Bathrooms	3
Location	Section 30
View	Residential
Site	7,875 SF/CDS
Quality	Stucco
Age	12

Clarification of Scope of Work

File No. 5327 Marsh Butte Street

Client	Wright Finlay & Zak			
Property Address	5327 Marsh Butte Street			
City	Las Vegas	County	Clark	State NV Zip Code 89148
Owner	Magnolia Gotera/Stacy Moore			

CLARIFICATION OF SCOPE OF WORK

(Rev. 02/08/2017)

This following, explanatory comments are not a modification of the assumptions, limiting conditions or certifications in the appraisal report, but a "clarification" of the appraiser's actions with respect to generally accepted appraisal practice and the requirements of this assignment. The intent is to clarify and document what the appraiser did and or did not do in order to develop the value opinion.

**Limitations of the Assignment:** The appraisal process is technical and therefore requires the intended user or anyone relying on the conclusions, to have a general understanding of the appraisal process to comprehend the limits of the applicability of the value opinion to the appraisal problem. Real estate is an "imperfect market" and one that can be affected by many factors. Therefore, supplemental reporting requirements and the realities of the market, including the reliability of the data sources, inability to verify key information and the reliance on information sources as being factual and accurate, can affect the conclusions within the report. Those relying on the report and its conclusions must understand and factor these limitations into their decisions regarding the subject property.

The "single point of value" (SPV) is based on the definition of value (stated within the report) which has criteria that may or may not be consistent in the marketplace. Value definitions often assume "knowledgeable buyers and sellers" or "no special motivations," when these and other criteria cannot be verified. For most assignments, guidelines require the selection and reporting of a SPV, taken from a range of value indicators that may vary high or low from the SPV due to factors that cannot be quantified or qualified within the constraints of the data, market conditions and time limits imposed in the development of the report and associated scope of work.

The SPV conclusion is a "benchmark" in time, provided at the request of the client and or intended user of this report and for the purpose stated. Anyone relying upon the conclusions should read the report in its entirety, to comprehend and accept the assignment conditions as suitable and reliable for their purpose.

This report was prepared to the intended user's requirements and only for their stated purpose. The analysis and conclusions are unique to that purpose and should not be relied upon for another purpose or use, even though they may seem similar. Decisions related to this property should only be made after properly considering all factors including information not within the report, but known or available to the reader and comprehending the process and guidelines that shape the appraisal process.

**SCOPE OF WORK (SOW):** Is "the type and extent of research and analysis in an assignment." This is specific to each appraisal given the appraisal problem and assignment conditions. The SOW is generally similar for most assignments, however, the property type or assignment conditions may require deviations from normal procedures. With some assignments, it is not possible to complete an interior inspection of the subject property. Likewise, with a retrospective date of value, the subject property and comparables may appear different than they were as of the effective value date.

For these and other reasons, this "clarification of scope of work" (COSOW) is intended as a guide to general tasks and analysis performed by the appraiser. These statements are a guide for comparison purposes (as part of the valuation process) and do not represent a detailed analysis of the physical or operational condition of these items. This report is not a home inspection. Any statement is advisory based only upon casual observation. The reader or intended user should not rely on this report to disclose hidden conditions and defects.

**Complete Visual Inspection Includes:** A visual inspection of only the readily accessible areas of the property and only those components that were clearly visible from the ground or floor level. List amenities, view readily observable interior and exterior areas, note quality of materials/workmanship and observe the general condition of improvements. Determine the building areas of the improvements; assess layout and utility of the property. Note the conformity to the market area. Perform a limited check and or observation of mechanical and electrical systems. Photograph interior/exterior, view site, observe and photograph each comparable from the street.

**Complete Visual Inspection Does/Did NOT Include:** Observation of spaces or areas not readily accessible to the typical visitor; building code compliance beyond obvious and apparent issues; testing or inspection of the well or septic system; mold and radon assessments; moving furniture or personal property; roof condition report beyond observation from the ground level.

**No Interior Inspection:** Some assignment conditions preclude inspection of the interior and or improvements on the site. Drive-by, review assignments, proposed construction and other assignment factors may affect the ability to view the improvements from the interior and at times, the exterior. In these cases, the appraiser has disclosed the "non-inspection" and used various sources of information to determine the property characteristics and condition as of the effective date of value. When applicable, these assignment conditions are stated in the report.

**Inspect The Neighborhood:** Observations were limited to driving through a representative number of streets in the area, reviewing maps and other data and observing comparables from the street to determine factors that may influence the value of the subject property. "Neighborhood" boundaries are not exact and are defined by the influence of physical, social, economic



Clarification of Scope of Work

File No. 5327 Marsh Butte Street

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and governmental characteristics (the same criteria used to define census tracts). Over time, small areas merge and once distinct boundaries become less defined. **Comparable data was selected based upon the area proximate to the subject that a buyer would consider directly competitive.**

**Repairs or Deterioration:** **Deficiency** and **livability** are subjective terms. The value considers repair items that (in his/her opinion), affect **safety, adequacy, and marketability** of the property. Physical deterioration has not been itemized, but considered in the approaches to value.

**Construction Defects:** Construction defect issues (even when widely publicized) are not consistently reported in the MLS data. State law requires disclosure by the seller to a buyer of known defects and or prior issues. The definition of value assumes “informed buyer” and disclosure to the buyer is mandated by law. The analysis and conclusions presume the prices reported in the market data reflect the buyer’s knowledge of prior or current defect related issues (if any).

**Satisfactory Completion:** The work will be completed as specified and consistent with the quality and workmanship associated with the quality classification identified and physical characteristics outlined within the report.

**Cost Approach:** Is applicable when the improvements are new or relatively new and when sufficient building sites are available to provide a buyer with a "construction alternative" to purchasing the subject. In areas where similar sites are not available and or in cases where the economy of scale from multi-unit construction is not available to a potential buyer, reliability of the cost approach is limited. Applicability of the cost approach in this assignment is specifically addressed in that section of the appraisal report.

If the cost approach was used it represents the “replacement cost estimate.” If used, its inclusion was based on one of the following: request by the client; age requirement under FHA/HUD guidelines; or deemed appropriate for use by the appraiser for “valuation purposes.” Regardless of the condition or reason for its use, it should not be relied upon for insurance purposes. The definition of “market value” used within this report is not consistent with the definition of “insurable value.”

**Income Approach:** Is applicable when investors regularly acquire properties that are similarly desirable to the subject for the express purpose of the income they provide. While rentals may exist in any area, their presence alone is not proof of a viable rental and investor marketplace. Use or exclusion of the income approach is specifically addressed in that section of the appraisal report.

**Gross Living Area (GLA):** The Greater Las Vegas Association of Realtors ® MLS auto-populates the GLA from Clark County Assessor (CCAO) records. Assessors in Nevada are granted (by statute), leeway in determination of the GLA via several commonly employed methods to measure properties and typically rounds measurements to the nearest foot. Therefore, it is common to have variances between the “as measured” GLA by the appraiser and the “as reported” GLA from the CCAO. The GLVAR MLS handles more than 90% of the transactions in this area. Buyers and sellers rely on the MLS and therefore, the GLAs therein are the de-facto standard used by the market as a decision making factor. The appraiser deems the CCAO reported GLA as being reasonable and reliable for comparison purposes, regardless of any other standard used by builders, architects, agents, etc. The appraiser has considered these facts in the analysis and reconciled in the value opinion, only differences in GLA that would be “market recognized” and contribute to greater utility or function in the subject or comparable and greater value by the buying and selling public.

**Extent of Data Research-Comparable Data:** The appraiser used reasonably available information from city/county records, assessor's records, multiple listing service (MLS) data and visual observation to identify the relevant characteristics of the subject property. Comparables used were considered relevant to the analysis of subject property and applicable to the appraisal problem. The data was adjusted to the subject to reflect the market's reaction (if any and in terms of value contribution) to differences. Photographs taken by the appraiser are originals and un-altered, unless physical access was unavailable. In some cases, MLS photographs may be used to illustrate property conditions, views, etc.

**Public and Private Data:** The appraiser has access to public records and data available on the internet, the Multiple Listing Service, various cost estimating services, flood data, maps and other property related information, along with private information and knowledge of the market that is pertinent and relevant for this assignment.

**Adverse Factors:** Based upon the standards of the party observing the property, a range of factors internal or external to the property may be "adverse" by their viewpoint. The appraiser noted factors that may affect the marketability and livability to potential buyers, based upon knowledge of the market and as evidenced by sales of properties with similar or comparable conditions. These items are noted in the report and the valuation approaches that were applied to the analysis. Some buyers in the market may consider factors such as drug labs, registered sex offenders, criminal activity, interim rehabilitation facilities, halfway houses or similar uses as "adverse". No attempt was made to investigate or discover such activities, unless such factors were readily apparent and obviously affecting the subject property as evidenced by market data. If the intended user or a reader has concerns in these areas, it is recommended that they secure this information from a reliable source.



Clarification of Scope of Work

File No. 5327 Marsh Butte Street

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City	Las Vegas	County	Clark	State NV Zip Code 89148
Owner	Magnolia Gotera/Stacy Moore			

**Easements:** Major power transmission and distribution lines, railroad and other services related easements, including utility easements, limited common areas and conditions that grant others the right to access the subject property and or travel adjacent to the private areas of the subject property. The term adverse applies to individual perspective. It may or may not be negative, dependent upon the individual. One perspective may hold easements to be unappealing visually or disruptive. From another, such easements and corridors provide open space and ensure greater privacy (due to the size of the easement) from neighboring properties. Unless the easement affects the utility or use of the site or improvements, any impact was only considered from the perspective of marketability. In cases where the site abuts a major power transmission easement, the towers are generally centered within the right of-way and engineered to collapse within the easement. The effect or impact is inconsistent (as measured in the market) and therefore unless compelling evidence was found in comparable data, no adjustment was made, only the presence stated.

**Valuation Methodology:** The data presented in the report is considered to be the most relevant to the valuation of the subject property (and its market segment) based on its current occupancy and market environment. In areas influenced by foreclosure, short-sale and REO activity, and motivated (or impacted) by factors that cannot be qualified or quantified, the transactional characteristics of those sales may not fully meet the definition of market value criteria and therefore may be misleading. Verifications and drive-by inspections frequently reveal inconsistencies between the MLS and public records. Through this process, the appraiser can present the rationale supporting the final value opinion within the reconciliation and the reader can comprehend the logic and its application to the valuation process.

**The Value Opinion:** The value opinion may not be valid in another time-period. It is important for anyone relying on the report to comprehend the dynamic nature of real estate and the validity of the single value point or value range reported. The reported value is a benchmark or reference in time (as of a specific date) and subject to change (sometimes rapidly), based upon many factors including market conditions, interest rates, supply and demand. Therefore, anyone relying on the reported conclusions should first comprehend and accept the assignment conditions, assumptions, limiting conditions and other factors stated within the report as being suitable and reliable for their purpose and intended use.

**Specific Reporting Guidelines:** Market participants have unique appraisal reporting guidelines. The COSOW is supplemental to the forms stated scope of work, providing an overview of the appraiser's actions with respect to general appraisal practice and the stated requirements of the assignment. The intent is to clarify what the appraiser did and or did not do in order to develop the value opinion. Guidelines require the borrower receive a copy of the appraisal report, however, the borrower is not an intended user. The appraisal process and specific reporting requirements are highly technical and in most cases, beyond the comprehension of most readers. Anyone choosing to rely upon the appraisal should read the report in its entirety and if needed, consult with professionals that can assist them with understanding the basis of this report and the required reporting requirements, prior to making any decisions based upon the conclusions and or observations stated within.

**Use of Electronic Appraisal Delivery Services:** If the client directed that the appraiser transmit the content of this report via Appraisal Port or a similar delivery portal service, pursuant to user agreements, these services disclaim any warranty that the service provided will be error free and that these services may be subject to transmission errors. Accordingly, the client should make its own determination as to the accuracy and reliability of any such service they employ. The appraiser makes no representations and specifically disclaims any warranty regarding the accuracy or portrayal of content transmitted via Appraisal Port or any similar service or their reliability. The appraiser uses such technology at the specific direction and sole risk of the client. At its request, the client may obtain a true copy of the original report directly from the appraiser via email (PDF), mail or other means.

GP Residential Certifications Addendum

File No.: 5327 Marsh Butte Street

Property Address:	5327 Marsh Butte Street	City:	Las Vegas	State:	NV	Zip Code:	89148
Client:	Wright Finlay & Zak	Address:	7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117				
Appraiser:	R. Scott Dugan, SRA	Address:	8930 W Tropicana Avenue, Suite 1, Las Vegas, NV 89147				

**STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS**

— The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.

— The appraiser may have provided a sketch in the appraisal report to show approximate dimensions of the improvements, and any such sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size. Unless otherwise indicated, a Land Survey was not performed.

— If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

— The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.

— If the cost approach is included in this appraisal, the appraiser has estimated the value of the land in the cost approach at its highest and best use, and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used. Unless otherwise specifically indicated, the cost approach value is not an insurance value, and should not be used as such.

— The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.

— The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.

— The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.

— If this appraisal is indicated as subject to satisfactory completion, repairs, or alterations, the appraiser has based his or her appraisal report and valuation conclusion on the assumption that completion of the improvements will be performed in a workmanlike manner.

— An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.

— The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database.

— An appraisal of real property is not a 'home inspection' and should not be construed as such. As part of the valuation process, the appraiser performs a non-invasive visual inventory that is not intended to reveal defects or detrimental conditions that are not readily apparent. The presence of such conditions or defects could adversely affect the appraiser's opinion of value. Clients with concerns about such potential negative factors are encouraged to engage the appropriate type of expert to investigate.

**The Scope of Work is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.**

**Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):**

**Important – Please Read – The client should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions. This appraisal report includes comments, observations, exhibits, maps, explanatory comments, and addenda that are necessary for the reader to comprehend the relevant characteristics of the subject property. The Expanded Comments and Clarification of Scope of Work provides specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.**

**INTENDED USE/USER:**

The intended user of this appraisal report is the lender/client. No additional intended users are identified by the appraiser. This report contains sufficient information to enable the client to understand the report. Any other party receiving a copy of this report for any reason is not an intended user; nor does it result in an appraiser-client relationship. Use of this report by any other party(ies) is not intended by the appraiser.




**SCOPE OF WORK:**

In the normal course of business, the appraiser attempted to obtain an adequate amount of information regarding the subject and comparable properties. Some of the required standardized responses, especially those in which the appraiser has not had the opportunity to verify personally or measure, could mistakenly imply greater precision and reliability in the data than is factually correct or typical in the normal course of business. Consequently, this information should be considered an estimate unless otherwise noted by the appraiser.

Examples include condition and quality ratings, as well as comparable sales and listing data. Not every element of the subject property was viewable, and comparable property data was generally obtained from third-party sources (real estate agents, buyers, sellers, public records, and the Greater Las Vegas Board of Realtors Multiple Listing Service).

Certifications

File No.: 5327 Marsh Butte Street

Property Address: 5327 Marsh Butte Street		City: Las Vegas		State: NV		Zip Code: 89148																																																									
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<b>APPRAISER'S CERTIFICATION</b>																																																															
<p>I certify that, to the best of my knowledge and belief:</p> <ul style="list-style-type: none"><li>— The statements of fact contained in this report are true and correct.</li><li>— The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.</li><li>— 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.</li><li>— I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.</li><li>— My engagement in this assignment was not contingent upon developing or reporting predetermined results.</li><li>— My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.</li><li>— My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.</li><li>— I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.</li><li>— Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.</li><li>— Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.</li></ul>																																																															
<b>Additional Certifications:</b>																																																															
<p><u>Supplemental Certification:</u> In compliance with the Ethics Rule of USPAP, I hereby certify that I have not performed any services with regard to the subject property within the 3-year period immediately preceding the engagement of this assignment.</p> <p><u>Supplemental Certification:</u> The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. As of the date of this report, I, R. Scott Dugan, SRA, Certified General Appraiser, have completed the continuing education program for Designated members of the Appraisal Institute.</p>																																																															
<b>Definition of Market Value:</b> (X) Market Value    ( ) Other Value																																																															
<b>Source of Definition:</b> FDIC Interagency Appraisal and Evaluation Guidelines (December 2, 2010) Appendix D																																																															
<p>As defined in the Agencies' appraisal regulations, the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:</p> <ol style="list-style-type: none"><li>1. Buyer and seller are typically motivated;</li><li>2. Both parties are well informed or well advised, and acting in what they consider their best interest;</li><li>3. A reasonable time is allowed for exposure in the open market;</li><li>4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and</li><li>5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.</li></ol> <p>*The definition of market value above is the most widely cited by federally regulated lending institutions, HUD and VA. Absent a specific definition from the client, this definition was used in the assignment.</p>																																																															
<table><tr><td colspan="2">Client Contact: Wright Finlay &amp; Zak</td><td colspan="2">Client Name: Wright Finlay &amp; Zak</td></tr><tr><td colspan="2">E-Mail: saslinger@wrightlegal.net</td><td colspan="2">Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117</td></tr><tr><td colspan="4"><b>APPRAISER</b></td></tr><tr><td colspan="4"></td></tr><tr><td colspan="4">Appraiser Name: R. Scott Dugan, SRA</td></tr><tr><td colspan="4">Company: R. Scott Dugan Appraisal Company, Inc.</td></tr><tr><td colspan="2">Phone: 702-876-2000</td><td colspan="2">Fax: 702-253-1888</td></tr><tr><td colspan="4">E-Mail: appraisals@rsdugan.com</td></tr><tr><td colspan="4">Date Report Signed: February 16, 2017</td></tr><tr><td colspan="2">License or Certification #: A.0000166-CG</td><td colspan="2">State: NV</td></tr><tr><td colspan="4">Designation: SRA</td></tr><tr><td colspan="4">Expiration Date of License or Certification: 05/31/2017</td></tr><tr><td colspan="4">Inspection of Subject: <input type="checkbox"/> Interior &amp; Exterior    <input checked="" type="checkbox"/> Exterior Only    <input type="checkbox"/> None</td></tr><tr><td colspan="4">Date of Inspection: February 05, 2017</td></tr></table>								Client Contact: Wright Finlay & Zak		Client Name: Wright Finlay & Zak		E-Mail: saslinger@wrightlegal.net		Address: 7785 W Sahara Avenue, Ste 200, Las Vegas, NV 89117		<b>APPRAISER</b>								Appraiser Name: R. Scott Dugan, SRA				Company: R. Scott Dugan Appraisal Company, Inc.				Phone: 702-876-2000		Fax: 702-253-1888		E-Mail: appraisals@rsdugan.com				Date Report Signed: February 16, 2017				License or Certification #: A.0000166-CG		State: NV		Designation: SRA				Expiration Date of License or Certification: 05/31/2017				Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input checked="" type="checkbox"/> Exterior Only <input type="checkbox"/> None				Date of Inspection: February 05, 2017			
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<b>SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)</b>																																																															
Supervisory or Co-Appraiser Name: _____																																																															
Company: _____																																																															
Phone: _____		Fax: _____																																																													
E-Mail: _____																																																															
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SIGNATURES

# EXHIBIT “S”

**GERRARD, COX & LARSEN**  
2450 St. Rose Parkway, Suite 200  
Henderson, Nevada 89074  
(702) 796-4000

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Fredrick J. Biedermann, Esq.  
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**GERRARD COX LARSEN**  
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Phone: (702) 796-4000

Melanie D. Morgan, Esq.  
Nevada Bar No. 8215  
Donna Whittig, Esq.  
Nevada Bar No. 11015  
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Las Vegas, Nevada 89134  
Telephone: (702) 634-5000  
Facsimile: (702) 380-8572  
Email: melanie.morgan@akerman.com  
Email: donna.wittig@akerman.com

*Attorneys for Defendant Nationstar Mortgage, LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC,

Plaintiff,

v.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL, AS  
TRUSTEE FOR THE JBWNO REVOCABLE  
LIVING TRUST, a trust; U.S. BANK, N.A., a  
national banking association; NATIONSTAR  
MORTGAGE, LLC, a foreign limited liability  
company; REPUBLIC SILVER STATE  
DISPOSAL, INC., DBA REPUBLIC SERVICES, a  
domestic government entity; DOE INDIVIDUALS I  
through X, inclusive; and ROE CORPORATIONS  
XI through XX inclusive.

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Counter-Defendant.

Case No.: A-14-705563-C  
Dept. No.: XVII

**DEFENDANT NATIONSTAR  
MORTGAGE, LLC'S SECOND  
SUPPLEMENT DISCLOSURES OF  
DOCUMENTS AND WITNESSES**

1 U.S. BANK, N.A.,

2 Third Party Plaintiff,

3 v.

4 SFR INVESTMENTS POOL 1, LLC, a Nevada  
5 limited liability company; INDIVIDUAL DOES I  
6 through X, inclusive; and ROE CORPORATIONS  
7 I through X, inclusive.

8 Third Party Defendants.

9 **DEFENDANT NATIONSTAR MORTGAGE, LLC'S SECOND SUPPLEMENT**  
10 **DISCLOSURES OF DOCUMENTS AND WITNESSES**

11 COMES NOW, Defendant NATIONSTAR MORTGAGE, LLC ("NATIONSTAR"), by and  
12 through their counsel of record, GERRARD COX LARSEN and AKERMAN, LLP, hereby submits it  
13 second supplement to its initial disclosures pursuant to Nevada Rules of Civil Procedure Rule 16.1 as  
14 follows:

15 **A. INDIVIDUALS LIKELY TO HAVE INFORMATION DISCOVERABLE UNDER**  
16 **N.R.C.P. Rule 16.1.**

17 **I.**

18 **LIST OF WITNESSES**

- 19 1. Corporate Designee for Nationstar Mortgage, LLC  
20 c/o AKERMAN, LLP  
21 1635 Village Center Circle, Suite 200  
22 Las Vegas, Nevada 89134  
23 Phone: (702) 634-5000

24 The Corporate Designee for Nationstar Mortgage, LLC is expected to testify regarding  
25 the facts and circumstances set forth in the pleadings on file herein.

- 26 2. Corporate Designee for Countrywide Home Loans, Inc.  
27 P.O. Box 10219  
28 Van Nuys, California 91410-0219

The Corporate Designee for Countrywide Home Loans, Inc. is expected to have knowledge  
concerning the facts and circumstances of this case.

3. Magnolia Gotera  
1275 Via Paraíso  
Salinas, California 93901

1 Magnolia Gotera is a defendant in this case and is expected to have knowledge concerning  
2 the facts and circumstances of this case.

3 4. Stacy Moore  
4 **Address Unknown**

5 Stacy Moore is a defendant in this case and is expected to have knowledge concerning  
6 the facts and circumstances of this case.

7 5. Corporate Designee for JBWNO Revocable Living Trust  
8 **Address Unknown**

9 The Corporate Designee for JBWNO Revocable Living Trust is expected to have  
10 knowledge concerning the facts and circumstances of this case. on file herein.

11 6. Corporate Designee for U.S. Bank, N.A.  
12 **c/o AKERMAN, LLP**  
13 **1635 Village Center Circle, Suite 200**  
14 **Las Vegas, Nevada 89134**  
15 **Phone: (702) 634-5000**

16 The Corporate Designee for U.S. Bank, N.A. is expected to testify regarding the facts and  
17 circumstances set forth in the pleadings on file herein.

18 7. Corporate Designee for Shadow Mountain Ranch Community Association  
19 c/o Level Property Management  
20 8966 Spanish Ridge Avenue # 100  
21 Las Vegas, Nevada 89148

22 The Corporate Designee for Shadow Mountain Ranch Community Association is  
23 expected to have knowledge concerning the facts and circumstances of this case.

24 8. Corporate Designee for Republic Silver State Disposal, Inc. dba Republic  
25 Services  
26 c/o The Corporation Trust Company of Nevada  
27 311 S. Division Street  
28 Carson City, Nevada 89703

The Corporate Designee for Republic Silver State Disposal, Inc. dba Republic Services is  
expected to have knowledge concerning the facts and circumstances of this case.

9. Corporate Designee for Alessi & Koenig, LLC  
**c/o HOA Lawyers Group, LLC**  
9500 W. Flamingo, Suite 204  
Las Vegas, Nevada 89147

The Corporate Designee for Alessi & Koenig, LLC is expected to have knowledge

1 concerning the facts and circumstances of this case.

2 10. Corporate Designee for SFR Investments Pool 1, LLC  
3 c/o KIM GILBERT EBRON  
4 7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
(702) 485-3300

5 The Corporate Designee for SFR Investments Pool 1, LLC is expected to have knowledge  
6 concerning the facts and circumstances of this case.

7 11. Rock K. Jung, Esq.  
8 Wright, Finlay & Zak, LLP  
9 7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117  
Telephone: (702) 475-7964

10 Mr. Jung may testify regarding the records maintained by Miles Bauer, the facts and  
11 communications with the HOA and/or its agent regarding the property. Mr. Jung is former  
12 counsel for Bank of America and all parties are expressly instructed that they may not attempt  
13 to make contact that would violate the attorney-client privilege without express consent.

14 12. David Alessi  
15 c/o HOA Lawyers Group, LLC  
16 9500 W. Flamingo, Suite 204  
Las Vegas, Nevada 89147

17 David Alessi is expected to have knowledge concerning the facts and circumstances of  
18 this case.

19 13. Corporate Designee for Level Property Management  
20 8966 Spanish Ridge Avenue # 100  
Las Vegas, Nevada 89148

21 The Corporate Designee for Level Property Management is expected to have knowledge  
22 concerning the facts and circumstances of this case.

23 14. Chris Hardin  
24 SFR Investments Pool 1, LLC  
25 c/o KIM GILBERT EBRON  
7625 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
(702) 485-3300

26 Chris Hardin is expected to have knowledge concerning the facts and circumstances of  
27 this case.



1           **15.     30(b)(6) Witness for Clark County Assessor**  
2                   **500 South Grand Central Parkway, 2nd Floor**  
3                   **Las Vegas, Nevada 89155**

4           **This witness is expected to have knowledge concerning the facts and circumstances of**  
5           **this case.**

6           **16.     30(b)(6) Witness for Clark County Recorder**  
7                   **500 South Grand Central Parkway, 2nd Floor**  
8                   **Las Vegas, Nevada 89155**

9           **This witness is expected to have knowledge concerning the facts and circumstances of**  
10           **this case.**

11           **17.     Michael Pizzi**  
12                   **President, Shadow Mountain Ranch Community Association**  
13                   **8966 Spanish Ridge Avenue # 100**  
14                   **Las Vegas, Nevada 89148**

15           **This witness is expected to have knowledge concerning the facts and circumstances of**  
16           **this case.**

17           **18.     Cecilia Hall**  
18                   **Secretary, Shadow Mountain Ranch Community Association**  
19                   **8966 Spanish Ridge Avenue # 100**  
20                   **Las Vegas, Nevada 89148**

21           **This witness is expected to have knowledge concerning the facts and circumstances of**  
22           **this case.**

23           **19.     John Fontanini**  
24                   **Director, Shadow Mountain Ranch Community Association**  
25                   **8966 Spanish Ridge Avenue # 100**  
26                   **Las Vegas, Nevada 89148**

27           **This witness is expected to have knowledge concerning the facts and circumstances of**  
28           **this case.**

29           **20.     Corporate Representative and/or 30(b) Witness for Miles, Bauer, &**  
30                   **Winters, LLP**  
31                   **575 Anton Road, Suite 300**  
32                   **Costa Mesa, CA 92626**  
33                   **Telephone: (714) 432-6503**

34           **This witness and/or these witnesses are expected to testify regarding Miles Bauer's**  
35           **knowledge of the HOA's foreclosure and all facts related thereto, including, without limitation,**  
36           **the payment of the super-priority Miles Bauer performed and/or attempted on U.S. Bank's and**

Nationstar's behalf. On information and belief, Doug Miles is likely to testify as the corporate representative, person most knowledgeable, and Rule 30(b)(6) witness for Miles Bauer, and his address is provided in this disclosure. Nationstar reserves the right to call other corporate representatives, persons most knowledgeable, and Rule 30(b)(6) witnesses for Miles Bauer on the topics stated herein, including, without limitation, Rock K. Jung, Esq.

**B. DOCUMENTS WHICH ARE DISCOVERABLE UNDER NCRP 16.l(a)(I)**

Nationstar hereby identifies and/or produces the following documents:

<u>Date</u>	<u>Description</u>	<u>Bates Stamped</u>
	Declaration of Covenants, Conditions and Restrictions for Shadow Mountain Ranch	WFZ00001 -WFZ00080
12/18/02	State of Nevada Declaration of Value-Corporation Grant, Bargain, Sale Deed	WFZ00081 -WFZ00084
08/25/04	Revolving Credit Deed of Trust	WFZ00085 -WFZ00093
11/21/05	Grant, Bargain, Sale Deed	WFZ00094 -WFZ00095
11/21/05	Deed of Trust	WFZ00096 -WFZ00121
01/22/08	Notice of Default and Election to Sell Under Deed of Trust	WFZ00122-WFZ00123
01/24/08	Substitution of Trustee Nevada	WFZ00124
03/20/08	Rescission of Election to Declare Default	WFZ00125
05/07/08	Notice of Delinquent Assessment	WFZ00126
07/23/08	Notice of Default and Election to Sell Under Homeowners Association Lien	WFZ00127
04/30/09	Notice of Default and Election to Sell Under Homeowners Association Lien	WFZ00128
07/01/10	Notice of Default and Election to Sell Under Homeowners Association Lien	WFZ00129
01/26/11	Notice of Trustee's Sale	WFZ00130
05/27/11	Grant Deed	WFZ00131-WFZ00134
05/27/11	Grant Deed	WFZ00135 -WFZ00138
11/02/11	Assignment of Deed of Trust	WFZ00139 -WFZ00140
09/11/12	Notice of Delinquent Assessment (Lien)	WFZ00141
05/15/13	Notice of Violation (Lien)	WFZ00142

06/13/13	Notice of Default and Election to Sell Under Homeowners Association Lien	WFZ00143
07/05/13	Notice of Default and Election to Sell Under Homeowners Association Lien	WFZ00144
10/01/13	Assignment of Deed of Trust	WFZ00145 -WFZ00146
12/10/13	Notice of Trustee's Sale	WFZ00147
01/13/14	Trustee's Deed Upon Sale	WFZ00148 -WFZ00149
05/05/14	Substitution of Trustee	WFZ00150
	Shadow Mountain Ranch Community Association Response to Subpoena Duces Tecum	SMRCA0001-0458
	Affidavit of Custodian of Records of Shadow Mountain Ranch Community Association	SMRCA0459-0461
	<b>Promissory Note</b>	<b>NATIONSTAR00001-00006</b>
	<b>Miles Bauer Affidavit</b>	<b>NATIONSTAR00007-00035</b>
	<b>Documents produced by Alessi &amp; Koenig, LLC relating to property</b>	<b>NATIONSTAR00036-00333</b>
	<b>Title Insurance Policy</b>	<b>NATIONSTAR00334-00350</b>

**C. COMPUTATION OF DAMAGES**

If the Court enters an order finding that the HOA foreclosure sale extinguished the Deed of Trust, Nationstar seeks all damages proximately caused by the wrongful foreclosure of the Property include including, but not limited to, the entire principal and interest secured by the Deed of Trust and all attorneys' fees and costs pursuant to the terms of the Note and Deed of Trust, including post-judgment attorneys' fees and costs. Nationstar may also seek damages for taxes, insurance and association dues it has paid since SFR acquired its interest, if any, in the Property. These damages cannot be computed until after entry of an order, if so entered, determining that the Deed of Trust was extinguished by the HOA Sale.

**D. INSURANCE AGREEMENTS**

Loan Policy of Title Insurance issued in favor of Mortgage Electronic Registration Systems, Inc., solely as nominee for Countrywide Home Loans, Inc., its successors and/or

1 assigns on November 21, 2005 by Fidelity National Title Insurance Company, attached hereto  
2 (Bate Stamp Nos. NATIONSTAR00334- NATIONSTAR00350). Although this title insurance  
3 policy does not apply to the claims asserted in the pleadings, Defendant Nationstar has  
4 produced a copy of this policy in good faith at the request of the other parties to this matter.

5 DATED this 1<sup>st</sup> day of June, 2018.

**GERRARD COX LARSEN**

6 */s/ Fredrick J. Biedermann, Esq.*

7 \_\_\_\_\_  
Douglas D. Gerrard, Esq.

8 Nevada Bar No. 4613

Fredrick J. Biedermann, Esq.

9 Nevada Bar No. 11918

2450 Saint Rose Pkwy., Suite 200

10 Henderson, Nevada 89074

*Attorneys for Defendant Nationstar Mortgage, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of GERRARD COX LARSEN, and that on the 1<sup>st</sup> day of June, 2018, I served a copy of the **DEFENDANT NATIONSTAR MORTGAGE, LLC'S SECOND SUPPLEMENT DISCLOSURES OF DOCUMENTS AND WITNESSES**, by e-serving a copy on all parties listed in the Master Service List pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

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/s/ Fredrick J. Biedermann, Esq.  
Fredrick J. Biedermann, an employee of  
GERRARD COX LARSEN

# EXHIBIT “T”

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3 ALESSI & KOENIG, LLC, )  
4 )  
5 Plaintiff, )  
6 )  
7 vs. ) Case No. A-14-705563-C  
8 ) Dept. No. XVII  
9 STACY MOORE, an individual; )  
10 MAGNOLIA GOTERA, an )  
11 individual; KRISTIN JORDAL, AS )  
12 TRUSTEE FOR THE JBWNO )  
13 REVOCABLE LIVING TRUST, a )  
14 trust; U.S. BANK, N.A., a )  
15 national banking association; )  
16 NATIONSTAR MORTGAGE, LLC, a )  
17 foreign limited liability )  
18 company; REPUBLIC SILVER STATE )  
19 DISPOSAL, INC., DBA REPUBLIC )  
20 SERVICES, a domestic )  
21 government entity; et al., )  
22 )  
23 Defendants. )  
24 )  
25 AND RELATED COUNTERCLAIM AND )  
THIRD-PARTY CLAIM. )  
\_\_\_\_\_ )

16 DEPOSITION OF  
17 30(B)(6) REPRESENTATIVE FOR ALESSI & KOENIG, L.L.C.  
18 DAVID ALESSI  
19 HENDERSON, NEVADA  
20 WEDNESDAY, MAY 16, 2018  
21

22 VERITEXT LEGAL SOLUTIONS  
23 (800) 567-8658  
24 REPORTED BY: CYNTHIA K. DuRIVAGE, CCR No. 451  
25 JOB NO.: 2908059

<p style="text-align: right;">Page 2</p> <p>1 DISTRICT COURT  2 CLARK COUNTY, NEVADA  3 ALESSI &amp; KOENIG, LLC, )  4 )  5 Plaintiff, )  6 )  7 vs. ) Case No. A-14-705563-C  8 ) Dept. No. XVII  9 STACY MOORE, an individual; )  10 MAGNOLIA GOTERA, an )  11 individual; KRISTIN JORDAL, AS)  12 TRUSTEE FOR THE JBWNO )  13 REVOCABLE LIVING TRUST, a )  14 trust; U.S. BANK, N.A., a )  15 national banking association; )  16 NATIONSTAR MORTGAGE, LLC, a )  17 foreign limited liability )  18 company; REPUBLIC SILVER STATE)  19 DISPOSAL, INC., DBA REPUBLIC )  20 SERVICES, a domestic )  21 government entity; et al., )  22 )  23 Defendants. )  24 )  25 AND RELATED COUNTERCLAIM AND )  THIRD-PARTY CLAIM. )  Deposition of DAVID ALESSI, taken on  behalf of Defendant Nationstar Mortgage, LLC, at  2450 St. Rose Parkway, Suite 200, Henderson, Nevada,  commencing at 3:21 p.m., Wednesday, May 16, 2018,  before Cynthia K. DuRivage, CCR No. 451.</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX  2 WITNESS: DAVID ALESSI  3 EXAMINATION PAGE  4 BY MR. MILNE 7  5 BY MR. MARTINEZ 59  6  7  8 EXHIBITS  9  10 LETTER DESCRIPTION PAGE  11 A Notice Of Subpoena For Deposition 7  12 Of The NRCP 30(B)(6) Witness For  Alessi &amp; Koenig, LLC  13  14 B Copper Sands Homeowners 10  15 Association, Inc. Status report  for Stacy Moore  16  17 C Deed Of Trust 13  18  19 D Notice Of Delinquent Assessment 14  Lien, 4/15/08  20 E Letter to Magnolia Gotera from 16  Aileen Ruiz, 4/15/08  21  22 F Trustee's Sale Guarantee 18  23  24 G Notice Of Default And Election 18  25 To Sell Under Homeowners  Association Lien, 6/21/08  H Letter to Alessi &amp; Koenig, LLC 21  from First American Title  Insurance Company, 5/14/10  I Letter to Miles, Bauer, 22  Bergstrom &amp; Winters from Ryan  Kerbow, 9/8/10</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES  2 FOR DEFENDANT NATIONSTAR MORTGAGE, LLC:  3 GARY C. MILNE  BY: GERRARD COX LARSEN, ESQ.  4 2450 St. Rose Parkway  Suite 200  5 Henderson, Nevada 89074  (702) 796-4000  6 gmlne@gerrard-cox.com  7  8 FOR THIRD-PARTY DEFENDANT SFR INVESTMENTS POOL 1,  9 LLC:  10 KIM GILBERT EBON  BY: JASON G. MARTINEZ, ESQ.  11 7625 Dean Martin Drive  Suite 110  12 Las Vegas, Nevada 89139  (702) 485-3300  13 jason@kgelegal.com  14  15  16 * * * * *  17  18  19  20  21  22  23  24  25</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX (CONT'D)  2 EXHIBITS  3 LETTER DESCRIPTION PAGE  4 J Letter to Alessi &amp; Koenig, 24  L.L.C. from Rock K. Jung,  5 9/30/10  6 K Letter from Shadow Mountain 27  Ranch to Magnolia Gotera  7 reflecting assessments  8 L Authorization To Conclude Non- 29  Judicial Foreclosure And  9 Conduct Trustee Sale  10 M Notice Of Trustee's Sale, 32  12/16/10  11 N Grant Deed, 5/27/11 33  12 O Grant Deed, 5/27/11 34  13 P Assignment Of Deed Of Trust, 34  14 10/27/11  15 Q Notice Of Delinquent Assessment 35  Lien, 8/13/12  16 R Letter from Shadow Mountain 37  17 Ranch to Stacy Moore reflecting  Assessments  18  19 S Letter to Stacy Moore from 39  Alessi &amp; Koenig, 8/13/12  20 T Real Estate Listing Report 40  21 U Notice Of Default And Election 41  To Sell Under Homeowners  22 Association Lien, 9/11/12  23 V Notice Of Default And Election 42  To Sell Under Homeowners  24 Association Lien, 6/3/13  25</p>



<p style="text-align: right;">Page 6</p> <p>1           I N D E X (CONT'D)</p> <p>2 EXHIBITS</p> <p>3 LETTER           DESCRIPTION           PAGE</p> <p>4 W     Assignment Of Deed Of Trust,     45</p> <p>       7/1/13</p> <p>5</p> <p>6     X     Notice Of Trustee's Sale,     46</p> <p>       9/11/2</p> <p>7     Y     Notice Of Trustee's Sale,     48</p> <p>       11/14/13</p> <p>8</p> <p>9     Z     Trustee's Deed Upon Sale,     49</p> <p>       6/13/14</p> <p>10   AA     Email from George Bates to     55</p> <p>       maximumfinancial@aol.com,</p> <p>       1/8/14</p> <p>11</p> <p>12   BB     Alessi &amp; Koenig multiple pages     55</p> <p>       of fees and costs</p> <p>13</p> <p>14   CC     Appraisal Of Real Property     56</p> <p>15</p> <p>16   DD     Affidavit of David Alessi,     58</p> <p>17         9/7/17</p> <p>18 QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:</p> <p>19           (NONE)</p> <p>20</p> <p>21</p> <p>22 INFORMATION TO BE SUPPLIED:</p> <p>23           (NONE)</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 8</p> <p>1           Have you seen this document before?</p> <p>2     A.   Yes, I have, and I am prepared to testify</p> <p>3 on all the matters contained within it.</p> <p>4     Q.   All right. Very good.</p> <p>5           I notice today you're not represented by</p> <p>6 counsel, although I understand you are an attorney,</p> <p>7 correct?</p> <p>8     A.   I'm a California attorney, correct.</p> <p>9     Q.   All right. I believe, if I'm not mistaken,</p> <p>10 Alessi &amp; Koenig, LLC is the named plaintiff in this</p> <p>11 litigation.</p> <p>12          Do you know if they're represented by</p> <p>13 counsel in this matter?</p> <p>14     A.   No. Alessi Koenig filed Chapter 7 in</p> <p>15 December of 2016. So Shelly Krohn is the trustee.</p> <p>16 Janette Pearson is the trustee's attorney.</p> <p>17     Q.   But you're here today as the 30(b)(6)</p> <p>18 designee for Alessi &amp; Koenig, are you not?</p> <p>19     A.   Yes.</p> <p>20     Q.   How much time did you spend preparing for</p> <p>21 this deposition, perhaps reviewing the collection</p> <p>22 file?</p> <p>23     A.   As I do in all my depositions, I contacted</p> <p>24 Jona, J-o-n-a, LePoma, L-e-P-o-m-a, on my way to the</p> <p>25 deposition, and we went over both files, the depo I</p>
<p style="text-align: right;">Page 7</p> <p>1           DAVID ALESSI,</p> <p>2 having first been duly sworn to testify to the truth,</p> <p>3 the whole truth, and nothing but the truth, was</p> <p>4 examined and testified as follows:</p> <p>5</p> <p>6           EXAMINATION</p> <p>7 BY MR. MILNE:</p> <p>8     Q.   David, my name is Gary Milne. I represent</p> <p>9 Nationstar Mortgage in this litigation.</p> <p>10          I know immediately prior to today's</p> <p>11 deposition, your deposition was taken in another</p> <p>12 matter here in this office.</p> <p>13          At that time, were any admonitions</p> <p>14 provided, or you've probably done hundreds, if not</p> <p>15 thousands of these?</p> <p>16     A.   That's correct, I have, and there's no need</p> <p>17 for any admonitions. We can just jump right in.</p> <p>18     Q.   All right. Thank you.</p> <p>19          Let me hand you what we're going to mark as</p> <p>20 Defendant's Exhibit A.</p> <p>21          (Exhibit A was marked for</p> <p>22 identification by the reporter.)</p> <p>23 BY MR. MILNE:</p> <p>24     Q.   David, you have in front of you what we've</p> <p>25 marked as Exhibit A to your deposition.</p>	<p style="text-align: right;">Page 9</p> <p>1 just took and this one.</p> <p>2          It doesn't take me long at this point. I</p> <p>3 probably spent five or ten minutes on it.</p> <p>4     Q.   Did you talk to anyone besides the</p> <p>5 individual identified?</p> <p>6     A.   No.</p> <p>7     Q.   Do you know how it is that Alessi &amp; Koenig</p> <p>8 got involved with this HOA foreclosure sale?</p> <p>9     A.   We would have been hired by the homeowners</p> <p>10 association.</p> <p>11     Q.   I believe, if I'm recalling correctly,</p> <p>12 Shadow Mountain Ranch Community Association?</p> <p>13     A.   Shadow Mountain, yes.</p> <p>14          So generally, there's a retainer between</p> <p>15 our firm and the association or the board by way of a</p> <p>16 motion at a properly quorumed HOA board meeting would</p> <p>17 hire us.</p> <p>18          Our main point of contact, though, is the</p> <p>19 HOA management company. It's usually not the board</p> <p>20 or the HOA itself.</p> <p>21     Q.   Would you happen to know whether is the</p> <p>22 first matter you've handled for Shadow Mountain?</p> <p>23 Were there others? Do you have any idea?</p> <p>24     A.   For Shadow Mountain, I don't know.</p> <p>25     Q.   Do you know who the management company was?</p>

<p style="text-align: right;">Page 10</p> <p>1 A. I don't know.</p> <p>2 Q. But most of your contact in terms of the</p> <p>3 collection process would be through the management</p> <p>4 company on behalf of the HOA, correct?</p> <p>5 A. Usually, yes.</p> <p>6 Q. Do you know anything about the homeowner,</p> <p>7 Magnolia Gotera?</p> <p>8 A. No.</p> <p>9 Q. Any communications through your office with</p> <p>10 her that you saw upon your review of the file?</p> <p>11 A. Not that I know of.</p> <p>12 If I had the status report, which I believe</p> <p>13 was produced in our document production, that would</p> <p>14 help assist me.</p> <p>15 Generally, communication with the homeowner</p> <p>16 would be noted in the status report.</p> <p>17 MR. MILNE: Why don't we go ahead and hand</p> <p>18 you, then.</p> <p>19 Madam Court Reporter, I don't know if</p> <p>20 you've got specific colors for your exhibit stickers</p> <p>21 you're wanting to use.</p> <p>22 (Exhibit B was marked for</p> <p>23 identification by the reporter.)</p> <p>24 BY MR. MILNE:</p> <p>25 Q. David, you have in front of you what we've</p>	<p style="text-align: right;">Page 12</p> <p>1 the homeowner, payments received or payments made.</p> <p>2 Q. Based upon anything here or, again,</p> <p>3 anything you may have seen in reviewing the file, do</p> <p>4 you know whether or not Magnolia Gotera lived in this</p> <p>5 property or whether it was a rental property or any</p> <p>6 understanding one way or the other?</p> <p>7 A. I don't have any understanding one way or</p> <p>8 the other of that.</p> <p>9 Q. At some point, did Alessi &amp; Koenig come to</p> <p>10 understand that she didn't live there?</p> <p>11 A. From the documents that I have in front of</p> <p>12 me, I cannot answer that question. Perhaps if I saw</p> <p>13 the mailings, if there was an offsite address. But I</p> <p>14 don't see anything in the file so far to indicate</p> <p>15 that.</p> <p>16 Q. Does Alessi &amp; Koenig -- or, did Alessi &amp;</p> <p>17 Koenig do anything in terms of making sure they had</p> <p>18 current mailing information for the homeowner?</p> <p>19 MR. MARTINEZ: Objection, form.</p> <p>20 THE WITNESS: We did review the public</p> <p>21 records to ascertain current addresses.</p> <p>22 BY MR. MILNE:</p> <p>23 Q. Beyond that, any other research?</p> <p>24 A. No, not that I can think of.</p> <p>25 Q. And if a mailing came back, would any</p>
<p style="text-align: right;">Page 11</p> <p>1 marked as Exhibit B, which I believe may be that</p> <p>2 status report, if I'm using the language correctly --</p> <p>3 A. Yes.</p> <p>4 Q. -- that you referenced.</p> <p>5 A. Yes. And so, to answer your question, it</p> <p>6 looks like we did make contact with the homeowner on</p> <p>7 October 12th, 2009. There's an entry in the status</p> <p>8 report to that effect. And it also says:</p> <p>9 "Spoke with homeowner, payment</p> <p>10 forthcoming."</p> <p>11 Q. Tell me a little bit about this Exhibit B,</p> <p>12 how it's prepared or was prepared.</p> <p>13 I'm going to assume it's by whoever does</p> <p>14 anything substantive with the file. There's a</p> <p>15 computer entry made as to what was done and when and</p> <p>16 a description and so forth.</p> <p>17 A. Yes.</p> <p>18 Q. Is that how it's generated?</p> <p>19 A. These entries are done by employees of the</p> <p>20 law firm.</p> <p>21 Q. Alessi &amp; Koenig?</p> <p>22 A. Of Alessi &amp; Koenig, yes. And they're meant</p> <p>23 to capture all of the pertinent, relevant events on a</p> <p>24 foreclosure file, such as the recording of the</p> <p>25 various notices, communications with the bank and/or</p>	<p style="text-align: right;">Page 13</p> <p>1 inquiry, either with the management company or the</p> <p>2 HOA, be made?</p> <p>3 A. Generally, any updates to mailing addresses</p> <p>4 or offsite addresses are reflected on the ledger.</p> <p>5 Generally, we would obtain an updated</p> <p>6 accounting ledger when we take the next step in the</p> <p>7 foreclosure process.</p> <p>8 I see several entries here where we</p> <p>9 requested an updated accounting ledger.</p> <p>10 So in that way, we are updating our</p> <p>11 records.</p> <p>12 (Exhibit C was marked for</p> <p>13 identification by the reporter.)</p> <p>14 BY MR. MILNE:</p> <p>15 Q. David, I've handed you what we've marked as</p> <p>16 Exhibit C to your deposition. It's a deed of trust</p> <p>17 recorded on November 21st, 2005.</p> <p>18 Did you see this upon your review of the</p> <p>19 collection file?</p> <p>20 A. I did not.</p> <p>21 Q. Is it typical to obtain a copy of the deed</p> <p>22 of trust in the process of foreclosing an HOA's lien?</p> <p>23 A. I don't know if it's typical or atypical.</p> <p>24 We oftentimes do either review it online -- I can't</p> <p>25 say that it's typical for us to print it out and scan</p>

<p style="text-align: right;">Page 14</p> <p>1 it into the file, although I have seen it on a number 2 of occasions.</p> <p>3 Q. And I'll represent to you that the 4 documents we obtained from the Dropbox did include a 5 copy of the deed of trust. I don't know whether it 6 was this exact one, exact copy, in other words, this 7 copy might have been obtained somewhere else, but one 8 was seen in the collection file.</p> <p>9 But be that as it may, why would Alessi &amp; 10 Koenig want to have a copy of the deed of trust in 11 the collection file?</p> <p>12 MR. MARTINEZ: Objection, form.</p> <p>13 THE WITNESS: We would place the -- to 14 obtain information as to who to mail the notices to 15 as well as the amount owed on the property.</p> <p>16 BY MR. MILNE:</p> <p>17 Q. Anything else?</p> <p>18 A. Not that I can think of.</p> <p>19 We would also be looking for assignments of 20 the deed of trust. All of this is done to ensure 21 that we mail the notices to the right parties.</p> <p>22 (Exhibit D was marked for 23 identification by the reporter.)</p> <p>24 THE WITNESS: Exhibit D is a copy of a 25 notice of delinquent assessment lien recorded</p>	<p style="text-align: right;">Page 16</p> <p>1 a super-priority lien?</p> <p>2 MR. MARTINEZ: Objection, form.</p> <p>3 THE WITNESS: The words "super-priority 4 lien" are not on this document. It just has a total 5 amount due. So there would be no way for a person 6 reading the document to ascertain a super-priority 7 amount.</p> <p>8 BY MR. MILNE:</p> <p>9 Q. The recording date is, I don't know, looks 10 to be about three weeks after the date the notice of 11 lien was signed.</p> <p>12 Is that typical, or is there any 13 requirement by the statute, as you understand it?</p> <p>14 MR. MARTINEZ: Objection, form.</p> <p>15 THE WITNESS: There's no requirement by the 16 statute, as I understand it.</p> <p>17 (Exhibit E was marked for 18 identification by the reporter.)</p> <p>19 BY MR. MILNE:</p> <p>20 Q. David, Exhibit E is two letters sent to 21 Magnolia Gotera, both dated April 15, 2008, one with 22 an address in Las Vegas, which I think is the 23 property address, and the other is to Salinas, 24 California.</p> <p>25 What is this letter?</p>
<p style="text-align: right;">Page 15</p> <p>1 May 7th, 2008.</p> <p>2 BY MR. MILNE:</p> <p>3 Q. I notice in looking at Exhibit D, David, 4 that in the first paragraph for recorded information 5 as to the CC&amp;Rs, the word "pending" is indicated 6 there.</p> <p>7 Do you know how or why that is?</p> <p>8 A. I don't.</p> <p>9 Q. The total amount due is \$957, and the 10 notice purports to break that amount down into 11 collection and attorney's fees as well as collection 12 costs, late fees, et cetera.</p> <p>13 Would I be correct in understanding, after 14 I subtract out the collection and attorney's fees and 15 the collection costs and late fees, the balance would 16 be the assessments that are delinquent?</p> <p>17 MR. MARTINEZ: Object to form.</p> <p>18 THE WITNESS: As well as the management 19 company intent to lien fee and the management company 20 audit fee.</p> <p>21 BY MR. MILNE:</p> <p>22 Q. Anybody who received this notice of 23 delinquent assessment lien, Exhibit D, upon looking 24 at it, would they be able to determine whether or not 25 the HOA was seeking to foreclose what we now know as</p>	<p style="text-align: right;">Page 17</p> <p>1 A. This is a lien cover letter. With this 2 letter, the notice of delinquent assessment lien 3 would have been enclosed. It's informing the 4 delinquent homeowner that there's a past-due balance 5 due and the date that it's due.</p> <p>6 Q. Can you tell from the -- what did you call 7 Exhibit B, status report or status record, whether or 8 not Exhibit E came back, was delivered, anything 9 about the success of this mailing?</p> <p>10 A. Well, you can see on the second entry, 11 April 11th, 2008, that the lien recordation was sent 12 via regular certified mail. This Exhibit E is a copy 13 of that mailing with the certified mail number.</p> <p>14 You can see the certified mail number on 15 the document.</p> <p>16 Q. Sure. And the dates, April 11 on the 17 report and April 15 on the Exhibit E itself, any 18 understanding as to why those are off by four days?</p> <p>19 MR. MARTINEZ: Objection, form.</p> <p>20 THE WITNESS: I don't think that they're 21 off.</p> <p>22 I would imagine that the lien might have 23 been drafted. The entries in the status report are 24 on or about dates, so it just may not -- the legal 25 assistant was in the process of mailing the lien out</p>

<p style="text-align: right;">Page 18</p> <p>1 and part of that process was entering the event in 2 the status report. 3 (Exhibit F was marked for 4 identification by the reporter.) 5 BY MR. MILNE: 6 Q. David, you have in front of you what we've 7 marked as Exhibit F to your deposition, a trustee 8 sale guarantee for North American Title Company, 9 effective July 23, 2008. 10 Why is this in Alessi &amp; Koenig's collection 11 file? 12 A. This document helps us ascertain the 13 encumbrances on the property, who to -- helps us 14 determine who to mail the notice of default to. 15 Q. And I see on the third page of Exhibit F 16 the deed of trust in favor of Countrywide Home Loans 17 is noted there, correct? 18 A. Yes. 19 (Exhibit G was marked for 20 identification by the reporter.) 21 BY MR. MILNE: 22 Q. David, you've been handed Exhibit G. It's 23 a notice of default and election to sell under 24 homeowners association lien, and it's actually three 25 different documents.</p>	<p style="text-align: right;">Page 20</p> <p>1 that each of the notices references the same lien. 2 BY MR. MILNE: 3 Q. The first lien that was Exhibit D? 4 A. Correct. 5 Q. It looks like, referencing again the status 6 report, Exhibit B, that the June 21, 2008 notice of 7 default is referenced, as is an April 2009 notice of 8 default, April 14th. 9 A. It looks like in parenthesis, it says, 10 "re-recording." I don't know if there was an issue 11 with the recordings or the mailings of that first 12 notice of default. I don't have enough documents in 13 front of me. 14 Q. And then, the third page of Exhibit G, the 15 July 2010 notice of default, again, that also, I 16 think, is reflected in the status report at the 17 bottom of the first page of Exhibit B as June 21st? 18 A. Yes. 19 Q. But your best recollection or understanding 20 is that these multiple notices of default was to 21 prompt the homeowner to pay the delinquent 22 assessment? 23 A. Yes. Going to foreclosure sale, though, 24 was the last resort, especially this long ago. 25 At the beginning of the process, we could</p>
<p style="text-align: right;">Page 19</p> <p>1 The first page is a notice of default 2 recorded on July 23, 2008. The second page is a 3 notice of default recorded on April 30, 2009. And 4 the third page is a notice of default recorded on 5 July 1, 2010. 6 As best as I can tell, the only difference 7 between the documents is some dollar figures are 8 different and maybe some other dates, but I'm just 9 hoping you can maybe help me understand what was the 10 need for successive notice of default under this one 11 notice of lien. 12 MR. MARTINEZ: Objection, form. 13 THE WITNESS: I don't know. It could be 14 that -- I don't know. 15 It does not look like we charged multiple 16 times for the notice of default. 17 This file is an old file, it's 2008, 2009, 18 2010. We really weren't going to sale. So these 19 notices could have been to try to get the attention 20 of the homeowner a year later because we weren't 21 moving forward to sale on properties at this time 22 very regularly. And so, just in an effort to shake 23 the trees, as it were, a little bit, it doesn't look 24 like we charged for the notice. I don't see the 25 mailings for any of the notices. But I would note</p>	<p style="text-align: right;">Page 21</p> <p>1 have certainly recorded a notice of trustee sale and 2 levied more fees on the account. 3 It does look like we might have had a 4 little bit of contact from the homeowner. So we were 5 just trying to close the account out and, like I 6 said, shake the trees a little bit. 7 Q. And the notice of default would, in 8 addition to being mailed to the homeowner would also 9 be mailed to a lender, correct? 10 A. Correct. 11 (Exhibit H was marked for 12 identification by the reporter.) 13 BY MR. MILNE: 14 Q. David, Exhibit H appears to be another 15 trustee sale guarantee like document. This time, 16 instead of it coming from North American Title 17 Company, this one appears to be generated by First 18 American Title Company, effective May 6, 2010. 19 Reason why it didn't go back to North 20 American Title? 21 A. I don't know. We use multiple title 22 insurance companies over the years. 23 Q. And again, Exhibit H shows the deed of 24 trust in favor of Countrywide, correct? 25 A. Correct.</p>

<p style="text-align: right;">Page 22</p> <p>1 (Exhibit I was marked for 2 identification by the reporter.) 3 BY MR. MILNE: 4 Q. David, Exhibit I is a letter on Alessi &amp; 5 Koenig letterhead, dated September 8, 2010 with a 6 subject line "Rejection of Partial Payments." 7 I've kind of tried to compare this to the 8 status report, Exhibit B, to get a better 9 understanding of the communications to and from 10 Alessi &amp; Koenig and Miles Bauer Bergstrom &amp; Winters 11 who is identified on this letter as the recipient. 12 And it looks like, based upon the status 13 report, that on September 9, 2010, Alessi &amp; Koenig 14 received payoff requests from Miles Bauer Bergstrom &amp; 15 Winters. 16 I didn't see that letter in the collection 17 file in preparation for your deposition. But then, I 18 look at that date, September 9, and compare it to 19 Exhibit I, which is a day earlier, September 8, and I 20 was a little confused on the dates. 21 Am I correct in believing and understanding 22 that Exhibit I was received after a request from 23 Miles Bauer for payoff information, whatever date 24 that letter may have been? 25 MR. MARTINEZ: Objection, form.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. But typically in these cases where Alessi &amp; 2 Koenig has communicated with Miles Bauer, Alessi &amp; 3 Koenig would receive communication from Miles Bauer 4 requesting a super-priority amount, and then, a 5 letter such as Exhibit I would be generated? 6 A. No. Exhibit I is an outlier. 7 Generally, the response would be a demand 8 that you see on page 2 of Exhibit I with an account 9 ledger attached to it. 10 Q. Okay. 11 A. I've only seen the first page of Exhibit I 12 at a couple of depositions. 13 Generally what I would see in response to 14 Miles' request for a payoff is a breakdown that you 15 see on page 2 with an attached account ledger. 16 Q. Page 2 of Exhibit I? 17 A. Yes. 18 (Exhibit J was marked for 19 identification by the reporter.) 20 BY MR. MILNE: 21 Q. David, Exhibit J is a letter dated 22 September 30, 2010 from Miles Bauer to Alessi &amp; 23 Koenig; the third page of which includes a Miles 24 Bauer check payable to Alessi &amp; Koenig for \$207. 25 Have you seen this document before, or did</p>
<p style="text-align: right;">Page 23</p> <p>1 THE WITNESS: Not received. This letter 2 would have been sent by our office to Miles Bauer, 3 and I'm not surprised that Ryan didn't note the 4 status report or that this document wouldn't be 5 scanned by Ryan into the status report. 6 But I've seen this document at a couple of 7 my several hundred depositions that Ryan apparently 8 sent out, Ryan Kerbow, K-e-r-b-o-w. I don't know 9 that this letter is noted on the status report, but 10 you are correct that this is part of the 11 back-and-forth communication between our office and 12 Miles Bauer reflected in the status report. 13 BY MR. MILNE: 14 Q. Would this letter ever go out peremptorily 15 or before receipt of communication from Miles Bauer? 16 MR. MARTINEZ: Objection, form. 17 THE WITNESS: No. It would be facilitated 18 by Miles Bauer contacting our office. 19 The document references a rejection of a 20 partial payment. I don't see anything in the status 21 report reflecting receipt of a payment by Miles 22 Bauer, however. 23 BY MR. MILNE: 24 Q. We'll get there. 25 A. Okay.</p>	<p style="text-align: right;">Page 25</p> <p>1 you see it in your review of the collection file? 2 A. I did not. 3 Q. It seems to reference the statement of 4 account that we did see as the second page to 5 Exhibit I. 6 In fact, it references the same \$3,554 as 7 what was being claimed for a full payoff amount. 8 Miles Bauer, however, forwarded a check 9 payable to Alessi &amp; Koenig for \$207, correct? 10 MR. MARTINEZ: Objection, form, facts not 11 in evidence. 12 BY MR. MILNE: 13 Q. I mean, do you know if Alessi &amp; Koenig 14 received Exhibit J? 15 MR. MARTINEZ: Objection, form. 16 THE WITNESS: I don't know. I would expect 17 to see either a copy of the check -- and this is 18 based on my prior testimony in depositions -- either 19 a file -- copy of the check in our file, in our 20 production or a reference to the check in the status 21 report or both. 22 However, the absence of a reference in the 23 status report and a copy in our check -- in our file 24 would not lead me to believe conclusively that we 25 didn't receive the check.</p>

<p style="text-align: right;">Page 26</p> <p>1        There is a possibility that the check was</p> <p>2 sent to our office, and we failed to scan it into the</p> <p>3 program and/or note it in the status report. I just</p> <p>4 don't know for sure.</p> <p>5 BY MR. MILNE:</p> <p>6     Q. Is it possible that Exhibit I, the letter</p> <p>7 from Ryan Kerbow, would be responsive to receipt of</p> <p>8 what Ryan was calling a partial payment?</p> <p>9        MR. MARTINEZ: Objection to form.</p> <p>10       THE WITNESS: The dates wouldn't make sense</p> <p>11 inasmuch as his letter predates --</p> <p>12 BY MR. MILNE:</p> <p>13     Q. The Miles Bauer letter?</p> <p>14     A. -- the Miles Bauer letter.</p> <p>15       So again, I would have no way of knowing</p> <p>16 except to say that it is possible that this letter</p> <p>17 and check were sent to our office and that we failed</p> <p>18 to note it in the status report or make a copy of it.</p> <p>19       Whether it's more likely or not, I don't</p> <p>20 know that I would be comfortable answering that.</p> <p>21     Q. The address for Alessi &amp; Koenig in</p> <p>22 September of 2010 is 9500 West Flamingo Road,</p> <p>23 Suite 100, was it not?</p> <p>24     A. Actually, it was Suite -- in 2010 we were</p> <p>25 upstairs in the Suite 204.</p>	<p style="text-align: right;">Page 28</p> <p>1 to the \$207 that the Miles Bauer check was for?</p> <p>2       MR. MARTINEZ: Objection, form.</p> <p>3       THE WITNESS: I agree.</p> <p>4 BY MR. MILNE:</p> <p>5     Q. So at any rate, assuming that Alessi &amp;</p> <p>6 Koenig received the Miles Bauer letter for \$207, it</p> <p>7 appears they were attempting to tender the</p> <p>8 super-priority lien based upon the</p> <p>9 23-dollar-per-month assessment for the HOA.</p> <p>10       Is that your understanding?</p> <p>11       MR. MARTINEZ: Objection, form, facts not</p> <p>12 in evidence. Also, hypothetical to a lay witness.</p> <p>13       THE WITNESS: Yeah. If we received this</p> <p>14 check, it would appear -- it is equal to nine months</p> <p>15 of assessments, 23 times 9.</p> <p>16 BY MR. MILNE:</p> <p>17     Q. And that was their attempt to -- I mean,</p> <p>18 reading their letter, I mean, Exhibit J speaks for</p> <p>19 itself, but it appears they were attempting to tender</p> <p>20 the super-priority amount as they determined at that</p> <p>21 time based upon the \$23-a-month assessments amount?</p> <p>22       MR. MARTINEZ: Objection, form.</p> <p>23       THE WITNESS: I mean, I would agree with</p> <p>24 you the document speaks for itself. I would defer to</p> <p>25 the author of the document to interpret it.</p>
<p style="text-align: right;">Page 27</p> <p>1     Q. Does this Exhibit J reference the correct</p> <p>2 property we're here to talk about today, Marsh Butte</p> <p>3 Street?</p> <p>4     A. Yes.</p> <p>5       (Exhibit K was marked for</p> <p>6 identification by the reporter.)</p> <p>7 BY MR. MILNE:</p> <p>8     Q. David, you have in front of you what we've</p> <p>9 marked as Exhibit K. It appears to be a ledger for</p> <p>10 Shadow Mountain Ranch HOA showing assessment amounts</p> <p>11 at least as early as January 2009 and continuing</p> <p>12 through October of 2010, correct?</p> <p>13     A. Yes.</p> <p>14     Q. Monthly assessments \$23?</p> <p>15     A. Yes.</p> <p>16     Q. And would that cover the period showing the</p> <p>17 amount of assessments for the notice of lien, the</p> <p>18 notice of default, and the Miles Bauer letters we've</p> <p>19 been talking about here?</p> <p>20       MR. MARTINEZ: Objection, form.</p> <p>21       THE WITNESS: Yes.</p> <p>22 BY MR. MILNE:</p> <p>23     Q. I went to law school, so I'm no great</p> <p>24 mathematician, but if I times the \$23 for monthly</p> <p>25 assessment by nine months, I think that computes out</p>	<p style="text-align: right;">Page 29</p> <p>1 BY MR. MILNE:</p> <p>2     Q. Looking at the second page, almost about</p> <p>3 the middle, quote:</p> <p>4       "Thus, enclosed, you will find a</p> <p>5 cashier's check made out to Alessi &amp;</p> <p>6 Koenig, LLC in the sum of \$207 which</p> <p>7 represents the maximum nine months</p> <p>8 worth of delinquent assessments</p> <p>9 recoverable by an HOA."</p> <p>10       Do you see that language?</p> <p>11     A. Yes.</p> <p>12       MR. MARTINEZ: Objection, form.</p> <p>13 BY MR. MILNE:</p> <p>14     Q. Did I read that correctly?</p> <p>15     A. Yes.</p> <p>16       (Exhibit L was marked for</p> <p>17 identification by the reporter.)</p> <p>18 BY MR. MILNE:</p> <p>19     Q. David, Exhibit L appears to be an unsigned</p> <p>20 authorization to conclude nonjudicial foreclosure and</p> <p>21 conduct a trustee's sale on Alessi &amp; Koenig</p> <p>22 letterhead. I don't see a date specific on it, but</p> <p>23 it appears to have been chronologically next in order</p> <p>24 in terms of what we're talking about here today.</p> <p>25       Do you have an understanding as to whether</p>

<p style="text-align: right;">Page 30</p> <p>1 or not the HOA approved proceeding with the trustee  2 sale at or about the time we've been discussing?  3 A. Yes. My understanding is that the  4 association approved the sale. They cashed the check  5 January 10th, 2014. A check was cut to Shadow  6 Mountain Ranch for \$3,806 which they cashed. I've  7 never heard anything from the association that they  8 did not approve the sale.  9 Our policy, Alessi &amp; Koenig's policy, was  10 that we would move forward to sale absent specific  11 direction from the client not to.  12 In other words, this authorization was not  13 required that it be signed.  14 Q. I guess what I -- I guess I want to go back  15 in time before then and drawing your attention to  16 September 15, 2011 on your status report in  17 Exhibit B.  18 A. Yes.  19 Q. That tells me that the trustee sale was not  20 authorized per board of directors.  21 A. Yeah. That -- and I don't have the board  22 meeting minutes.  23 I can tell you that we wanted to show the  24 client that we were looking at the file every month,  25 especially at the beginning of the process, files</p>	<p style="text-align: right;">Page 32</p> <p>1 (Exhibit M was marked for  2 identification by the reporter.)  3 BY MR. MILNE:  4 Q. David, Exhibit M is a notice of trustee  5 sale recorded January 26, 2011. That was signed on  6 December 16, 2010.  7 Looking at Exhibit M, would anybody who  8 received it be able to determine that the HOA was  9 foreclosing on a super-priority lien?  10 MR. MARTINEZ: Objection, form.  11 THE WITNESS: No.  12 BY MR. MILNE:  13 Q. I see the delinquent amount, including  14 costs, expenses and so forth, referenced on Exhibit M  15 is \$5,757, correct?  16 A. Yes.  17 Q. Are you able to break that down into any of  18 its component parts?  19 MR. MARTINEZ: Objection, form.  20 THE WITNESS: Well, I could give you  21 estimates, but I wouldn't be able to give you exact  22 numbers.  23 BY MR. MILNE:  24 Q. And certainly, anybody who had never seen  25 any of the management company documents and so forth,</p>
<p style="text-align: right;">Page 31</p> <p>1 could linger for years, months and years.  2 So that was what we call sort of a filler  3 entry. It did not necessarily mean that the  4 association specifically did not authorize the sale,  5 just that they weren't requiring us to move forward  6 at that time.  7 Q. And that appears to be the same entry for  8 several different dates there in late 2011, early  9 2012?  10 A. Yeah. We wanted the status report touched  11 every 30 days with some sort of entry so that the  12 client knew that we were looking at the file every  13 30 days.  14 And in some instances, months, if not  15 years, could go by without any actual steps being  16 taken.  17 So we wanted to have some sort of an entry.  18 So like I said, I call that a filler entry.  19 Q. Okay. But in terms of Exhibit L, without a  20 date being on that, whether that was contemporaneous  21 with the late 2011 time period or at, we don't know?  22 A. Correct.  23 MR. MARTINEZ: Objection to form of the  24 question.  25 ///</p>	<p style="text-align: right;">Page 33</p> <p>1 a recipient of this wouldn't be able to do that  2 either?  3 MR. MARTINEZ: Objection, form.  4 THE WITNESS: Correct.  5 BY MR. MILNE:  6 Q. A sale date is noted of March 9, 2011.  7 Did this property go to sale down on that  8 date?  9 A. I don't have the trustee's deed in front of  10 me, but based on the status report, it looks like the  11 sale did not take place until January of 2014.  12 Q. Some --  13 A. A year later.  14 Q. -- three years later?  15 A. Or, three years later, sorry.  16 (Exhibit N was marked for  17 identification by the reporter.)  18 BY MR. MILNE:  19 Q. David, Exhibit N is a grant deed, recorded  20 May 27, 2011, Instrument 4010, that purports to have  21 transferred the property from Gotera, Magnolia to  22 JBWNO Revocable Living Trust.  23 Have you seen this document before?  24 A. No.  25 Q. Do you know whether or not it was part of</p>

<p style="text-align: right;">Page 34</p> <p>1 the collection file?</p> <p>2 A. I don't.</p> <p>3 (Exhibit O was marked for</p> <p>4 identification by the reporter.)</p> <p>5 BY MR. MILNE:</p> <p>6 Q. David, you've been handed what we've marked</p> <p>7 as Exhibit O, a second grant deed, but also recorded</p> <p>8 on May 27, 2011 as instrument 4011 that purports to</p> <p>9 transfer title to the property from JBWNO Revocable</p> <p>10 Living Trust to Stacy Moore.</p> <p>11 Have you seen this document before?</p> <p>12 A. No.</p> <p>13 Q. Any understanding as to whether or not it</p> <p>14 was in your collection file?</p> <p>15 A. If it was in our collection file, it would</p> <p>16 have been produced.</p> <p>17 (Exhibit P was marked for</p> <p>18 identification by the reporter.)</p> <p>19 BY MR. MILNE:</p> <p>20 Q. David, you've been handed what we've marked</p> <p>21 as Exhibit P to your deposition, an assignment of</p> <p>22 deed of trust recorded on November 2, 2011, assigning</p> <p>23 the deed of trust that we've seen previously,</p> <p>24 Exhibit C, to US Bank National Association.</p> <p>25 Do you know whether or not a copy of this</p>	<p style="text-align: right;">Page 36</p> <p>1 THE WITNESS: Correct.</p> <p>2 BY MR. MILNE:</p> <p>3 Q. Why another notice of delinquent assessment</p> <p>4 lien?</p> <p>5 MR. MARTINEZ: Objection, form.</p> <p>6 THE WITNESS: I don't know.</p> <p>7 It does appear that we received -- I'm</p> <p>8 looking at Exhibit B, page 2, new ownership</p> <p>9 information received. There's an entry in the status</p> <p>10 report on May 24th, 2012, "New ownership information</p> <p>11 received. AK to proceed with collection efforts."</p> <p>12 I would note that this new notice has the</p> <p>13 owner Stacy Moore on it, not Magnolia Gotera.</p> <p>14 I don't know if this new notice was the</p> <p>15 result of the quitclaim deed that we looked at</p> <p>16 earlier or not, but it could have been.</p> <p>17 BY MR. MILNE:</p> <p>18 Q. It is certainly for the same property, is</p> <p>19 it not?</p> <p>20 A. Yes.</p> <p>21 Q. So our best understanding today might be,</p> <p>22 if we put our heads together, is this new --</p> <p>23 Exhibit Q, this new assessment lien, was perhaps</p> <p>24 necessitated by the change in ownership of the</p> <p>25 property?</p>
<p style="text-align: right;">Page 35</p> <p>1 document was in the collection file?</p> <p>2 A. I don't. If this document was in the</p> <p>3 collection file, it would have been produced.</p> <p>4 Q. But this is a document that would be</p> <p>5 important for Alessi &amp; Koenig to know about so that</p> <p>6 appropriate notices can be mailed to a beneficiary of</p> <p>7 a deed of trust, correct?</p> <p>8 MR. MARTINEZ: Objection, form.</p> <p>9 THE WITNESS: Correct.</p> <p>10 (Exhibit Q was marked for</p> <p>11 identification by the reporter.)</p> <p>12 BY MR. MILNE:</p> <p>13 Q. David, you've been handed what we've marked</p> <p>14 as Exhibit Q. It appears to me to be a new or a</p> <p>15 second notice of delinquent assessment lien, this one</p> <p>16 recorded on September 11, 2012, for our same property</p> <p>17 on Marsh Butte. And it indicates that the total</p> <p>18 amount due through today's date is \$6,448, and that's</p> <p>19 broken down somewhat into collection and attorney's</p> <p>20 fees and also into collection costs, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Anybody receiving this would not be able to</p> <p>23 determine whether there is a super-priority portion,</p> <p>24 would they?</p> <p>25 MR. MARTINEZ: Objection to form.</p>	<p style="text-align: right;">Page 37</p> <p>1 MR. MARTINEZ: Objection, form.</p> <p>2 THE WITNESS: Correct.</p> <p>3 BY MR. MILNE:</p> <p>4 Q. I'm curious as to the amount, \$6,448.</p> <p>5 Does that appear to be a carryover -- I</p> <p>6 don't know if I'm using that word correctly, but</p> <p>7 whatever the delinquent assessments were while the</p> <p>8 property was owned by Gotera, that amount was carried</p> <p>9 over and assessed against the new property owner?</p> <p>10 MR. MARTINEZ: Objection, form.</p> <p>11 THE WITNESS: Yeah. The quitclaim deed</p> <p>12 wouldn't obviate the new owner's responsibility to</p> <p>13 pay the assessments that accrued prior to the</p> <p>14 quitclaim deed.</p> <p>15 (Exhibit R was marked for</p> <p>16 identification by the reporter.)</p> <p>17 BY MR. MILNE:</p> <p>18 Q. David, you've been handed what we marked as</p> <p>19 Exhibit R to your deposition. It appears to be a</p> <p>20 ledger in Spanish -- I'm sorry -- Shadow Mountain</p> <p>21 Ranch HOA letterhead, care of Level Property</p> <p>22 Management for Stacy Moore and the Marsh Butte</p> <p>23 property.</p> <p>24 The ledger starts June 1, 2011 and</p> <p>25 continues through June 1, 2013.</p>



<p style="text-align: right;">Page 38</p> <p>1 As I read this, and again, to my best</p> <p>2 understanding, it appears through that whole time</p> <p>3 period, we keep the same \$23-per-month assessment?</p> <p>4 A. Yes.</p> <p>5 Q. So nothing has changed there?</p> <p>6 A. Right.</p> <p>7 Q. Exhibit R also reflects a balance from the</p> <p>8 prior owner, does it not, near the top, \$2,730?</p> <p>9 A. Yes.</p> <p>10 Q. The last dollar that be saw -- I'm sorry.</p> <p>11 The last document that we saw, Exhibit M,</p> <p>12 the notice of trustee sale, seemed to indicate that</p> <p>13 the delinquent amount -- and this is as of</p> <p>14 January 26, 2011, was \$5,757?</p> <p>15 A. Correct.</p> <p>16 Q. Can you help me with the difference in the</p> <p>17 two figures looking at Exhibit M and Exhibit R,</p> <p>18 specifically the balance from prior owner being 2730</p> <p>19 on Exhibit R, but the notice of trustee sale,</p> <p>20 Exhibit M, says 5757?</p> <p>21 A. Oh, those would be the Alessi &amp; Koenig fees</p> <p>22 and costs as well as the management company's fees</p> <p>23 and costs.</p> <p>24 Q. Would those get carried over to the new</p> <p>25 owner and be part of what is being foreclosed?</p>	<p style="text-align: right;">Page 40</p> <p>1 with the notice of delinquent assessment lien, the</p> <p>2 second one or the new one --</p> <p>3 A. Yes.</p> <p>4 Q. -- correct?</p> <p>5 A. Yeah.</p> <p>6 (Exhibit T was marked for</p> <p>7 identification by the reporter.)</p> <p>8 BY MR. MILNE:</p> <p>9 Q. David, we've marked Exhibit T, a document</p> <p>10 called "Real Estate Listing Report," which by my</p> <p>11 observation, appears to provide much the same</p> <p>12 function as a trustee sale guarantee in terms of</p> <p>13 identifying entities that have an interest in the</p> <p>14 property.</p> <p>15 This one from Stewart Title, a third title</p> <p>16 company this time, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And this is effective February 27, 2013 --</p> <p>19 A. Yes.</p> <p>20 Q. -- correct?</p> <p>21 A. Yes.</p> <p>22 Q. We see our deed of trust in the amount of</p> <p>23 \$508,250, correct?</p> <p>24 A. Yes.</p> <p>25 Q. We see the assignment on the second page to</p>
<p style="text-align: right;">Page 39</p> <p>1 A. Yes.</p> <p>2 Q. In fact, if we look at Exhibit Q, it does</p> <p>3 show that today's -- as of that date, the amount due</p> <p>4 was \$6,448?</p> <p>5 A. Yeah. The quitclaim deed would not obviate</p> <p>6 the new owner's requirement to pay the prior fees and</p> <p>7 costs either as well as the assessments.</p> <p>8 If it did, homeowners would be quitclaiming</p> <p>9 properties every 12 months.</p> <p>10 Q. So I guess, then, what I'm understanding is</p> <p>11 this second notice of delinquent assessment lien,</p> <p>12 Exhibit Q, included all of the fees, assessments,</p> <p>13 costs, the kit and kaboodle, from the first notice of</p> <p>14 assessment lien that we saw, which was Exhibit D?</p> <p>15 A. Yes.</p> <p>16 (Exhibit S was marked for</p> <p>17 identification by the reporter.)</p> <p>18 BY MR. MILNE:</p> <p>19 Q. David, you've been handed what we've marked</p> <p>20 as Exhibit S. It looks kind of like a repeat of some</p> <p>21 of the same things we've seen but with a new notice</p> <p>22 of lien. It looks like the process kind of starts</p> <p>23 over a little bit here, sorry to say.</p> <p>24 But this is a letter to the new owner,</p> <p>25 Stacy Moore, dated August 13, 2012, providing her</p>	<p style="text-align: right;">Page 41</p> <p>1 US Bank, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And then, of course, we also see the two</p> <p>4 grant deeds, as they were captioned, on page 3</p> <p>5 transferring the property ultimately to Stacy Moore,</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. And this is something that Alessi &amp; Koenig</p> <p>9 received to help it to, what, prosecute or proceed</p> <p>10 with the foreclosure sale, correct?</p> <p>11 A. Yes.</p> <p>12 (Exhibit U was marked for</p> <p>13 identification by the reporter.)</p> <p>14 BY MR. MILNE:</p> <p>15 Q. David, Exhibit U is an undated, unsigned,</p> <p>16 unrecorded notice of default. It shows an amount due</p> <p>17 of \$6,631.41. But attached to it, there's also a</p> <p>18 notice of default 10-day mailings identifying various</p> <p>19 entities. And the third page is certified mail</p> <p>20 receipts, correct?</p> <p>21 A. Yes.</p> <p>22 Q. If I go back and look at Exhibit T, the</p> <p>23 real estate listing report from Stewart Title, and</p> <p>24 compare that to this notice of default, again, I'm</p> <p>25 not a hundred percent certain of the date of the</p>

<p style="text-align: right;">Page 42</p> <p>1 notice of default, but the real estate listing report 2 is dated February 27, 2013. 3 I don't see that this notice of default was 4 mailed to US Bank. 5 MR. MARTINEZ: Objection, form, facts not 6 in evidence. 7 BY MR. MILNE: 8 Q. Do you see US Bank's name identified on 9 either the second or the third page of Exhibit U? 10 MR. MARTINEZ: Objection, form. 11 Do we have a recorded copy of this? 12 MR. MILNE: Yes. 13 THE WITNESS: I don't know the date of this 14 NOD. 15 MR. MILNE: Well, let me help out this 16 discussion and conversation. We'll attach the next 17 document in order. 18 (Exhibit V was marked for 19 identification by the reporter.) 20 BY MR. MILNE: 21 Q. David, you've been handed what we've marked 22 as Exhibit V. It's actually two different notices of 23 default. 24 The first page was recorded on June 13, 25 2013. The second was recorded on July 5, 2013. They</p>	<p style="text-align: right;">Page 44</p> <p>1 mailings of the notice of default recorded July 5th, 2 2013 in Exhibit V. And those mailings of that notice 3 of default do not show a mailing to US Bank. 4 BY MR. MILNE: 5 Q. Okay. So to make sure I understood, the 6 evidence of mailing attached as part of Exhibit U 7 pertain to the notice of default that was recorded on 8 July 5, 2013, which is part of Exhibit V? 9 MR. MARTINEZ: Objection, form. 10 THE WITNESS: Correct. 11 BY MR. MILNE: 12 Q. And the assignment that you were 13 referencing before, Exhibit P, that was the one 14 showing the assignment of the deed of trust to 15 US Bank, correct? 16 A. Yes. 17 Q. And your question was whether US Bank is 18 somehow -- there's a connection between US Bank and 19 Recon Trust Company in Richardson, Texas? 20 MR. MARTINEZ: Objection, form. 21 THE WITNESS: Yeah. Yes. I understand 22 NODs are mailed to the servicer, not the holder of 23 the deed of trust. 24 I don't see any reference to Recon Trust 25 Company, however, in the assignment of the deed of</p>
<p style="text-align: right;">Page 43</p> <p>1 both have different signature dates at the bottom. 2 The first, again, being June 3rd, 2013, the second 3 July 1st, 2013, both under the signature of attorney 4 Lam, L-a-m. 5 Both of these notices of default, which are 6 recorded and signed, different dates, admittedly, 7 appear to have been signed and recorded after 8 Exhibit T, the real estate listing report, which 9 identifies US Bank, correct? 10 A. Yes. 11 Q. So I have not seen anything by looking at 12 Exhibit U, which is admittedly the unsigned notice of 13 default, that a notice of default was mailed to 14 US Bank. 15 Are you aware of any evidence to the 16 contrary? 17 MR. MARTINEZ: Objection, form. 18 THE WITNESS: I am looking at the 19 assignment of the deed of trust to see if a recon 20 trust company was an agent of US Bank. 21 What I can testify to is that the mailings 22 of the notice of default recorded July 5th, 2013 are 23 shown on page 2 and 3, in particular page 3 of 24 Exhibit -- is that O or U? 25 Okay, yes. Exhibit U, page 3, reflect the</p>	<p style="text-align: right;">Page 45</p> <p>1 trust on Exhibit P. 2 BY MR. MILNE: 3 Q. You do see, though, an address for US Bank 4 in Littleton, Colorado on Park Meadows Drive? 5 A. Yes. I see an address in Littleton, 6 Colorado on Park Meadows Drive. I do not see that 7 the notice of default was mailed to that address. 8 (Exhibit W was marked for 9 identification by the reporter.) 10 BY MR. MILNE: 11 Q. David, you've been handed what we've marked 12 as Exhibit W to your deposition, an assignment of 13 deed of trust recorded October 1, 2013, assigning the 14 deed of trust to Nationstar Mortgage, LLC. 15 Do you see that? 16 A. Yes. 17 Q. And this was recorded, it looks to be, 18 about three months -- I'm not counting days but about 19 three months after the notice of default, the July 5, 20 2013 notice of default that was mailed by Alessi &amp; 21 Koenig, correct? 22 A. Yes. 23 Q. Do you know whether a date-down or some 24 other such document was obtained between the time the 25 notice of default was recorded in July of 2013 and</p>

<p style="text-align: right;">Page 46</p> <p>1 the notice of trustee's sale, which I will represent  2 to you as we haven't got to it yet, which was  3 recorded December 10, 2013?  4 A. We would have done a date-down or should  5 have done a date-down at the time of publication of  6 the notice of trustee sale, the first publication --  7 we call that a pub date-down, and we would have also  8 done a sale date-down on or just before the date of  9 the sale.  10 Q. Do you remember seeing anything like that  11 in your file that you would have reviewed in  12 preparation for today?  13 A. I have not seen the mailings for the notice  14 of trustee sale. Without seeing those, I wouldn't be  15 able to answer that.  16 (Exhibit X was marked for  17 identification by the reporter.)  18 BY MR. MILNE:  19 Q. Well, let's show it to you.  20 David, we've marked as Exhibit X a notice  21 of trustee sale that is not dated and not recorded,  22 but it does include a notice of NOTS mailings. It  23 shows both certified mail receipts and a listing of  24 individuals and entities.  25 First, it shows what I'm going to assume to</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. So it looks like, kind of to summarize  2 where we are, the notice of trustee sale was mailed  3 to lenders but the notice of default was not mailed  4 to US Bank?  5 MR. MARTINEZ: Objection, form.  6 THE WITNESS: That's correct.  7 (Exhibit Y was marked for  8 identification by the reporter.)  9 BY MR. MILNE:  10 Q. David, you've been handed what we've marked  11 as Exhibit Y to your deposition, a notice of trustee  12 sale recorded December 10, 2013 that was dated at the  13 bottom under the signature of attorney Lam  14 November 14, 2013. It shows the same delinquent  15 amount, \$8,017.11, correct?  16 A. Yes.  17 Q. And a sale date of January 8, 2014?  18 A. Yes.  19 Q. And the sale -- let's not go there yet.  20 Same questions, I suppose, as to this  21 recorded document, notice of sale, as I asked with  22 the unrecorded notice of sale, Exhibit X. Nobody can  23 break that delinquent amount down into its component  24 parts?  25 MR. MARTINEZ: Objection, form.</p>
<p style="text-align: right;">Page 47</p> <p>1 be a delinquency amount of \$8,017.11, correct?  2 A. Correct.  3 Q. It set the sale for January 8, 2014?  4 A. Correct.  5 Q. And anybody receiving this notice of sale,  6 would they be able to break that \$8,000-and-change  7 down into its component parts?  8 MR. MARTINEZ: Objection, form.  9 THE WITNESS: No, just one lump sum.  10 BY MR. MILNE:  11 Q. And would they be able to determine whether  12 or not any portion of it is a super-priority lien?  13 MR. MARTINEZ: Objection, form.  14 THE WITNESS: No.  15 BY MR. MILNE:  16 Q. It appears this time, based upon these  17 documents, that this notice of trustee sale was  18 mailed to US Bank in Lone Tree, Colorado, and also to  19 Nationstar Mortgage.  20 Do you see that?  21 A. Yes.  22 Q. Do you know how or where those addresses  23 came from?  24 A. I'm assuming from the public records and  25 the assignments of the deeds of trust.</p>	<p style="text-align: right;">Page 49</p> <p>1 THE WITNESS: Correct.  2 MR. MARTINEZ: The one in Exhibit X is  3 actually recorded. At least on mine, it was. I  4 don't know if the actual one is.  5 Oh, it isn't. Okay. Carry on.  6 BY MR. MILNE:  7 Q. And also, super-priority amount, nobody  8 could determine that from Exhibit Y?  9 MR. MARTINEZ: Objection, form.  10 THE WITNESS: Correct.  11 (Exhibit Z was marked for  12 identification by the reporter.)  13 BY MR. MILNE:  14 Q. David, Exhibit Z is the trustee's deed upon  15 sale, recorded January 13, 2014, indicating that the  16 property was sold on January 8, 2014. It appears to  17 be for the amount of \$59,000 to SFR Investments  18 Pool 1, LLC, correct?  19 A. Yes.  20 Q. The sale was held at Alessi &amp; Koenig?  21 A. Yes.  22 Q. Do you have any knowledge as to the  23 particulars or the procedures of that day, January 8,  24 2014, number of bidders, bidding amounts?  25 A. I did not attend the foreclosure sales.</p>

<p style="text-align: right;">Page 50</p> <p>1 I can testify that by 2014, the conference 2 room was fairly full, and I would estimate a dozen to 3 15 investors were there that day. 4 Q. Based upon -- 5 A. Based upon the number -- we had sales, I 6 think, every other Wednesday, and it was usually the 7 same, you know, usual suspects and 12 or 15 people. 8 By 2014, the conference room was beginning to get 9 full. 10 Q. And do you know how many bidders there were 11 on this property? 12 A. I don't. I don't. 13 Q. Is that something that Alessi &amp; Koenig ever 14 documented in these sales every other Wednesday? 15 A. We would qualify the bidders or we would -- 16 I've seen sheets where we had some notes scribbled on 17 an email as to who the successful bidder was, but we 18 did not document who bid -- you know, it was a pretty 19 fluid, fast process, and we did not write down -- 20 sometimes investors would raise the bid one dollar 21 back and forth ad nauseum. 22 So we did keep a log of who the successful 23 bidder was and the successful bid amount, but we did 24 not track the entire bidding process. 25 Q. And/or when you were qualifying bidders</p>	<p style="text-align: right;">Page 52</p> <p>1 that was started back in 2010, 2011-ish. 2 It didn't ever go to sale through those 3 documents, but we did see that Miles Bauer 4 communication back and forth, a check for \$207, 5 correct? 6 A. Yes. 7 Q. And then, we saw a second foreclosure 8 process started right after there was a new owner for 9 the property, correct? 10 A. Correct. 11 Q. Had Miles Bauer or any other, whoever would 12 have been the current lender, we've seen a couple of 13 assignments, had they attempted to tender a 14 super-priority amount in connection with where we 15 are, 2013 late, early 2014, would they have received 16 or basically got the same communication back that we 17 saw, Exhibit I, the rejection of partial payments? 18 MR. MARTINEZ: Objection, form, facts not 19 in evidence, improper hypothetical to a lay witness, 20 speculation. 21 THE WITNESS: As I testified earlier, the 22 exhibit in the letter from Ryan Kerbow was an 23 outlier. 24 Our general protocol policy was to respond 25 to Miles Bauer by sending a breakdown on the account</p>
<p style="text-align: right;">Page 51</p> <p>1 keep track of who was there that day or anything like 2 that? 3 A. We had -- I know that George Bates, who was 4 at all of the sales, he's since passed away, but he 5 was our trustee sale department, did have a 6 handwritten yellow sheet of who was there on what 7 days, but we have not ever -- I do not believe we 8 retained that. I've never seen that except for years 9 ago during the sales. 10 Q. Was there any -- 11 A. So the documents that George wrote on were 12 not retained. So we do not have any documents as to 13 who was at the sales on a given day. 14 Q. In terms of a script for the calling of the 15 sale? 16 A. Pretty easy process. We would cry the APN 17 number, the opening bid amount, and the common 18 address. 19 Q. Would anything ever be said relative to 20 super-priority lien? 21 MR. MARTINEZ: Objection, form. 22 THE WITNESS: No. 23 BY MR. MILNE: 24 Q. Now, in this particular matter, we saw that 25 there was an initial or first foreclosure process</p>	<p style="text-align: right;">Page 53</p> <p>1 ledger. 2 I've only seen that letter from Ryan on a 3 couple of depositions out of the hundreds involving 4 the Miles Bauer issue. 5 BY MR. MILNE: 6 Q. Would it be your understanding that the 7 \$207 that Miles Bauer sent to Alessi &amp; Koenig was not 8 cashed? 9 MR. MARTINEZ: Objection, form. 10 BY MR. MILNE: 11 Q. We saw that attached as part of Exhibit J? 12 MR. MARTINEZ: Same objection. 13 THE WITNESS: As we discussed, that check 14 is not in the status report, and we don't have a copy 15 of it. 16 Based on my prior depositions, I would 17 expect one of those to be there. 18 So I don't know that I'm willing to concede 19 that we received that payment, but if we had, we 20 would not have cashed it. 21 BY MR. MILNE: 22 Q. Similarly, had you received a tender check 23 in connection with the foreclosure process that 24 culminated in a sale on -- 25 A. January 2014.</p>

<p style="text-align: right;">Page 54</p> <p>1 Q. -- January 8, 2014, you would have likewise 2 have not accepted that tender of a super-priority 3 amount? 4 MR. MARTINEZ: Objection, form, 5 speculation, improper hypothetical to a lay witness, 6 facts not in evidence. 7 THE WITNESS: I would be speculating. It 8 depends on what the restrictive language in the 9 company letter or the memo. I wouldn't feel 10 comfortable speculating on that. 11 I can testify that we did not cash -- I 12 believe we cashed in all the depositions I've done 13 one Miles Bauer check and immediately refunded it. 14 So our standard policy was that we did not cash the 15 Miles Bauer checks. 16 BY MR. MILNE: 17 Q. So that would have been a futile effort on 18 their part to re-tender? 19 MR. MARTINEZ: Objection, form, facts not 20 in evidence, speculation, improper hypothetical to a 21 lay witness. 22 THE WITNESS: I don't know if I would say 23 futile, but your point is well-taken. 24 (A recess was taken.) 25 ///</p>	<p style="text-align: right;">Page 56</p> <p>1 BY MR. MILNE: 2 Q. David, Exhibit BB looks to be an invoice or 3 statement from Alessi &amp; Koenig to Shadow Mountain HOA 4 showing the various services, fees, costs, et cetera, 5 in connection with this foreclosure. 6 Looking at all the items for which charges 7 were assessed, based upon the documents we've 8 reviewed today, does it appear to you that Alessi &amp; 9 Koenig provided all those services for which a fee 10 was charged? 11 MR. MARTINEZ: Objection, form. 12 THE WITNESS: Yes. 13 BY MR. MILNE: 14 Q. The sale date-down, \$150, I know it's 15 referenced in the status report, but I didn't see one 16 in the collection file itself. 17 Would that -- 18 A. I don't know why that is. 19 MR. MILNE: And last, but certainly not 20 least. 21 (Exhibit CC was marked for 22 identification by the reporter.) 23 BY MR. MILNE: 24 Q. Exhibit CC is an appraisal of real property 25 completed by R. Scott Dugan with an effective date of</p>
<p style="text-align: right;">Page 55</p> <p>1 (Exhibit AA was marked for 2 identification by the reporter.) 3 BY MR. MILNE: 4 Q. All right, David. We've handed you what 5 we've marked as AA, an email dated January 8, 2014, 6 from George Bates to Maximum Financial. 7 It includes copies of a couple checks and a 8 nora receipt, check made payable to Alessi &amp; Koenig 9 for \$60,536.80. 10 Recalling that the successful bid amount 11 was 59,000. I think the email explains why the 12 additional moneys were paid in terms of the dollar 13 amount on these checks? 14 A. Correct, taxes and the recording fee. 15 Q. Transfer tax? 16 A. Yep. 17 Q. And the recording fee. 18 And this is the George Bates you identified 19 previously, correct? 20 A. Yes. 21 Q. And the check was remitted on behalf of 22 SFR Investments, correct? 23 A. Yes. 24 (Exhibit BB was marked for 25 identification by the reporter.)</p>	<p style="text-align: right;">Page 57</p> <p>1 January 8, 2014 that was prepared for Wright Finlay &amp; 2 Zak. 3 I don't suppose you've seen this document 4 before? 5 A. I have not. 6 Q. The second page indicates appraiser Dugan's 7 opinion that the property we've been discussing today 8 on Marsh Butte Street was valued on January 8, 2014, 9 \$306,000. 10 Do you have any basis upon which to -- what 11 is the word I'm looking for, Jason? 12 MR. MARTINEZ: I don't know. 13 THE WITNESS: Dispute that? 14 BY MR. MILNE: 15 Q. Dispute that. Thank you, David. 16 MR. MARTINEZ: Objection, form, calls for 17 an expert opinion. 18 THE WITNESS: I do not except to say that 19 my testimony is that the value of a property is 20 different if it's purchased through an escrow with 21 title insurance than a property purchased at an HOA 22 foreclosure sale. 23 So I don't know that it has any relevance 24 on the value of the property at the sale. 25 MR. MILNE: Okay. I thought last but there</p>

<p style="text-align: right;">Page 58</p> <p>1 was one set aside.  2 (Exhibit DD was marked for  3 identification by the reporter.)  4 BY MR. MILNE:  5 Q. Lastly, Exhibit DD is what appears to be a  6 custodian of records certificate for Alessi &amp; Koenig  7 that I believe has your signature on page 2?  8 A. Yes.  9 Q. And if I'm not mistaken, and I need you to  10 correct me if I am, this was produced in connection  11 with Alessi &amp; Koenig's bankruptcy filing and was a  12 means whereby counsel involved in these various HOA  13 pieces of litigation could obtain copies of Alessi &amp;  14 Koenig's collection files through a Dropbox.  15 And this was the custodian of records  16 certificate that was supposed to authenticate those  17 collection files from Alessi &amp; Koenig?  18 A. Yes, sir.  19 Q. Including the documents we've seen today to  20 the extent they were obtained from the collection  21 file?  22 A. Correct.  23 Q. Thank you, sir.  24 A. Thank you, sir.  25 MR. MARTINEZ: I only have about 105</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. And there is no reference to this document,  2 Exhibit J, in Exhibit B?  3 A. Correct.  4 Q. One of the other questions I have, when we  5 look at Exhibit I, there's a letter here from Ryan  6 Kerbow dated September 8th, 2010.  7 What was the purpose of this letter being  8 drafted by Ryan Kerbow?  9 A. To communicate what his position was and to  10 provide a breakdown of what he felt was owed.  11 Q. And this letter is addressed to Miles Bauer  12 Bergstrom &amp; Winters, correct?  13 A. Yes.  14 Q. It appears to be the same address that  15 although not in your records, Exhibit J actually  16 retains an address for Miles Bauer Bergstrom &amp;  17 Winters in the letterhead that appears to match with  18 Exhibit I, the specific address?  19 A. Yes.  20 Q. And is it my understanding that this letter  21 reflects Alessi &amp; Koenig's position regarding  22 potential attempted payments by Miles, Bauer,  23 Bergstrom &amp; Winters such as the one that is listed on  24 Exhibit J?  25 A. This would have just been Ryan's -- our</p>
<p style="text-align: right;">Page 59</p> <p>1 questions.  2 THE WITNESS: Thank you.  3  4 EXAMINATION  5 BY MR. MARTINEZ:  6 Q. So the exhibits I'm going to be looking at  7 are B, I, and J.  8 A. Okay.  9 Q. Now, B is the status report. We had talked  10 about this earlier.  11 If you look at page 2, all of the dates  12 don't correspond perfectly. I'm looking at the  13 fourth and fifth entry down, September 9th and  14 September 13th of 2010?  15 A. Yes.  16 Q. Now, we had talked about these entries, and  17 you thought that they would potentially be relating  18 to Exhibit I; is that correct?  19 A. Potentially, yes.  20 Q. But you weren't sure of that?  21 A. Correct.  22 Q. And then, Exhibit J seems to be dated  23 September 30th, 2010, and you had testified that this  24 document was not within your records, correct?  25 A. Correct.</p>	<p style="text-align: right;">Page 61</p> <p>1 position was, as I testified earlier, to Miles Bauer  2 was why don't you just make a payment for what you  3 think is owed without the restrictive language. We  4 would have cashed that payment and then a court  5 determined the effect of that payment.  6 With regard to our clients, we did not take  7 the position that Ryan lays out here.  8 Q. What do you mean by that specifically?  9 A. Well, we didn't advise the client as to --  10 where Ryan says that the -- I'm sorry, there was a  11 letter from Ryan in the prior deposition I'm  12 confusing.  13 This was a position that we took, yes.  14 This letter is accurate.  15 Q. This letter basically says that Alessi &amp;  16 Koenig recognizes the interpretation that Miles Bauer  17 may be taking as to the statute, specifically  18 NRS 116.3116, but disagreeing with that position,  19 correct?  20 A. Yes.  21 Q. And specifically, Alessi &amp; Koenig took the  22 position that the super-priority lien wasn't limited  23 to nine months of assessments based on the site in  24 this --  25 A. I would say more specifically, Alessi &amp;</p>

<p style="text-align: right;">Page 62</p> <p>1 Koenig took the position that it was up for debate.  2 Q. Obviously at the time of this letter in  3 September of 2010, this was an unsettled area of  4 dispute between either Alessi &amp; Koenig and Miles  5 Bauer especially but also pretty much in the  6 industry?  7 A. Correct.  8 Q. Although Exhibit J is not in your business  9 records and there's no evidence that it was actually  10 received based on the status report, would this  11 position laid out by Mr. Kerbow in Exhibit I  12 obviously be the same position that Alessi &amp; Koenig  13 would retain even if this Exhibit J were sent to them  14 considering that it's only three weeks later?  15 A. If we had received Exhibit J, we would not  16 have cashed the check.  17 Q. And that would be based on your position as  18 set forth in Exhibit I?  19 A. And our policies and procedures at the  20 time, yes.  21 Q. In the second paragraph here, it says:  22 "If the association were to accept  23 your offer that only includes  24 assessments, Alessi &amp; Koenig would  25 be left with a lien against the</p>	<p style="text-align: right;">Page 64</p> <p>1 can you have send it to a different email address,  2 not to me specifically.  3 (The deposition was concluded at  4 5:00 p.m.)  5  6 * * * * *  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
<p style="text-align: right;">Page 63</p> <p>1 association for our substantial  2 out-of-pocket expenses and fees  3 generated."  4 Then it further continues to say:  5 "The association could end up  6 having lost money in attempting to  7 collect assessments from the  8 delinquent owner."  9 Did I read that correctly?  10 A. Yes.  11 Q. Was it Alessi &amp; Koenig's position that if  12 they were to accept a partial payment with any  13 condition such as the ones laid out by Miles Bauer  14 that that would end up causing potential harm to the  15 association, the client of Alessi &amp; Koenig?  16 A. Yes.  17 Q. And possibly, that harm would be the form  18 of waiving any potential rights under NRS 116 moving  19 forward?  20 A. Yes.  21 MR. MARTINEZ: I don't have any further  22 questions.  23 THE REPORTER: Do you need a copy of the  24 transcript?  25 MR. MARTINEZ: Electronic, please. And I</p>	<p style="text-align: right;">Page 65</p> <p style="text-align: center;">1 CERTIFICATE OF DEPONENT  2  3  4  5 I, DAVID ALESSI, deponent herein, do  6 hereby certify and declare the within and foregoing  7 transcription to be my deposition in said action;  8 that I have read, corrected and do hereby affix my  9 signature to said deposition.  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p> <p style="text-align: center;">_____  DAVID ALESSI, Deponent</p>

## 1 CERTIFICATE OF REPORTER

2 I, Cynthia K. DuRivage, a Certified  
3 Shorthand Reporter of the State of Nevada, do hereby  
4 certify:

5 That the foregoing proceedings were taken  
6 before me at the time and place herein set forth;  
7 that any witnesses in the foregoing proceedings,  
8 prior to testifying, were duly sworn; that a record  
9 of the proceedings was made by me using machine  
10 shorthand which was thereafter transcribed under my  
11 direction; that the foregoing transcript is a true  
12 record of the testimony given.

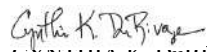
13 Reading and signing by the witness was  
14 requested.

15 I further certify I am neither financially  
16 interested in the action nor a relative or employee  
17 of any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date  
19 subscribed my name.

20 Dated: May 30, 2018

21  
22



23 CYNTHIA K. DURIVAGE

CCR No. 451

24  
25



<p><b>&amp;</b></p> <p><b>&amp;</b> 1:3,17 2:3 4:10 4:20,23 5:4,19 6:12 8:10,18 9:7 11:21,22 12:9,16 12:16 14:9 18:10 22:4,10,10,13,14 24:1,2,22,24 25:9 25:13 26:21 28:5 29:5,21 30:9 35:5 38:21 41:8 45:20 49:20 50:13 53:7 55:8 56:3,8 57:1 58:6,11,13,17 60:12,16,21,23 61:15,21,25 62:4 62:12,24 63:11,15</p>	<p><b>14</b> 4:14 48:14 <b>14-705563</b> 1:5 2:5 <b>14th</b> 20:8 <b>15</b> 16:21 17:17 30:16 50:3,7 <b>150</b> 56:14 <b>16</b> 1:20 2:20 4:16 32:6 <b>18</b> 4:17,18 <b>1st</b> 43:3</p>	<p>49:16,24 50:1,8 52:15 53:25 54:1 55:5 57:1,8 <b>2016</b> 8:15 <b>2018</b> 1:20 2:20 66:20 <b>204</b> 26:25 <b>207</b> 24:24 25:9 28:1,6 29:6 52:4 53:7 <b>21</b> 4:20 20:6 <b>21st</b> 13:17 20:17 <b>22</b> 4:22 <b>23</b> 18:9 19:2 27:14 27:24 28:9,15,21 38:3 <b>24</b> 5:4 <b>2450</b> 2:19 3:4 <b>24th</b> 36:10 <b>26</b> 32:5 38:14 <b>27</b> 5:6 33:20 34:8 40:18 42:2 <b>2730</b> 38:18 <b>29</b> 5:8 <b>2908059</b> 1:25</p>	<p><b>3:21</b> 2:20 <b>3rd</b> 43:2</p>
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<b>terms</b> 10:2 12:17 29:24 31:19 40:12 51:14 55:12 <b>testified</b> 7:4 52:21 59:23 61:1 <b>testify</b> 7:2 8:2 43:21 50:1 54:11 <b>testifying</b> 66:8 <b>testimony</b> 25:18 57:19 66:12 <b>texas</b> 44:19 <b>thank</b> 7:18 57:15 58:23,24 59:2 <b>things</b> 39:21 <b>think</b> 12:24 14:18 16:22 17:20 20:16 27:25 50:6 55:11 61:3 <b>third</b> 1:14 2:14 3:7 18:15 19:4 20:14 24:23 40:15 41:19 42:9 <b>thought</b> 57:25 59:17 <b>thousands</b> 7:15 <b>three</b> 16:10 18:24 33:14,15 45:18,19 62:14 <b>time</b> 7:13 8:20 19:21 21:15 28:21 30:2,15 31:6,21 38:2 40:16 45:24 46:5 47:16 62:2 62:20 66:6 <b>times</b> 19:16 27:24 28:15 <b>title</b> 4:21 18:8 21:16,18,20,21 34:9 40:15,15 41:23 57:21	<b>today</b> 8:5,17 27:2 29:24 36:21 46:12 56:8 57:7 58:19 <b>today's</b> 7:10 35:18 39:3 <b>top</b> 38:8 <b>total</b> 15:9 16:4 35:17 <b>touched</b> 31:10 <b>track</b> 50:24 51:1 <b>transcribed</b> 66:10 <b>transcript</b> 63:24 66:11 <b>transcription</b> 65:6 <b>transfer</b> 34:9 55:15 <b>transferred</b> 33:21 <b>transferring</b> 41:5 <b>tree</b> 47:18 <b>trees</b> 19:23 21:6 <b>tried</b> 22:7 <b>true</b> 66:11 <b>trust</b> 1:8,8 2:8,8 4:13 5:13 6:4 13:16,22 14:5,10 14:20 18:16 21:24 33:22 34:10,22,23 35:7 40:22 43:19 43:20 44:14,19,23 44:24 45:1,13,14 47:25 <b>trustee</b> 1:7 2:7 5:9 8:15 18:7 21:1,15 30:1,19 32:4 38:12,19 40:12 46:6,14,21 47:17 48:2,11 51:5 <b>trustee's</b> 4:17 5:10 6:5,7,8 8:16 29:21 33:9 46:1 49:14	<b>truth</b> 7:2,3,3 <b>try</b> 19:19 <b>trying</b> 21:5 <b>two</b> 16:20 38:17 41:3 42:22 <b>typical</b> 13:21,23 13:25 16:12 <b>typically</b> 24:1 <b>u</b> <b>u</b> 5:21 41:12,15 42:9 43:12,24,25 44:6 <b>u.s.</b> 1:8 2:8 <b>ultimately</b> 41:5 <b>undated</b> 41:15 <b>understand</b> 8:6 12:10 16:13,16 19:9 44:21 <b>understanding</b> 12:6,7 15:13 17:18 20:19 22:9 22:21 28:10 29:25 30:3 34:13 36:21 38:2 39:10 53:6 60:20 <b>understood</b> 44:5 <b>unrecorded</b> 41:16 48:22 <b>unsettled</b> 62:3 <b>unsigned</b> 29:19 41:15 43:12 <b>updated</b> 13:5,9 <b>updates</b> 13:3 <b>updating</b> 13:10 <b>upstairs</b> 26:25 <b>use</b> 10:21 21:21 <b>usual</b> 50:7 <b>usually</b> 9:19 10:5 50:6	<b>v</b> <b>v</b> 5:23 42:18,22 44:2,8 <b>value</b> 57:19,24 <b>valued</b> 57:8 <b>various</b> 11:25 41:18 56:4 58:12 <b>vegas</b> 3:11 16:22 <b>veritext</b> 1:22 <b>vs</b> 1:5 2:5 <b>w</b> <b>w</b> 6:4 23:8 45:8,12 <b>waiving</b> 63:18 <b>want</b> 14:10 30:14 <b>wanted</b> 30:23 31:10,17 <b>wanting</b> 10:21 <b>way</b> 8:24 9:15 12:6,7 13:10 16:5 26:15 <b>we've</b> 7:24 10:25 13:15 18:6 27:8 27:18 30:2 34:6 34:20,23 35:13 39:19,21 40:9 42:21 45:11 46:20 48:10 52:12 55:4 55:5 56:7 57:7 58:19 <b>wednesday</b> 1:20 2:20 50:6,14 <b>weeks</b> 16:10 62:14 <b>went</b> 8:25 27:23 <b>west</b> 26:22 <b>whereof</b> 66:18 <b>willing</b> 53:18 <b>winters</b> 4:23 22:10 22:15 60:12,17,23 <b>witness</b> 4:2,10 6:18 12:20 14:13
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<b>y</b> 6:7 48:7,11 49:8 <b>yeah</b> 28:13 30:21 31:10 37:11 39:5 40:5 44:21 <b>year</b> 19:20 33:13 <b>years</b> 21:22 31:1,1 31:15 33:14,15 51:8 <b>yellow</b> 51:6 <b>yep</b> 55:16	

Nevada Rules of Civil Procedure  
Part V. Depositions and Discovery

Rule 30

(e) Review by Witness; Changes; Signing. If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.



VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at [www.veritext.com](http://www.veritext.com).

# EXHIBIT “U”

DAVID ALESSI\*

THOMAS BAYARD \*

ROBERT KOENIG\*\*

RYAN KERBOW\*\*\*

\* Admitted to the California Bar

\*\* Admitted to the California, Nevada  
and Colorado Bars

\*\*\* Admitted to the Nevada and California Bar



*A Multi-Jurisdictional Law Firm*

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Facsimile: 702-222-4043

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ADDITIONAL OFFICES IN

AGOURA HILLS, CA  
PHONE: 818- 735-9600

RENO NV  
PHONE: 775-626-2323  
&  
DIAMOND BAR CA  
PHONE: 909-861-8300

***FACSIMILE COVER LETTER***

<b>To:</b>	Alex Bhame	<b>Re:</b>	5327 Marsh Butte St./HO #6601
<b>From:</b>	Aileen Ruiz	<b>Date:</b>	Monday, September 13, 2010
<b>Fax No.:</b>		<b>Pages:</b>	1, including cover
		<b>HO #:</b>	6601

Dear Alex Bhame:

This cover will serve as an amended demand on behalf of Shadow Mountain Ranch for the above referenced escrow; property located at 5327 Marsh Butte St., Las Vegas, NV. The total amount due through October, 15, 2010 is \$3,554.00. The breakdown of fees, interest and costs is as follows:

Notice of Intent To Lien -- Nevada	\$95.00
Notice of Delinquent Assessment Lien -- Nevada	\$345.00
Notice of Default	\$395.00
9/13/2010 Demand Fee	\$100.00
<b>Total</b>	<b>\$935.00</b>
<b>1. Attorney and/or Trustees fees:</b>	<b>\$935.00</b>
<b>2. Costs (Notary, Recording, Copies, Mailings, Publication and Posting)</b>	<b>\$550.00</b>
<b>3. Assessments Through October 15, 2010</b>	<b>\$1,284.00</b>
<b>4. Late Fees Through September 13, 2010</b>	<b>\$10.00</b>
<b>5. Fines Through September 13, 2010</b>	<b>\$0.00</b>
<b>6. Interest Through September 13, 2010</b>	<b>\$0.00</b>
<b>7. RPIR-GI Report</b>	<b>\$85.00</b>
<b>8. Title Research (10-Day Mailings per NRS 116.31163)</b>	<b>\$240.00</b>
<b>9. Management Company Audit Fee</b>	<b>\$200.00</b>
<b>10. Management Document Processing &amp; Transfer Fee</b>	<b>\$250.00</b>
<b>11. Progress Payments:</b>	<b>\$0.00</b>
<b>Sub-Total:</b>	<b>\$3,554.00</b>
<b>Less Payments Received:</b>	<b>\$0.00</b>
<b>Total Amount Due:</b>	<b>\$3,554.00</b>

Please have a check in the amount of \$3,554.00 made payable to the Alessi & Koenig, LLC and mailed to the below listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

DAVID ALESSI\*  
THOMAS BAYARD\*  
ROBERT KOENIG\*\*  
RYAN KERBOW\*\*\*

\* Admitted to the California Bar  
\*\* Admitted to the California, Nevada  
and Colorado Bar  
\*\*\* Admitted to the California and Nevada Bar



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**ADDITIONAL OFFICES**

AGOURA HILLS, CA  
PHONE: 818-735-9600

RENO NV  
PHONE: 775-626-2323  
&  
DIAMOND BAR CA  
PHONE: 909-843-6590

Nevada Licensed Qualified Collection Manager  
AMANDA LOWER

September 8, 2010

Miles, Bauer, Bergstrom & Winters  
2200 Paseo Verde Parkway, Suite 250  
Henderson, NV 89052

Re: Rejection of Partial Payments

Gentlepersons,

This letter will serve to inform you that we are unable to accept the partial payments offered by your clients as payment in full. While we understand how you read NRS 116.3116 as providing a super priority lien only with respect to 9 months of assessments, case authority exists which provides that the association's lien also includes the reasonable cost of collection of those assessments. (see *Korbel Family Trust v. Spring Mountain Ranch Master Association*, Case No. 06-A-523959-C.)

If the association were to accept your offer that only includes assessments, Alessi & Koenig would be left with a lien against the association for our substantial out-of-pocket expenses and fees generated. The association could end up having *lost* money in attempting to collect assessments from the delinquent homeowner.

If you would like to discuss these matters further, please do not hesitate to call.

Sincerely,

Ryan Kerbow, Esq.

DOUGLAS E. MILES \*  
Also Admitted in Nevada and Illinois  
RICHARD J. BAUER, JR. \*  
JEREMY T. BERGSTROM  
Also Admitted in Arizona  
FRED TIMOTHY WINTERS \*  
KEENAN E. McCLENAHAN \*  
MARK T. DOMEYER \*  
Also Admitted in District of  
Columbia & Virginia  
TAMIS CROSBY \*  
L. BRYANT JAQUEZ \*  
DANIEL L. CARTER \*  
GINA M. CORENA  
WAYNE A. RASH \*  
ROCK K. JUNG  
VY T. PHAM \*  
KRISTA J. NIELSON  
MARK S. BRAUN  
Also Admitted in Iowa & Missouri  
HADI R. SEYED-ALI \*  
ROSEMARY NGUYEN \*  
JORY C. GARABEDIAN  
THOMAS M. MORLAN  
Admitted in California  
KRISTIN S. WEBB \*  
BRIAN H. TRAN \*  
ANNA A. GHAJAR \*



\* CALIFORNIA OFFICE  
1231 E. DYER ROAD  
SUITE 100  
SANTA ANA, CA 92705  
PHONE (714) 481-9100  
FACSIMILE (714) 481-9141

**MILES, BAUER, BERGSTROM & WINTERS, LLP**  
ATTORNEYS AT LAW SINCE 1985

2200 Paseo Verde Parkway, Suite 250  
Henderson, NV 89052  
Phone: (702) 369-5960  
Fax: (702) 369-4955

September 30, 2010

ALESSI & KOENIG, LLC  
9500 W. FLAMINGO ROAD, SUITE 100  
LAS VEGAS, NV 89147

Re: *Property Address:* 5327 Marsh Butte Street  
HO #: 6601  
LOAN #: 121434068  
*MBBW File No.* 10-H1641

Dear Sir/Madame:

As you may recall, this firm represents the interests of BAC Home Loans Servicing, LP fka Countrywide Home Loans, Inc. (hereinafter "BAC") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by in regards to the above-referenced address shows a full payoff amount of \$3,554.00. BAC is the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...

*any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section*

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

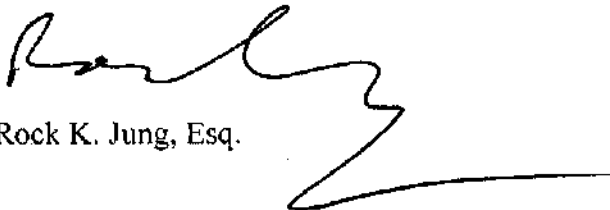
Based on Section 2(b), a portion of your HOA lien is arguably prior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n).

Our client has authorized us to make payment to you in the amount of \$207.00 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$207.00, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BAC's financial obligations towards the HOA in regards to the real property located at 5327 Marsh Butte Street have now been "paid in full".

Thank you for your prompt attention to this matter. If you have any questions or concerns, I may be reached by phone directly at (702) 942-0412.

Sincerely,

*MILES, BAUER, BERGSTROM & WINTERS, LLP*

A handwritten signature in dark ink, appearing to read 'Rock K. Jung', with a long horizontal flourish extending to the right.

Rock K. Jung, Esq.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct

10-H1641

Initials: TLC

Payee: Alessi & Koenig, LLC

Check #: 5169

Date: 9/28/2010 Amount: 207.00

Inv. Date	Reference #	Description	Inv. Amount	Case #	Matter Description	Cost Amount
9/28/2010	8801	To Cure HOA Deficiency	207.00			

198

Miles, Bauer, Bergstrom & Winters, LLP  
Trust Account

1231 E. Dyer Road, #100  
Santa Ana, CA 92705  
Phone: (714) 481-9100

Bank of America  
1100 N. Green Valley Parkway

Henderson, NV 89074  
16-66/1220  
1020

5169

Date: 9/28/2010

Amount \$\*\*\*\* 207.00

10-H1641  
Loan # 121434068

Pay \$\*\*\*\*\*Two Hundred Seven & No/100 Dollars  
to the order of

Alessi & Koenig, LLC

Check Void After 90 Days



Security Features Details on back

⑈ 5 1 6 9 ⑈ ⑆ 1 2 2 4 0 0 7 2 4 ⑆ 5 0 1 0 0 6 ⑆ N A T I O N S T A R 0 0 1 7 6

Shadow Mountain Ranch  
8966 Spanish Ridge Ave #100  
Las Vegas, NV 89148

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Magnolia Gotera  
1090 Twin Creeks Dr  
Salinas, CA 93905

Property Address: 5327 Marsh Butte St.  
Account #: 21103

Code	Date	Amount	Balance	Check#	Memo
Beg Bal	12/31/2008	588.00	588.00		Begin Balance
MA	1/1/2009	23.00	611.00		Monthly Assessment
LF	1/15/2009	10.00	621.00		
MA	2/1/2009	23.00	644.00		Monthly Assessment
LF	2/15/2009	10.00	654.00		
MA	3/1/2009	23.00	677.00		Monthly Assessment
MA	4/1/2009	23.00	700.00		Monthly Assessment
LF	4/16/2009	10.00	710.00		Late Fee Processed
MA	5/1/2009	23.00	733.00		Monthly Assessment
LF	5/16/2009	10.00	743.00		Late Fee Processed
MA	6/1/2009	23.00	766.00		Monthly Assessment
LF	6/16/2009	10.00	776.00		Late Fee Processed
MA	7/1/2009	23.00	799.00		Monthly Assessment
LF	7/16/2009	10.00	809.00		Late Fee Processed
MA	8/1/2009	23.00	832.00		Monthly Assessment
LF	8/16/2009	10.00	842.00		Late Fee Processed
MA	9/1/2009	23.00	865.00		Monthly Assessment
LF	9/16/2009	10.00	875.00		Late Fee Processed
MA	10/1/2009	23.00	898.00		Monthly Assessment
LF	10/16/2009	10.00	908.00		Late Fee Processed
MA	11/1/2009	23.00	931.00		Monthly Assessment
LF	11/16/2009	10.00	941.00		Late Fee Processed
MA	12/1/2009	23.00	964.00		Monthly Assessment
LF	12/16/2009	10.00	974.00		Late Fee Processed
MA	1/1/2010	23.00	997.00		Monthly Assessment
LF	1/16/2010	10.00	1,007.00		Late Fee Processed

---

Level Property Management | 8966 Spanish Ridge Ave #100 | Las Vegas, NV 89148 | 702.433.0149

**Make check payable to: Shadow Mountain Ranch Homeowners Association**

10/20/2010



# EXHIBIT “V”

1 AFFT

Douglas D. Gerrard, Esq.

2 Nevada Bar No. 4613

dgerrard@gerrard-cox.com

3 Fredrick J. Biedermann, Esq.

Nevada Bar No. 11918

4 fbiedermann@gerrard-cox.com

**GERRARD COX LARSEN**

5 2450 Saint Rose Pkwy., Suite 200

Henderson, Nevada 89074

6 Phone: (702) 796-4000

*Attorneys for Defendant Nationstar Mortgage, LLC*

7  
Melanie D. Morgan, Esq.

8 Nevada Bar No. 8215

Donna Whittig, Esq.

9 Nevada Bar No. 11015

1635 Village Center Circle, Suite 200

10 Las Vegas, Nevada 89134

Telephone: (702) 634-5000

11 Facsimile: (702) 380-8572

Email: melanie.morgan@akerman.com

12 Email: donna.wittig@akerman.com

13 *Attorneys for Defendant Nationstar Mortgage, LLC*

*and Defendant/Counterclaimant/Third-Party Defendant U.S. Bank,*

14 *National Association, as Trustee for the Certificateholders of the LXS 2006-*

*4N Trust Fund, erroneously pled as U.S. Bank, N.A.*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 **ALESSI & KOENIG, LLC,**

19 **Plaintiff,**

20 **v.**

21 **STACY MOORE, an individual; MAGNOLIA**  
22 **GOTERA, an individual; KRISTIN JORDAL, AS**  
23 **TRUSTEE FOR THE JBWNO REVOCABLE**  
24 **LIVING TRUST, a trust; U.S. BANK, N.A., a**  
25 **national banking association; NATIONSTAR**  
26 **MORTGAGE, LLC, a foreign limited liability**  
27 **company; REPUBLIC SILVER STATE**  
28 **DISPOSAL, INC., DBA REPUBLIC SERVICES, a**  
**domestic government entity; DOE INDIVIDUALS**  
**I through X, inclusive; and ROE CORPORATIONS**  
**XI through XX inclusive.**

**Defendants.**

Case No.: A-14-705563-C

Dept. No.: XVII

**AFFIDAVIT OF FREDRICK J.**  
**BIEDERMANN, ESQ.**

AFFIDAVIT OF FREDRICK J. BIEDERMANN, ESQ.

STATE OF NEVADA        )  
                                  ) ss.  
COUNTY OF CLARK        )

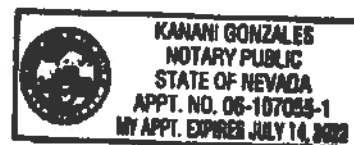
FREDRICK J. BIEDERMANN, ESQ., after being first duly sworn, states and avers as follows:

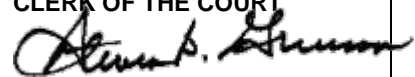
1. That I am an attorney duly licensed to practice law in the State of Nevada and associate attorney with the law firm of Gerrard Cox Larsen, and counsel for Nationstar Mortgage, LLC in the instant matter.
  2. The discovery deadline this matter was June 1, 2018.
  3. On June 1, 2018, I prepared Nationstar's Second Supplemental Disclosures of Documents and Witnesses, which included the entire collection file from Alessi & Koenig, LLC (the "Collection File").
  4. The Collection File was obtained through HOA Lawyers Group, LLC's website and from the dropbox created pursuant to the procedures established in Alessi & Koenig, LLC's bankruptcy case, Case No. BK-S-16-16593-ABL.
  5. In support of Nationstar's Motion For Reconsideration, I attached the documents found in the Collection File pertaining to the tender made by BAC Home Loan Servicing to Alessi & Koenig, LLC to the Second Supplemental Disclosures.
  6. On June 1, 2018, I served a copy the Second Supplemental Disclosures to all parties in listed in the Master Service List in this matter.
  7. For the sake of efficiency, I did not include the remaining pages from the Collection File as an exhibit to the instant Motion for Reconsideration. However, I will provide the remaining pages from the Collection File upon request for this Court's review.
- FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
By: FREDRICK J. BIEDERMANN, ESQ.

Subscribed and sworn to before me  
this 14<sup>th</sup> day of January, 2019.

  
Notary Public





**ERR**

Douglas D. Gerrard, Esq.

Nevada Bar No. 4613

[dgerrard@gerrard-cox.com](mailto:dgerrard@gerrard-cox.com)

Fredrick J. Biedermann, Esq.

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*Attorneys for Defendant Nationstar Mortgage, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC,

Plaintiff,

v.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBWNO  
REVOCABLE LIVING TRUST, a trust; U.S.  
BANK, N.A., a national banking association;  
NATIONSTAR MORTGAGE, LLC, a foreign  
limited liability company; REPUBLIC SILVER  
STATE DISPOSAL, INC., DBA REPUBLIC  
SERVICES, a domestic government entity;  
DOE INDIVIDUALS I through X, inclusive;  
and ROE CORPORATIONS XI through XX  
inclusive.

Defendants.

Case No.: A-14-705563-C

Dept.: XVII

**ERRATA TO DEFENDANT  
NATIONSTAR MORTGAGE, LLC'S  
MOTION FOR RECONSIDERATION  
AND/OR TO ALTER/AMEND  
JUDGMENT**

U.S. BANK, N.A.,  
Counterclaimant,  
vs.  
ALESSI & KOENIG, LLC, a Nevada limited  
liability company,  
Counter-Defendant.

U.S. BANK, N.A.,  
Third Party Plaintiff,  
v.  
SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company; INDIVIDUAL DOES  
I through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive.  
Third Party Defendants.

SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company,  
Third Party Counterclaimant/Cross-claimant,  
vs.  
U.S. BANK, N.A.; NATIONSTAR  
MORTGAGE, LLC, a foreign limited liability  
company; KRISTIN JORDAL, AS TRUSTEE  
FOR THE JBWNO REVOCABLE LIVING  
TRUST, a trust; STACY MOORE, an  
individual; and MAGNOLIA GOTERA, an  
individual,  
Counter-Defendant/Cross-Defendants.

**ERRATA TO DEFENDANT NATIONSTAR MORTGAGE, LLC'S MOTION FOR  
RECONSIDERATION AND/OR TO ALTER/AMEND JUDGMENT**

COMES NOW, Defendant / Cross-Defendant, NATIONSTAR MORTGAGE, LLC  
("Nationstar" or "Defendant"), by and through its attorneys, GERRARD COX LARSEN and  
AKERMAN, LLP, and hereby submits its Errata to its Motion For Reconsideration and/or to Alter  
or Amend Judgment (the "Motion") filed on January 14, 2019.

Section III of the Motion is amended to correct a few errors made in the section, to provide  
clarity to the exhibits cited, and to make minor grammatical changes none of which affect the  
substance of the original motion. Accordingly, Section III is amended as follows:

## III.

**ADMISSIBILITY OF EXHIBITS**

Nationstar requests that this Court take judicial notice of **Exhibit “A”** in accordance with N.R.S. § 47.130, as it is an order from the District Court constituting the record from the instant case.

Nationstar requests that the Court take judicial notice of the following exhibits pursuant to N.R.S. § 47.130: **Exhibits “B”, “C”, “D”, “E”, “H”, “K”, “L”, “M”, “N”, “O”, “P”, and “Q”** as they are self-authenticating documents pursuant to N.R.S. § 52.165 due to these documents being acknowledged with a notarial certificate and recorded in the public records of Clark County, Nevada. **Exhibits “F”, “F-1”, “F-2”, “F-3”, “F-4”, and “F-5”** are supported by the Affidavit of Douglas Miles, Esq. of Miles Bauer & Winters, LLP. **Exhibit “G”** is an affidavit from Rock K. Jung, Esq. **Exhibits “I” and “M”** comprise of account ledgers that were produced by either the HOA or HOA Trustee in response to a Subpoena *Duces Tecum* and are authenticated by the Deposition testimony of David Alessi, attached hereto as **Exhibit “T”**. **Exhibit “R”** is supported by the Declaration of R. Scott Dugan, SRA, Certified General Appraiser and Nationstar’s designated expert witness in this case. **Exhibit “S”** consists of Nationstar’s Second Supplemental Disclosure and is supported by the Affidavit of Fredrick J. Biedermann, Esq. attached hereto as **Exhibit “V”**. **Exhibit “U”** consists of tender related documents which were contained in Alessi & Koenig, LLC’s collection file to the subject Property which is supported by the Affidavit of Custodian of Records, which is attached hereto as **Exhibit “J”**. **Exhibit “U”** is also supported by the Affidavit of Fredrick J. Biedermann, Esq. attached hereto as **Exhibit “V”**.

Dated this 24<sup>th</sup> day of January, 2019.

**GERRARD COX LARSEN**

/s/ Fredrick J. Biedermann, Esq.  
Douglas D. Gerrard, Esq.  
Nevada Bar No. 4613  
Fredrick J. Biedermann, Esq.  
Nevada Bar No. 11918  
2450 Saint Rose Pkwy., Suite 200  
Henderson, Nevada 89074  
*Attorneys for Defendant Nationstar  
Mortgage, LLC*

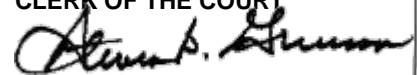
**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of GERRARD COX LARSEN, and that on the 24<sup>th</sup> day of January, 2019, I served a copy of the **ERRATA TO MOTION FOR RECONSIDERATION AND/OR TO ALTER/AMEND JUDGMENT**, by e-serving a copy on all parties listed in the Master Service List pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

Melanie D. Morgan, Esq.  
Donna Wittig, Esq.  
1635 Village Center Circle, Suite 200  
Las Vegas, Nevada 89134  
*Attorneys for Defendant, Nationstar Mortgage, LLC and Defendant/ Counterclaimant/ Third-Party Defendant U.S. Bank, National Association, as Trustee for the Certificate Holders of the LXS 2006-4N Trust Fund, erroneously plead as U.S. Bank, N.A.*

Diane Cline Ebron, Esq.  
Jacqueline A. Gilbert, Esq.  
Karen L. Hanks, Esq.  
KIM GILBERT EBRON  
7650 Dean Martin Drive, Suite 110  
Las Vegas, Nevada 89139  
*Attorneys for SFR Investment Pool 1, LLC*

/s/ Fredrick J. Biedermann, Esq.  
Fredrick J. Biedermann, an employee of  
GERRARD COX LARSEN



**ORDR**

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Email: [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

*Attorneys for Defendant Nationstar Mortgage, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC,

Plaintiff,

v.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBWNO  
REVOCABLE LIVING TRUST, a trust; U.S.  
BANK, N.A., a national banking association;  
NATIONSTAR MORTGAGE, LLC, a foreign  
limited liability company; REPUBLIC SILVER  
STATE DISPOSAL, INC., DBA REPUBLIC  
SERVICES, a domestic government entity;  
DOE INDIVIDUALS I through X, inclusive;  
and ROE CORPORATIONS XI through XX  
inclusive.

Defendants.

Case No.: A-14-705563-C

Dept.: XXVI

**ORDER GRANTING NATIONSTAR  
MORTGAGE, LLC'S MOTION FOR  
RECONSIDERATION AND TO  
ALTER/AMEND JUDGMENT**

**GERRARD, COX & LARSEN**  
2450 St. Rose Parkway, Suite 200  
Henderson, NV 89074  
O: (702) 796-4000 F: (702) 796-47848



1 U.S. BANK, N.A.,  
2 Counterclaimant,  
3 vs.

4 ALESSI & KOENIG, LLC, a Nevada limited  
5 liability company,  
6 Counter-Defendant.

7 U.S. BANK, N.A.,  
8 Third Party Plaintiff,  
9 v.  
10 SFR INVESTMENTS POOL 1, LLC, a Nevada  
11 limited liability company; INDIVIDUAL DOES  
12 I through X, inclusive; and ROE  
13 CORPORATIONS I through X, inclusive.  
14 Third Party Defendants.

15 SFR INVESTMENTS POOL 1, LLC, a  
16 Nevada limited liability company,  
17 Third Party Counterclaimant/Cross-claimant,  
18 vs.  
19 U.S. BANK, N.A.; NATIONSTAR  
20 MORTGAGE, LLC, a foreign limited liability  
21 company; KRISTIN JORDAL, AS TRUSTEE  
22 FOR THE JBWNO REVOCABLE LIVING  
23 TRUST, a trust; STACY MOORE, an  
24 individual; and MAGNOLIA GOTERA, an  
25 individual,  
26 Counter-Defendant/Cross-Defendants.

27 **ORDER GRANTING NATIONSTAR MORTGAGE, LLC'S MOTION FOR**  
28 **RECONSIDERATION AND TO ALTER/AMEND JUDGMENT**

Defendant NATIONSTAR MORTGAGE, LLC'S ("Nationstar") Motion For  
Reconsideration and to Alter / Amend Judgment (the "Motion") was heard on March 26, 2018,  
Douglas D. Gerrard, Esq. of the law firm GERRARD COX LARSEN appeared on behalf of  
Defendant Nationstar, Jason Martinez, Esq. of the law firm KIM GILBERT EBRON appeared on  
behalf of SFR Investments Pool 1, LLC ("SFR").

///

///

///

1 Having reviewed the Motion, Plaintiff SFR's Opposition to the Motion, and Nationstar's  
2 Reply in Support thereof, and being fully informed, the Court finds as follows:

3 1. On January 14, 2019, Nationstar timely filed its Motion for Reconsideration and to  
4 Alter/Amend Judgment ("Motion") related to the Findings of Fact and Conclusions of Law entered  
5 on November 29, 2018 by Judge Villani ("FFCL"), notice of entry of which was completed on  
6 December 26, 2018. On January 7, 2019, this case was randomly reassigned from Judge Villani to  
7 Judge Mary Kay Holthus. On January 31, 2019, SFR filed a Peremptory Challenge of Judge Holthus  
8 resulting in a February 1, 2019 Notice of Department Reassignment to Judge Kenneth Cory. Judge  
9 Cory then recused himself resulting in a February 5, 2019 Notice of Department Reassignment to this  
10 Court.

11 2. This Court now has jurisdiction over this case and has the authority and the right to  
12 consider and decide the Motion, as the entire case has been reassigned to this Court.

13 3. This Court determines that the FFCL contained legal errors in that Douglas Miles was  
14 properly disclosed as a witness in Nationstar's Second Supplemental Disclosure of Documents and  
15 Witnesses which was electronically served on SFR's counsel on June 1, 2018 and that the Affidavit  
16 of Douglas Miles met the criteria of NRS 52.260 as a custodial declaration to authenticate the business  
17 records of the Miles Bauer Bergstrom & Winters law firm, which included the records and letters  
18 related to the tender.

19 4. This Court determines that the FFCL contained a legal error as the documents related  
20 to the tender were also properly authenticated through the Affidavit of Rock Jung, Esq., which  
21 satisfies the requirements of NRS 52.025, as testimony of a person with personal knowledge.

22 5. The Court determines that reconsideration of the FFCL is appropriate because the  
23 records of Miles Bauer Bergstrom & Winters create a genuine issue of material fact regarding whether  
24 a full tender of the super-priority portion of the Association's lien was sent to and received by the  
25 Association's agent, Alessi & Koenig, prior to the HOA completing its sale to SFR.

26 6. Reconsideration is also appropriate because the FFCL failed to apply recent Nevada  
27 Supreme Court authority, including the *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134  
28 Nev. Adv. Op. 72 (Sept. 13, 2018) decision regarding tender, the defenses to a tender and the impact  
of a tender on SFR's bona fide purchaser defense.

1 7. The Court also determines the other legal and factual issues with the FFCL raised in  
2 the Motion warrant reconsideration and create genuine issues of material fact which must be decided  
3 in a trial.

4 **THEREFORE, IT IS HEREBY ORDERED** that Nationstar's Motion For Reconsideration  
5 and to Alter/Amend Judgment is hereby **GRANTED** and this matter will be set for a trial to  
6 determine the issues of material fact which preclude summary judgment.


7 **IT IS SO ORDERED.**

8 DATED this 26 day of June, 2019.

9  
10   
DISTRICT COURT JUDGE


11 Prepared and Submitted By:

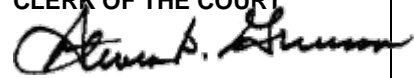
12 GERRARD COX LARSEN

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14 Douglas D. Gerrard, Esq.  
15 Nevada Bar No. 4613  
16 Fredrick J. Biedermann, Esq.  
17 Nevada Bar No. 11918  
18 2450 Saint Rose Pkwy., Ste 200  
19 Henderson, Nevada 89074  
Attorney for Defendant  
Nationstar Mortgage, LLC

Approved as to Form and Content:

KIM GILBERT EBRON

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21 Diana Ebron, Esq.  
22 Nevada Bar No. 10580  
23 Jason G. Martinez, Esq.  
24 Nevada Bar No. 13375  
25 7625 Dean Martin Drive, Ste. 110  
26 Henderson, Nevada 89139  
27 Attorneys for SFR Investments  
28 Pool 1, LLC



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*Attorneys for Defendant Nationstar Mortgage, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC,

Plaintiff,

v.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL, AS  
TRUSTEE FOR THE JBWNO REVOCABLE  
LIVING TRUST, a trust; U.S. BANK, N.A., a  
national banking association; NATIONSTAR  
MORTGAGE, LLC, a foreign limited liability  
company; REPUBLIC SILVER STATE  
DISPOSAL, INC., DBA REPUBLIC SERVICES,  
a domestic government entity; DOE  
INDIVIDUALS I through X, inclusive; and ROE  
CORPORATIONS XI through XX inclusive.

Defendants.

Case No.: A-14-705563-C

Dept.: XXVI

**NOTICE OF ENTRY OF ORDER  
GRANTING NATIONSTAR MORTGAGE,  
LLC'S MOTION FOR  
RECONSIDERATION AND TO  
ALTER/AMEND JUDGMENT**

1 U.S. BANK, N.A.,  
2 Counterclaimant,  
3 vs.

4 ALESSI & KOENIG, LLC, a Nevada limited  
liability company,  
5 Counter-Defendant.

6 U.S. BANK, N.A.,  
7 Third Party Plaintiff,  
8 v.  
9 SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company; INDIVIDUAL DOES I  
through X, inclusive; and ROE CORPORATIONS  
I through X, inclusive.  
10 Third Party Defendants.

11 SFR INVESTMENTS POOL 1, LLC, a  
Nevada limited liability company,  
12 Third Party Counterclaimant/Cross-claimant,  
vs.

13 U.S. BANK, N.A.; NATIONSTAR  
14 MORTGAGE, LLC, a foreign limited liability  
company; KRISTIN JORDAL, AS TRUSTEE  
15 FOR THE JBWNO REVOCABLE LIVING  
TRUST, a trust; STACY MOORE, an  
16 individual; and MAGNOLIA GOTERA, an  
individual,

17 Counter-Defendant/Cross-Defendants.  
18

**NOTICE OF ENTRY OF ORDER  
GRANTING NATIONSTAR  
MORTGAGE, LLC'S MOTION FOR  
RECONSIDERATION AND TO  
ALTER/AMEND JUDGMENT**

19 NOTICE IS HEREBY GIVEN that an **ORDER GRANTING NATIONSTAR MORTGAGE,**  
20 **LLC'S MOTION FOR RECONSIDERATION AND TO ALTER/AMEND JUDGMENT**, was  
21 entered herein on the 28<sup>th</sup> day of June, 2018. A copy of said Order is attached hereto.

22 DATED this 28<sup>th</sup> day of June, 2019.

**GERRARD COX LARSEN**

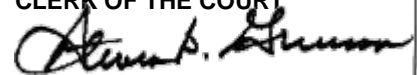
23 /s/ Douglas D. Gerrard, Esq.  
24 Douglas D. Gerrard, Esq.  
25 Fredrick J. Biedermann, Esq.  
26 2450 St. Rose Parkway, Ste. #200  
Henderson, NV 89074  
27 *Attorneys for Defendant Nationstar  
Mortgage, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of GERRARD COX LARSEN, and that on the 28<sup>th</sup> day of June, 2018, I served a copy of the **NOTICE OF ENTRY OF ORDER GRANTING NATIONSTAR MORTGAGE, LLC'S MOTION FOR RECONSIDERATION AND TO ALTER/AMEND JUDGMENT**, by e-serving a copy on all parties listed in the Master Service List pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

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Fredrick J. Biedermann, Esq.	fbiedermann@gerrard-cox.com
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KGE Legal Staff	staff@kgelegal.com

/s/ Esther K. Medellin .  
Esther K. Medellin, an employee of  
GERRARD COX LARSEN



**ORDR**

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Fredrick J. Biedermann, Esq.

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Email: [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

*Attorneys for Defendant Nationstar Mortgage, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC,

Plaintiff,

v.

STACY MOORE, an individual; MAGNOLIA  
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DOE INDIVIDUALS I through X, inclusive;  
and ROE CORPORATIONS XI through XX  
inclusive.

Defendants.

Case No.: A-14-705563-C

Dept.: XXVI

**ORDER GRANTING NATIONSTAR  
MORTGAGE, LLC'S MOTION FOR  
RECONSIDERATION AND TO  
ALTER/AMEND JUDGMENT**

**GERRARD, COX & LARSEN**  
2450 St. Rose Parkway, Suite 200  
Henderson, NV 89074  
O: (702) 796-4000 F: (702) 796-47848

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24 individual; and MAGNOLIA GOTERA, an  
25 individual,  
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27 **ORDER GRANTING NATIONSTAR MORTGAGE, LLC'S MOTION FOR**  
28 **RECONSIDERATION AND TO ALTER/AMEND JUDGMENT**

Defendant NATIONSTAR MORTGAGE, LLC'S ("Nationstar") Motion For  
Reconsideration and to Alter / Amend Judgment (the "Motion") was heard on March 26, 2018,  
Douglas D. Gerrard, Esq. of the law firm GERRARD COX LARSEN appeared on behalf of  
Defendant Nationstar, Jason Martinez, Esq. of the law firm KIM GILBERT EBRON appeared on  
behalf of SFR Investments Pool 1, LLC ("SFR").

///

///

///



1 Having reviewed the Motion, Plaintiff SFR's Opposition to the Motion, and Nationstar's  
2 Reply in Support thereof, and being fully informed, the Court finds as follows:

3 1. On January 14, 2019, Nationstar timely filed its Motion for Reconsideration and to  
4 Alter/Amend Judgment ("Motion") related to the Findings of Fact and Conclusions of Law entered  
5 on November 29, 2018 by Judge Villani ("FFCL"), notice of entry of which was completed on  
6 December 26, 2018. On January 7, 2019, this case was randomly reassigned from Judge Villani to  
7 Judge Mary Kay Holthus. On January 31, 2019, SFR filed a Peremptory Challenge of Judge Holthus  
8 resulting in a February 1, 2019 Notice of Department Reassignment to Judge Kenneth Cory. Judge  
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11 2. This Court now has jurisdiction over this case and has the authority and the right to  
12 consider and decide the Motion, as the entire case has been reassigned to this Court.

13 3. This Court determines that the FFCL contained legal errors in that Douglas Miles was  
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16 of Douglas Miles met the criteria of NRS 52.260 as a custodial declaration to authenticate the business  
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22 5. The Court determines that reconsideration of the FFCL is appropriate because the  
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24 a full tender of the super-priority portion of the Association's lien was sent to and received by the  
25 Association's agent, Alessi & Koenig, prior to the HOA completing its sale to SFR.

26 6. Reconsideration is also appropriate because the FFCL failed to apply recent Nevada  
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28 Nev. Adv. Op. 72 (Sept. 13, 2018) decision regarding tender, the defenses to a tender and the impact  
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1 7. The Court also determines the other legal and factual issues with the FFCL raised in  
2 the Motion warrant reconsideration and create genuine issues of material fact which must be decided  
3 in a trial.

4 **THEREFORE, IT IS HEREBY ORDERED** that Nationstar's Motion For Reconsideration  
5 and to Alter/Amend Judgment is hereby **GRANTED** and this matter will be set for a trial to  
6 determine the issues of material fact which preclude summary judgment.


7 **IT IS SO ORDERED.**

8 DATED this 26 day of June, 2019.

9  
10   
DISTRICT COURT JUDGE


11 Prepared and Submitted By:

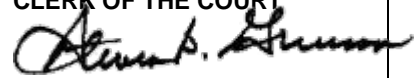
12 GERRARD COX LARSEN

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19 Henderson, Nevada 89074  
Attorney for Defendant  
Nationstar Mortgage, LLC

Approved as to Form and Content:

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28 Pool 1, LLC



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*Attorneys for Nationstar Mortgage LLC and U.S.  
Bank, National Association, as Trustee for the  
Certificateholders of the LXS 2006-4N Trust Fund,  
erroneously pled as U.S. Bank, N.A.*

**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTEN JORDAL,  
AS TRUSTEE FOR THE JBWNO  
REVOCABLE LIVING TRUST; U.S. BANK,  
N.A.; NATIONSTAR MORTGAGE, LLC;  
REPUBLIC SILVER STATE DISPOSAL, INC.,  
et al.;

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Counter-Defendant.

Case No.: A-14-705563-C

Dept.: XXVI

**PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
JUDGMENT**

<input type="checkbox"/>	Voluntary Dismissal	<input checked="" type="checkbox"/>	Summary Judgment
<input type="checkbox"/>	Involuntary Dismissal	<input type="checkbox"/>	Stipulated Judgment
<input type="checkbox"/>	Stipulated Dismissal	<input type="checkbox"/>	Default Judgment
<input type="checkbox"/>	Motion to Dismiss by Deft(s)	<input type="checkbox"/>	Judgment of Arbitration

1 U.S. BANK, N.A.

2 Third-Party Plaintiff,

3 vs.

4 SFR INVESTMENTS POOL 1, LLC, a Nevada  
5 limited liability company, et al.

6 Third-Party Defendants.

7 This matter proceeded to a bench trial on February 10, 2020. Karen Hanks, Esq. and Jason  
8 Martinez, Esq. appeared on behalf of SFR. Melanie Morgan Esq. and Ariel Stern, Esq. appeared on  
9 behalf of U.S. Bank. Having reviewed and considered the evidence and arguments of counsel, for the  
10 reasons stated on the record and in the pleadings, and good cause appearing, this Court makes the  
11 following findings of fact and conclusions of law.<sup>1</sup>

12 **FINDINGS OF FACT**

13 1. In 1991, Nevada adopted the Uniform Common Interest Ownership Act as NRS 116,  
14 including NRS 116.3116(2). (FOFCOL<sup>2</sup> at ¶1).

15 2. On June 21, 2000, Shadow Mountain Ranch Community Association (Association)  
16 perfected and gave notice of its lien by recording its Declaration of Covenants, Conditions, and  
17 Restrictions (CC&Rs) in the Official Records of the Clark County Recorder in Book No. 20000621  
18 as Instrument No. 01735. (*Id.* at ¶2).

19 **Property Transfers, The Deed of Trust, and Assignments**

20 3. On November 21, 2005, a Grant, Bargain, Sale Deed was recorded in the Official  
21 Records of the Clark County Recorder as Instrument No. 20051121-0005566, transferring real  
22 property located at 5327 Marsh Butte Street, Las Vegas, Nevada 89148; Parcel No. 163-30-312-007  
23 (the property) to Magnolia Gotera. (*Id.* at ¶3).

24 ///

25  
26 <sup>1</sup> Any findings of fact that are more appropriately conclusions of law shall be so deemed. Any conclusions of law that are  
27 more appropriately findings of fact shall be so deemed.

28 <sup>2</sup> References to "FOF&COL" pertain to the Findings of Fact and Conclusions of Law filed on November 29, 2018 following  
the hearing on SFR, U.S. Bank and Nationstar's competing motions for summary judgment.

1           4.       On November 21, 2005, a Deed of Trust listing Countrywide Home Loans, Inc. as  
2 lender, with Mortgage Electronic Registration Systems, Inc. (MERS) as beneficiary, was recorded in  
3 the Official Records of the Clark County Recorder as Instrument No. 20051121-0005567 (deed of  
4 trust). (*Id.* at ¶4).

5           5.       A Notice of Default and Election to Sell under Deed of Trust was recorded in the  
6 Official Records of the Clark County Recorder on January 22, 2008 as Instrument No. 20080122-  
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8           6.       On March 20, 2008, a Rescission of Election to Declare Default was recorded in the  
9 Official Records of the Clark County Recorder as Instrument No.20080320-0001352. (Jt. Trial Ex.  
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11          7.       On May 27, 2011, a Grant Deed transferring the Property to JBWNO Revocable Living  
12 Trust was recorded in the Official Records of the Clark County Recorder as Instrument No.  
13 201105270004010. (*Id.* at ¶7).

14          8.       On May 27, 2011, a Grant Deed transferring the Property to Stacy Moore was recorded  
15 in the Official Records of the Clark County Recorder as Instrument No. 201105270004011. (*Id.* at ¶8).

16          9.       On November 2, 2011, an assignment of deed of trust purportedly transferring the deed  
17 of trust from MERS to U.S. Bank was recorded in the Official Records of the Clark County Recorder  
18 as Instrument. No. 201111070000754. (*Id.* at ¶9).

19       **Default and HOA Foreclosure Sale**

20          10.       On September 2, 2010, MERS as nominee for BAC Home Loans Servicing, LP,  
21 through its counsel, Rock Jung of Miles, Bauer, Bergstrom & Winters, LLP, sent a letter to the  
22 Association and Alessi requesting a superpriority payoff of the Association's lien. In response, Alessi  
23 provided a payoff with a total amount due of \$3,544. On September 28, 2010, Miles Bauer sent a  
24 check for \$207.00 to Alessi, which represented nine months of common assessments at \$23.00 per  
25 month. (*See* FOF&COL at 15 in conjunction with order granting Nationstar's motion for  
26 reconsideration at ¶¶ 3 and 4).

27          11.       Tender of \$207.00 was the proper amount of the superpriority lien, as it was nine  
28 months of assessments under NRS 116.3116(2). (FOF&COL at ¶ P).

12. Alessi received the Miles Bauer check and September 28, 2010 letter, but rejected the payment. (Jt. Trial Ex. 26 at NATIONSTAR00174-176; trial testimony of David Alessi; FOF&COL at ¶ Q).

13. On December 10, 2013, the Association recorded a Notice of Trustee's Sale in the Official Records of the Clark County. Recorder as Instrument No. 201307150002689 (Notice of Sale). (*See id.* at ¶17).

14. On January 8, 2014, Alessi held a public non-judicial foreclosure auction for the property. (*See id.* at ¶20).

15. SFR placed the highest cash bid of \$59,000.00. (*See id.* at ¶20).

16. The Trustee's Deed Upon Sale was recorded in the Official Records of the Clark County Recorder as Instrument No. 201401130001460 (Foreclosure Deed). (*Id.* at ¶24).

### **CONCLUSIONS OF LAW**

A. Douglas Miles was properly disclosed as a witness in Nationstar's Second Supplemental Disclosure of Documents and Witnesses which was electronically served on SFR's counsel on June 1, 2019 and that and the Affidavit of Douglas Miles met the criteria of NRS 52.260 as a custodial declaration to authenticate the business records of the Miles Bauer Bergstrom & Winters law firm, which included the records and letters related to the tender." (Order granting Nationstar's motion for reconsideration at ¶ 3).

B. The documents related to the tender were also properly authenticated through the Affidavit of Rock Jung, Esq., which satisfies the requirements of NRS 52.025, as testimony of a person with personal knowledge." (Order granting Nationstar's motion for reconsideration at ¶ 4).

C. The Nevada Supreme Court held in *Horizon at Seven Hills Homeowners Association v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, at 13 (Nev. April 28, 2016), that the superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees and foreclosure costs incurred; rather it is limited to an amount equal to the common expense assessments due during the nine months before foreclosure. While this Court acknowledges that in *Horizon at Seven Hills v. Ikon*, the association in question did not foreclose, the Nevada Supreme Court's in depth review of legislative history and statutory interpretation indicates the superpriority portion in question does not include fees

1 and costs. *Id.* at 70. Therefore, the court finds Miles Bauer's tender of \$207.00 was the proper amount  
2 of the superpriority lien, as it was nine months of assessments under NRS 116.3116(2). (FOF&COL  
3 at ¶ P).

4 D. In *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (2014), the Nevada  
5 Supreme Court clearly stated that a first deed of trust holder's pre-foreclosure tender prevents the first  
6 deed of trust from being extinguished. 334 P.3d at 414 ("[A]s junior lienholder, [the holder of the first  
7 deed of trust] could have paid off the [HOA] lien to avert loss of its security[.]").

8 E. Here, U.S. Bank's predecessor's attempt to pay the statutory superpriority portion of the  
9 Association's lien, prior to the foreclosure sale, extinguished the superpriority portion of the  
10 Association's lien pursuant to the tender doctrine.

11 F. The Nevada supreme court has held that a lender's tender of the superpriority portion  
12 of the statutory HOA lien extinguishes the superpriority lien, even if the tender is rejected. *Bank of*  
13 *America v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 118-20 (Nev. 2018) (hereinafter ***Diamond***  
14 ***Spur***).

15 G. *Diamond Spur* further confirmed that (1) the letters Miles Bauer routinely sent in  
16 conjunction with its tender check contained only one condition, upon which the tendering party had  
17 the right to insist, and therefore do not contain impermissible conditions; (2) an association or an  
18 association trustee's rejection of the tender check on the basis that it did not satisfy the entire amount  
19 of the lien—or anything more than nine months of assessments and any nuisance abatement charges—is  
20 not a good faith rejection; (3) the tendering party was neither required to record its tender nor “keep it  
21 good” by paying the amount into court in order to discharge the superpriority portion of the  
22 association's lien; and (4) that bona fide purchaser status is irrelevant in superpriority tender cases.  
23 *Id.* at 117-21.

24 H. The tender check at issue in this case constituted a valid tender sufficient to discharge  
25 the superpriority portion of the statutory HOA lien.

26 I. U.S. Bank's predecessor's tender was sufficient to discharge the superpriority portion  
27 of the statutory association lien.

28 ///

1 J. The tender letter Miles Bauer sent, and Alessi received, in conjunction with its  
2 superpriority payment did not contain any conditions and, therefore, the tender was unconditional.  
3 Even if the tender letter did contain conditions, they were conditions upon which U.S. Bank's  
4 predecessor had the right to insist. *See Diamond Spur*, 427 P.3d at 118.

5 K. U.S. Bank's predecessor was also not required to record notice of its superpriority  
6 tender pursuant to either NRS 111.315 or NRS 106.220. *Id.* at 119. NRS 111.315 does not apply to  
7 the tender because an association's lien does not create, alienate, assign, or surrender an interest in  
8 land. Instead, “it *preserves* a pre-existing interest, which does not require recording.” *Id.* (emphasis  
9 in original). With respect to NRS 106.220, U.S. Bank's predecessor cured the statutory superpriority  
10 portion of the Association's lien by operation of law, as opposed to by recording a written instrument,  
11 and therefore NRS 106.220 is not applicable.

12 L. Nevada law did not require U.S. Bank's predecessor to take any further steps to solidify  
13 the legal effect of its tender, such as paying the money into court. *Id.* at 120. Imposing such a  
14 requirement would “negate[] the purpose behind the unconventional HOA split-lien scheme: prompt  
15 and efficient payment of the HOA assessment fees on defaulted properties.” *Id.*

16 M. Because U.S. Bank's predecessor tendered and satisfied the superpriority portion of the  
17 Association's lien prior to the Association's foreclosure, the Association could only foreclosure on the  
18 sub-priority portion of its lien. Therefore, SFR purchased only the sub-priority portion of the  
19 Association's lien and took the property subject to the Deed of Trust.

20 N. At the close of U.S. Bank's case in chief, SFR moved under NRCP 52(c), arguing the  
21 Deed of Trust was extinguished through operation of NRS 106.240. U.S. Bank opposed on procedural  
22 and substantive grounds. The court considers SFR's NRS 106.240 argument on its substantive  
23 merits. In deciding SFR's motion, the court has reviewed and considered the following, among other  
24 things: the parties' trial briefs and the cases cited therein, the arguments of counsel at trial, and the  
25 text of NRS 106.240. On that basis, the court denies SFR's NRCP 52(c) motion.

26 O. U.S. Bank protected its Deed of Trust from NRS 106.240 by filing the subject quiet  
27 title action on August 18, 2015, prior to ten years following the date upon which SFR claims the loan  
28



1 obligation became "wholly due." U.S. Bank did not need to do anything else to avoid operation of  
2 NRS 106.240.

3 P. In addition, NRS 106.240 does not apply because SFR is not a party to the note and is  
4 not subject to any type of enforcement action concerning the underlying loan obligation. The court  
5 has considered *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 16 P.3d 1074 (2001), and finds the case does  
6 not help SFR. As a non-party to the note not subject to personal liability on the obligation, NRS  
7 106.240 does not apply to SFR.

8 Q. If any of these conclusions of law are more properly considered findings of fact, they should  
9 be so construed.

### 10 **JUDGMENT**

11 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that when Shadow Mountain  
12 Ranch Homeowners Association foreclosed on its lien on January 8, 2014, it foreclosed only on the  
13 sub-priority portion of its lien;

14 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** the deed of trust, recorded  
15 November 21, 2005, with the Clark County, Nevada Recorder's Office as Instrument No. 20051121-  
16 0005667 remains a valid, secured encumbrance against the property located at 5327 March Butte St.,  
17 Las Vegas, Nevada 89148; APN 163-30-312-007;

18 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED**, all persons or entities  
19 whom were granted title or an interest in the property through the Association's January 8, 2014  
20 foreclosure sale took such title or interest subject to the deed of trust.

21 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Notice of Lis  
22 Pendens recorded against the property on August 31, 2015 as Instrument No. 20150831-0001732 is  
23 hereby expunged.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Notice of Lis  
2 Pendens recorded against the property on March 18, 2016 as Instrument No. 20160318-0000035 is  
3 hereby expunged

4 DATED April 30, 2020.



5  
6 DISTRICT COURT JUDGE  
7 Case Number: A-14-705563-C  
8

9 Submitted by:

10 **AKERMAN LLP**

11 /s/ Melanie D. Morgan

12 MELANIE D. MORGAN, ESQ.

13 Nevada Bar No. 8215

14 DONNA M. WITTIG, ESQ.

15 Nevada Bar No. 11015

16 1635 Village Center Circle, Suite 200

17 Las Vegas, Nevada 89134

18 *Attorneys for Nationstar Mortgage LLC  
and U.S. Bank, National Association, as  
Trustee for the Certificateholders of the  
LXS 2006-4N Trust Fund, erroneously  
pled as U.S. Bank, N.A.*  
19

20 Not approved as to content and  
21 submitting competing order:

22 **Kim Gilbert Ebron**

23 /s/

24 Karen L. Hanks, Esq.

25 Nevada Bar No. 9578

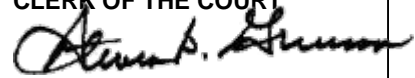
26 Jason G. Martinez, Esq.

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*Attorneys for SFR Investments Pool 1,  
LLC*



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*Attorneys for Defendant, Nationstar Mortgage, LLC and Defendant/Counterclaimant/Third-Party Defendant U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank, N.A.*

**EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA GOTERA, an individual; KRISTEN JORDAL, AS TRUSTEE FOR THE JBWNO REVOCABLE LIVING TRUST; U.S. BANK, N.A.; NATIONSTAR MORTGAGE, LLC; REPUBLIC SILVER STATE DISPOSAL, INC., et al.;

Defendants.

U.S. BANK., N.A.,,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited liability company,

Counter-Defendant.

Case No.: A-14-705563-C

Dept.: XXVI

**NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

1 U.S. BANK, N.A.

2 Third-Party Plaintiff,

3 vs.

4 SFR INVESTMENTS POOL 1, LLC, a Nevada  
5 limited liability company, et al.

6 Third-Party Defendants.

7 **TO: ALL PARTIES OF RECORD AND THEIR COUNSEL:**

8 PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law and Judgment has  
9 been entered on April 30, 2020, a copy of which is attached hereto.

10 DATED May 4, 2020.

11 **AKERMAN LLP**

12 /s/ Melanie D. Morgan

13 MELANIE D. MORGAN, ESQ.

14 Nevada Bar No. 8215

15 DONNA M. WITTIG, ESQ.

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19 *Attorneys for Defendant, Nationstar Mortgage, LLC*  
20 *and Defendant/Counterclaimant/Third-Party Defendant*  
21 *U.S. Bank, National Association, as Trustee for the*  
22 *Certificateholders of the LXS 2006-4N Trust Fund,*  
23 *erroneously pled as U.S. Bank, N.A.*  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 4<sup>th</sup> day of May, 2020, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**, in the following manner:

**(ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

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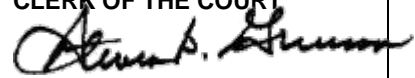
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/s/ Patricia Larsen

An employee of AKERMAN LLP

**EXHIBIT A**

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### **FINDINGS OF FACT**

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16. The Trustee's Deed Upon Sale was recorded in the Official Records of the Clark County Recorder as Instrument No. 201401130001460 (Foreclosure Deed). (*Id.* at ¶24).

### **CONCLUSIONS OF LAW**

A. Douglas Miles was properly disclosed as a witness in Nationstar's Second Supplemental Disclosure of Documents and Witnesses which was electronically served on SFR's counsel on June 1, 2019 and that and the Affidavit of Douglas Miles met the criteria of NRS 52.260 as a custodial declaration to authenticate the business records of the Miles Bauer Bergstrom & Winters law firm, which included the records and letters related to the tender." (Order granting Nationstar's motion for reconsideration at ¶ 3).

B. The documents related to the tender were also properly authenticated through the Affidavit of Rock Jung, Esq., which satisfies the requirements of NRS 52.025, as testimony of a person with personal knowledge." (Order granting Nationstar's motion for reconsideration at ¶ 4).

C. The Nevada Supreme Court held in *Horizon at Seven Hills Homeowners Association v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, at 13 (Nev. April 28, 2016), that the superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees and foreclosure costs incurred; rather it is limited to an amount equal to the common expense assessments due during the nine months before foreclosure. While this Court acknowledges that in *Horizon at Seven Hills v. Ikon*, the association in question did not foreclose, the Nevada Supreme Court's in depth review of legislative history and statutory interpretation indicates the superpriority portion in question does not include fees

1 and costs. *Id.* at 70. Therefore, the court finds Miles Bauer's tender of \$207.00 was the proper amount  
2 of the superpriority lien, as it was nine months of assessments under NRS 116.3116(2). (FOF&COL  
3 at ¶ P).

4 D. In *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (2014), the Nevada  
5 Supreme Court clearly stated that a first deed of trust holder's pre-foreclosure tender prevents the first  
6 deed of trust from being extinguished. 334 P.3d at 414 ("[A]s junior lienholder, [the holder of the first  
7 deed of trust] could have paid off the [HOA] lien to avert loss of its security[.]").

8 E. Here, U.S. Bank's predecessor's attempt to pay the statutory superpriority portion of the  
9 Association's lien, prior to the foreclosure sale, extinguished the superpriority portion of the  
10 Association's lien pursuant to the tender doctrine.

11 F. The Nevada supreme court has held that a lender's tender of the superpriority portion  
12 of the statutory HOA lien extinguishes the superpriority lien, even if the tender is rejected. *Bank of*  
13 *America v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 118-20 (Nev. 2018) (hereinafter ***Diamond***  
14 ***Spur***).

15 G. *Diamond Spur* further confirmed that (1) the letters Miles Bauer routinely sent in  
16 conjunction with its tender check contained only one condition, upon which the tendering party had  
17 the right to insist, and therefore do not contain impermissible conditions; (2) an association or an  
18 association trustee's rejection of the tender check on the basis that it did not satisfy the entire amount  
19 of the lien—or anything more than nine months of assessments and any nuisance abatement charges—is  
20 not a good faith rejection; (3) the tendering party was neither required to record its tender nor “keep it  
21 good” by paying the amount into court in order to discharge the superpriority portion of the  
22 association's lien; and (4) that bona fide purchaser status is irrelevant in superpriority tender cases.  
23 *Id.* at 117-21.

24 H. The tender check at issue in this case constituted a valid tender sufficient to discharge  
25 the superpriority portion of the statutory HOA lien.

26 I. U.S. Bank's predecessor's tender was sufficient to discharge the superpriority portion  
27 of the statutory association lien.

28 ///

1 J. The tender letter Miles Bauer sent, and Alessi received, in conjunction with its  
2 superpriority payment did not contain any conditions and, therefore, the tender was unconditional.  
3 Even if the tender letter did contain conditions, they were conditions upon which U.S. Bank's  
4 predecessor had the right to insist. *See Diamond Spur*, 427 P.3d at 118.

5 K. U.S. Bank's predecessor was also not required to record notice of its superpriority  
6 tender pursuant to either NRS 111.315 or NRS 106.220. *Id.* at 119. NRS 111.315 does not apply to  
7 the tender because an association's lien does not create, alienate, assign, or surrender an interest in  
8 land. Instead, “it *preserves* a pre-existing interest, which does not require recording.” *Id.* (emphasis  
9 in original). With respect to NRS 106.220, U.S. Bank's predecessor cured the statutory superpriority  
10 portion of the Association's lien by operation of law, as opposed to by recording a written instrument,  
11 and therefore NRS 106.220 is not applicable.

12 L. Nevada law did not require U.S. Bank's predecessor to take any further steps to solidify  
13 the legal effect of its tender, such as paying the money into court. *Id.* at 120. Imposing such a  
14 requirement would “negate[] the purpose behind the unconventional HOA split-lien scheme: prompt  
15 and efficient payment of the HOA assessment fees on defaulted properties.” *Id.*

16 M. Because U.S. Bank's predecessor tendered and satisfied the superpriority portion of the  
17 Association's lien prior to the Association's foreclosure, the Association could only foreclosure on the  
18 sub-priority portion of its lien. Therefore, SFR purchased only the sub-priority portion of the  
19 Association's lien and took the property subject to the Deed of Trust.

20 N. At the close of U.S. Bank's case in chief, SFR moved under NRCP 52(c), arguing the  
21 Deed of Trust was extinguished through operation of NRS 106.240. U.S. Bank opposed on procedural  
22 and substantive grounds. The court considers SFR's NRS 106.240 argument on its substantive  
23 merits. In deciding SFR's motion, the court has reviewed and considered the following, among other  
24 things: the parties' trial briefs and the cases cited therein, the arguments of counsel at trial, and the  
25 text of NRS 106.240. On that basis, the court denies SFR's NRCP 52(c) motion.

26 O. U.S. Bank protected its Deed of Trust from NRS 106.240 by filing the subject quiet  
27 title action on August 18, 2015, prior to ten years following the date upon which SFR claims the loan  
28

1 obligation became "wholly due." U.S. Bank did not need to do anything else to avoid operation of  
2 NRS 106.240.

3 P. In addition, NRS 106.240 does not apply because SFR is not a party to the note and is  
4 not subject to any type of enforcement action concerning the underlying loan obligation. The court  
5 has considered *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 16 P.3d 1074 (2001), and finds the case does  
6 not help SFR. As a non-party to the note not subject to personal liability on the obligation, NRS  
7 106.240 does not apply to SFR.

8 Q. If any of these conclusions of law are more properly considered findings of fact, they should  
9 be so construed.

### 10 **JUDGMENT**

11 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that when Shadow Mountain  
12 Ranch Homeowners Association foreclosed on its lien on January 8, 2014, it foreclosed only on the  
13 sub-priority portion of its lien;

14 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** the deed of trust, recorded  
15 November 21, 2005, with the Clark County, Nevada Recorder's Office as Instrument No. 20051121-  
16 0005667 remains a valid, secured encumbrance against the property located at 5327 March Butte St.,  
17 Las Vegas, Nevada 89148; APN 163-30-312-007;

18 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED**, all persons or entities  
19 whom were granted title or an interest in the property through the Association's January 8, 2014  
20 foreclosure sale took such title or interest subject to the deed of trust.

21 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Notice of Lis  
22 Pendens recorded against the property on August 31, 2015 as Instrument No. 20150831-0001732 is  
23 hereby expunged.

24 ///

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1 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the Notice of Lis  
2 Pendens recorded against the property on March 18, 2016 as Instrument No. 20160318-0000035 is  
3 hereby expunged

4 DATED April 30, 2020.



5  
6 DISTRICT COURT JUDGE  
7 Case Number: A-14-705563-C  
8

9 Submitted by:

10 **AKERMAN LLP**

11 /s/ Melanie D. Morgan

12 MELANIE D. MORGAN, ESQ.

13 Nevada Bar No. 8215

14 DONNA M. WITTIG, ESQ.

15 Nevada Bar No. 11015

16 1635 Village Center Circle, Suite 200

17 Las Vegas, Nevada 89134

18 *Attorneys for Nationstar Mortgage LLC  
and U.S. Bank, National Association, as  
Trustee for the Certificateholders of the  
LXS 2006-4N Trust Fund, erroneously  
pled as U.S. Bank, N.A.*  
19

20 Not approved as to content and  
21 submitting competing order:

22 **Kim Gilbert Ebron**

23 /s/

24 Karen L. Hanks, Esq.

25 Nevada Bar No. 9578

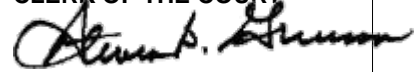
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**SAO**

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*Attorneys for SFR Investments Pool 1, LLC*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF CLARK**

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBNWO  
REVOCABLE LIVING TRUST, a trust; U.S.  
BANK, N.A., a national banking association;  
NATIONSTAR MORTGAGE, LLC, a foreign  
limited liability company; REPUBLIC SILVER  
STATE DISPOSAL, INC., DBA REPUBLIC  
SERVICES, a domestic governmental entity;  
DOE INDIVIDUALS I through X, inclusive;  
and ROE CORPORATIONS XI through XX  
inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Counter-Defendant.

U.S. BANK, N.A.,

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company; INDIVIDUAL DOES  
I through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive,

Case No. A-14-705563-C

Dept. No. XXVI

**STIPULATION AND ORDER TO  
CERTIFY THE FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
JUDGMENT, ENTERED APRIL 30, 2020  
AS TO NATIONSTAR MORTGAGE, LLC,  
U.S. BANK, N.A. AND SFR  
INVESTMENTS POOL 1, LLC**

Third-Party Defendant(s).  
SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company,  
Third-Party Counterclaimant/Cross-Claimant,  
vs.  
U.S. BANK, N.A.; NATIONSTAR  
MORTGAGE, LLC, foreign limited liability  
company; KRISTEN JORDAL, as Trustee for  
the JBWNO REVOCABLE LIVING TRUST, a  
Trust; STACY MOORE, an individual; and  
MAGNOLIA GOTERA, an individual,  
Counter-Defendants/Cross-Defendants.

Nationstar Mortgage LLC (“Nationstar”), U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank, N.A. (“U.S. Bank”), and SFR Investments Pool 1, LLC (“SFR”)<sup>1</sup> hereby stipulate and agree that the Findings of Fact, Conclusions of Law and Judgment<sup>2</sup> entered on April 30, 2020 (the “Order”) be amended to dismiss U.S. Bank’s claim for unjust enrichment against SFR be deemed moot, and then for this Court review the record on file and independently determine that, pursuant to NRCP 54(b), there is no just cause for delay in certifying as final as to the stipulating parties. A premature notice of appeal was filed for which appellant SFR anticipates receiving an Order to Show Cause and this request will ripen the appeal.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

NRCP 54(b) authorizes a court to certify an order as final as to less than all parties if the order resolves all disputes as to those parties and the court finds there is no just reason for delay. Here, the Court’s Findings of Fact, Conclusions of Law and Judgment entered on April 30, 2020, resolved all but two of the claims as between Nationstar, U.S. Bank, and SFR. Those resolved were

<sup>1</sup> Plaintiff-in-Interpleader/counterdefendant Alessi & Koenig no longer have counsel in the case, as an order granting withdrawal of HOA lawyers was entered on May 15, 2018 and no attorney has made an appearance on behalf of Alessi & Koenig. Silver State Disposal has not made an appearance in the case, Kristen Jordal as Trustee for the JBWNO Revocable Living Trust was voluntarily dismissed by SFR by Notice entered on June 20, 2016.

<sup>2</sup> This Order was determined following the Court’s reconsideration of an Order entered on November 29, 2018 granting summary judgment in favor of SFR (the “Prior Order”).



1 opposing claims for quiet title/declaratory relief as to whether the deed of trust survived the NRS  
2 116 homeowners association non-judicial foreclosure. The Order granted judgment in favor of  
3 Nationstar and U.S. Bank and determined that SFR obtained title subject to the deed of trust. SFR's  
4 claim for slander of title remains, and the Parties stipulate that the claim shall be dismissed.  
5 Thus, only U.S. Bank's unjust enrichment claim against SFR remains unresolved as between the  
6 stipulating Parties. The Parties hereby stipulate and request this Court amend the April 30, 2020  
7 Order to include an Order dismissing that unjust enrichment claim as moot.

8         There were a number of other claims against other parties, however, which were not  
9 directly addressed in the Order or in the Prior Order entered on November 29, 2018 which had  
10 granted summary judgment in favor of SFR. Therefore, the stipulating parties are asking for Rule  
11 54(b) certification out of an abundance of caution. It appears that as to the Complaint in  
12 Interpleader, the following parties remain: Alessi & Koenig, Republic Silver State Disposal Inc.,  
13 Stacy Moore, and Magnolia Gotera. U.S. Bank's claims against Alessi & Koenig appear  
14 unresolved, and SFR has filed for default judgments against Moore and Gotera.

15         As noted above, SFR filed a notice of appeal on June 3, 2020, which, based on the  
16 foregoing was premature. NRAP 4(a)(6). SFR anticipates receiving an Order to Show Cause why  
17 the Appeal should not be dismissed for lack of jurisdiction. Granting this request will resolve any  
18 jurisdictional issues, and will perfect the appeal as of the date of this court's order.

19  
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**CONCLUSION**

For the reasons stated above, Nationstar, U.S. Bank, and SFR respectfully request this Court dismiss SFR's slander of title claim, modify the April 30, 2020 Order to dismiss as moot U.S. Bank's unjust enrichment claim against SFR, and review the file and find no just cause for delay in certifying the Order as final pursuant to NRCP 54(b).

DATED June 30, 2020.

<b>KIM GILBERT EBRON</b>	<b>AKERMAN LLP</b>
<u>/s/ Jacqueline A. Gilbert</u> Jacqueline A. Gilbert, Esq. Nevada Bar No. 10593 Diana S. Ebron, Esq. Nevada Bar No. 10580 Karen L. Hanks, Esq. Nevada Bar No. 9578 7625 Dean Martin Drive, Suite 110 Las Vegas, Nevada 89139 Telephone: 702-485-3300 Facsimile: 702-485-3301 Email: jackie@kgelegal.com Email: diana@kgelegal.com Email: karen@kgelegal.com  <i>Attorneys for</i> <i>SFR Investments Pool 1, LLC</i>	<u>/s/ Donna M. Wittig</u> Melanie D. Morgan, Esq. Nevada Bar No. 8215 Donna M. Wittig, Esq. Nevada Bar No. 11015 1635 Village Center Circle, Suite 200 Las Vegas, Nevada 89134 Telephone: 702-634-5000 Facsimile: 702-381-8572 Email: melanie.morgan@akerman.com Email: donna.wittig@akerman.com  <i>Attorneys for Nationstar Mortgage LLC</i> <i>and U.S. Bank National Association as</i> <i>Trustee for the Certificateholders of the</i> <i>LXS 2006-4N Trust Fund, erroneously pled</i> <i>as U.S. Bank, N.A.</i>

**ORDER**

The Court, having read the stipulation and having independently reviewed the papers on file in this case has determined that the Parties' stipulation to dismiss SFR's slander of title claim and request to modify the April 30, 2020 Findings of Fact, Conclusions of Law and Judgment, to include that the Court denies U.S. Bank's claim for unjust enrichment as moot should be granted. Further, the Court finds no just reason to delay certifying the April 30, 2020 as final as to the claims between the stipulating Parties. NRCP 54(b). Good cause appearing

IT IS HEREBY ORDERED that SFR's slander of title claim is dismissed.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and

**KIM GILBERT EBRON**  
7625 DEAN MARTIN DRIVE, SUITE 110  
LAS VEGAS, NEVADA 89139  
(702) 485-3300 FAX (702) 485-3301

1 Judgment entered on April 30, 2020, shall be modified to DENY U.S. Bank's unjust  
2 enrichment claim as against SFR as moot.

3 IT IS FURTHER ORDERED that final judgment be entered as to Nationstar  
4 Mortgage, LLC, U.S. Bank, N.A., and SFR Investments Pool 1, LLC on their claims  
5 against each other.

6  
7 DATE: July 1, 2020

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10 DISTRICT COURT JUDGE  
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## Jackie Gilbert

---

**From:** donna.wittig@akerman.com  
**Sent:** Tuesday, June 30, 2020 4:28 PM  
**To:** Jackie Gilbert; melanie.morgan@akerman.com  
**Cc:** Michael L. Sturm; Alex Loglia; Diana Ebron; de715b910+matter1033047067@maildrop.clio.com  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Yes.

### Donna Wittig

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**Sent:** Tuesday, June 30, 2020 4:16 PM  
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**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Sorry, one last thing. I would like to include the following:

The Parties also stipulate that SFR shall dismiss its Slander of Title claim against Nationstar and U.S. Bank.

IT IS ALSO ORDERED that SFR's claim for Slander of Title against Nationstar and U.S. Bank is hereby dismiss. (this right before the 54(b) cert.

Will that work for you?

*Jackie*

---

**From:** [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>  
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**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>; [de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Yes, please use my e-signature. Thanks!

### Donna Wittig

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**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>; [de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

I have no problem with those changes. They will change the formatting a bit, so the signature blocks are not split, but if you are okay with me making those changes, may I file with your e-signature.

*Jackie*

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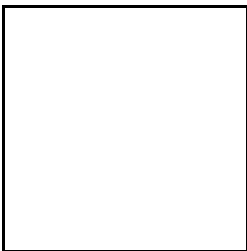
**From:** [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>  
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**To:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>; [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>; [de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Let us know if you are agreeable to these edits.

**Donna Wittig**

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**From:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>  
**Sent:** Tuesday, June 30, 2020 2:37 PM  
**To:** Wittig, Donna (Assoc-Las) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>; Morgan, Melanie (Ptnr-Las) <[melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)>  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>;

Marsh Butte St. <[de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)>

**Subject:** Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

**Importance:** High

Hello, Donna,

As we discussed in prior emails, I am attaching a draft Stipulation and Order to certify the FFCLJ entered on April 30, 2020 as final as to US Bank, Nationstar, and SFR.

Please let me know if you have any revisions. If not, please reply to this email that I have your authority to use your electronic signature.

Thank you for your prompt attention to this matter.

Jackie

*Jacqueline A. Gilbert, Esq.*

**KIM GILBERT EBRON**

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Our office is currently closed to clients and visitors in order to comply with best practices for minimizing the spread of COVID-19. KGE is committed to serving our clients and will continue to operate during this period, but most of our attorneys and staff are working remotely and there may be a delay in responses. The best way to contact us is by e-mail. Please copy Diana and Jackie on emails at [Diana@kgelegal.com](mailto:Diana@kgelegal.com) and [jackie@kgelegal.com](mailto:jackie@kgelegal.com). If you need to reach me (Jackie) directly, please call my cell: 702-400-4130.

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## Jackie Gilbert

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**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Yes.

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[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

---

**From:** Jackie Gilbert <jackie@kgelegal.com>  
**Sent:** Tuesday, June 30, 2020 4:16 PM  
**To:** Wittig, Donna (Assoc-Las) <donna.wittig@akerman.com>; Morgan, Melanie (Ptnr-Las) <melanie.morgan@akerman.com>  
**Cc:** Michael L. Sturm <Mike@kgelegal.com>; Alex Loglia <alex@kgelegal.com>; Diana Ebron <diana@kgelegal.com>; de715b910+matter1033047067@maildrop.clio.com  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Sorry, one last thing. I would like to include the following:

The Parties also stipulate that SFR shall dismiss its Slander of Title claim against Nationstar and U.S. Bank.

IT IS ALSO ORDERED that SFR's claim for Slander of Title against Nationstar and U.S. Bank is hereby dismiss. (this right before the 54(b) cert.

Will that work for you?

*Jackie*

---

**From:** [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>  
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**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Yes, please use my e-signature. Thanks!

### Donna Wittig

Associate  
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134

D: 702 634 5035  
[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

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I have no problem with those changes. They will change the formatting a bit, so the signature blocks are not split, but if you are okay with me making those changes, may I file with your e-signature.

*Jackie*

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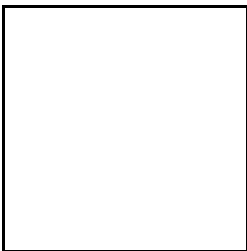
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**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Let us know if you are agreeable to these edits.

**Donna Wittig**

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**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>;



Marsh Butte St. <[de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)>

**Subject:** Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

**Importance:** High

Hello, Donna,

As we discussed in prior emails, I am attaching a draft Stipulation and Order to certify the FFCLJ entered on April 30, 2020 as final as to US Bank, Nationstar, and SFR.

Please let me know if you have any revisions. If not, please reply to this email that I have your authority to use your electronic signature.

Thank you for your prompt attention to this matter.

Jackie

*Jacqueline A. Gilbert, Esq.*

**KIM GILBERT EBRON**

*fka Howard Kim & Associates*

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

Phone: (702) 485-3300

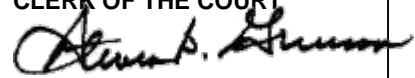
Fax: (702) 485-3301

Cell: (702) 400-4130

Our office is currently closed to clients and visitors in order to comply with best practices for minimizing the spread of COVID-19. KGE is committed to serving our clients and will continue to operate during this period, but most of our attorneys and staff are working remotely and there may be a delay in responses. The best way to contact us is by e-mail. Please copy Diana and Jackie on emails at [Diana@kgelegal.com](mailto:Diana@kgelegal.com) and [jackie@kgelegal.com](mailto:jackie@kgelegal.com). If you need to reach me (Jackie) directly, please call my cell: 702-400-4130.

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DONNA M. WITTIG, ESQ.  
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*Attorneys for Defendant, Nationstar Mortgage  
LLC and Defendant/Counterclaimant/Third-Party  
Defendant U.S. Bank, National Association, as  
Trustee for the Certificateholders of the LXS 2006-  
4N Trust Fund, erroneously pled as U.S. Bank,  
N.A.*

**EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTEN JORDAL,  
AS TRUSTEE FOR THE JBNWO  
REVOCABLE LIVING TRUST; U.S. BANK,  
N.A.; NATIONSTAR MORTGAGE, LLC;  
REPUBLIC SILVER STATE DISPOSAL, INC.,  
et al.;

Defendants.

U.S. BANK., N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Counter-Defendant.

Case No.: A-14-705563-C

Dept.: XXVI

**NOTICE OF ENTRY OF STIPULATION  
AND ORDER TO CERTIFY THE  
FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND JUDGMENT, ENTERED  
APRIL 30, 2020 AS TO NATIONSTAR  
MORTGAGE LLC, U.S. BANK, N.A. AND  
SFR INVESTMENTS POOL 1, LLC**

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200  
LAS VEGAS, NEVADA 89134  
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 U.S. BANK, N.A.

2 Third-Party Plaintiff,

3 vs.

4 SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company, et al.

5 Third-Party Defendants.  
6

7  
8 **TO: ALL PARTIES OF RECORD AND THEIR COUNSEL:**

9 PLEASE TAKE NOTICE that the **STIPULATION AND ORDER TO CERTIFY THE**  
10 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT, ENTERED APRIL 30,**  
11 **2020 AS TO NATIONSTAR MORTGAGE LLC, U.S. BANK, N.A. AND SFR**  
12 **INVESTMENTS POOL 1, LLC** has been filed on July 17, 2020. A copy of which is attached  
13 hereto as Exhibit A.

14 DATED on August 11, 2020.

15 **AKERMAN LLP**

16 /s/ Donna M. Wittig

17 MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

18 DONNA M. WITTIG, ESQ.

Nevada Bar No. 11015

19 1635 Village Center Circle, Suite 200

20 Las Vegas, Nevada 89134

21 *Attorneys for Defendant, Nationstar Mortgage, LLC*  
22 *and Defendant/Counterclaimant/Third-Party Defendant*  
23 *U.S. Bank, National Association, as Trustee for the*  
*Certificateholders of the LXS 2006-4N Trust Fund,*  
24 *erroneously pled as U.S. Bank, N.A.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 11<sup>th</sup> day of August, 2020, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER TO CERTIFY THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT, ENTERED APRIL 30, 2020 AS TO NATIONSTAR MORTGAGE LLC, U.S. BANK, N.A. AND SFR INVESTMENTS POOL 1, LLC**, in the following manner:

**(ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

**KIM GILBERT EBRON**

Diana S. Ebron

KGE E-Service List

KGE Legal Staff

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E-Service for Kim Gilbert Ebron

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**ALESSI & KOENIG**

A&amp;K eserve

eserve@alessikoenig.com

**WRIGHT FINLAY & ZAK, LLP**

Sarah Greenberg Davis

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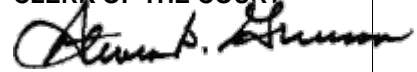
I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Patricia Larsen

An employee of AKERMAN LLP

**EXHIBIT A**

**EXHIBIT A**



**SAO**

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Las Vegas, Nevada 89139

Telephone: (702) 485-3300

Facsimile: (702) 485-3301

*Attorneys for SFR Investments Pool 1, LLC*

**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF CLARK**

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Plaintiff,

vs.

STACY MOORE, an individual; MAGNOLIA  
GOTERA, an individual; KRISTIN JORDAL,  
AS TRUSTEE FOR THE JBNWO  
REVOCABLE LIVING TRUST, a trust; U.S.  
BANK, N.A., a national banking association;  
NATIONSTAR MORTGAGE, LLC, a foreign  
limited liability company; REPUBLIC SILVER  
STATE DISPOSAL, INC., DBA REPUBLIC  
SERVICES, a domestic governmental entity;  
DOE INDIVIDUALS I through X, inclusive;  
and ROE CORPORATIONS XI through XX  
inclusive,

Defendants.

U.S. BANK, N.A.,

Counterclaimant,

vs.

ALESSI & KOENIG, LLC, a Nevada limited  
liability company,

Counter-Defendant.

U.S. BANK, N.A.,

Third-Party Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company; INDIVIDUAL DOES  
I through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive,

Case No. A-14-705563-C

Dept. No. XXVI

**STIPULATION AND ORDER TO  
CERTIFY THE FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
JUDGMENT, ENTERED APRIL 30, 2020  
AS TO NATIONSTAR MORTGAGE, LLC,  
U.S. BANK, N.A. AND SFR  
INVESTMENTS POOL 1, LLC**

Third-Party Defendant(s).  
SFR INVESTMENTS POOL 1, LLC, a Nevada  
limited liability company,  
Third-Party Counterclaimant/Cross-Claimant,  
vs.  
U.S. BANK, N.A.; NATIONSTAR  
MORTGAGE, LLC, foreign limited liability  
company; KRISTEN JORDAL, as Trustee for  
the JBWNO REVOCABLE LIVING TRUST, a  
Trust; STACY MOORE, an individual; and  
MAGNOLIA GOTERA, an individual,  
Counter-Defendants/Cross-Defendants.

Nationstar Mortgage LLC (“Nationstar”), U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank, N.A. (“U.S. Bank”), and SFR Investments Pool 1, LLC (“SFR”)<sup>1</sup> hereby stipulate and agree that the Findings of Fact, Conclusions of Law and Judgment<sup>2</sup> entered on April 30, 2020 (the “Order”) be amended to dismiss U.S. Bank’s claim for unjust enrichment against SFR be deemed moot, and then for this Court review the record on file and independently determine that, pursuant to NRCP 54(b), there is no just cause for delay in certifying as final as to the stipulating parties. A premature notice of appeal was filed for which appellant SFR anticipates receiving an Order to Show Cause and this request will ripen the appeal.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

NRCP 54(b) authorizes a court to certify an order as final as to less than all parties if the order resolves all disputes as to those parties and the court finds there is no just reason for delay. Here, the Court’s Findings of Fact, Conclusions of Law and Judgment entered on April 30, 2020, resolved all but two of the claims as between Nationstar, U.S. Bank, and SFR. Those resolved were

<sup>1</sup> Plaintiff-in-Interpleader/counterdefendant Alessi & Koenig no longer have counsel in the case, as an order granting withdrawal of HOA lawyers was entered on May 15, 2018 and no attorney has made an appearance on behalf of Alessi & Koenig. Silver State Disposal has not made an appearance in the case, Kristen Jordal as Trustee for the JBWNO Revocable Living Trust was voluntarily dismissed by SFR by Notice entered on June 20, 2016.

<sup>2</sup> This Order was determined following the Court’s reconsideration of an Order entered on November 29, 2018 granting summary judgment in favor of SFR (the “Prior Order”).

1 opposing claims for quiet title/declaratory relief as to whether the deed of trust survived the NRS  
2 116 homeowners association non-judicial foreclosure. The Order granted judgment in favor of  
3 Nationstar and U.S. Bank and determined that SFR obtained title subject to the deed of trust. SFR's  
4 claim for slander of title remains, and the Parties stipulate that the claim shall be dismissed.  
5 Thus, only U.S. Bank's unjust enrichment claim against SFR remains unresolved as between the  
6 stipulating Parties. The Parties hereby stipulate and request this Court amend the April 30, 2020  
7 Order to include an Order dismissing that unjust enrichment claim as moot.

8         There were a number of other claims against other parties, however, which were not  
9 directly addressed in the Order or in the Prior Order entered on November 29, 2018 which had  
10 granted summary judgment in favor of SFR. Therefore, the stipulating parties are asking for Rule  
11 54(b) certification out of an abundance of caution. It appears that as to the Complaint in  
12 Interpleader, the following parties remain: Alessi & Koenig, Republic Silver State Disposal Inc.,  
13 Stacy Moore, and Magnolia Gotera. U.S. Bank's claims against Alessi & Koenig appear  
14 unresolved, and SFR has filed for default judgments against Moore and Gotera.

15         As noted above, SFR filed a notice of appeal on June 3, 2020, which, based on the  
16 foregoing was premature. NRAP 4(a)(6). SFR anticipates receiving an Order to Show Cause why  
17 the Appeal should not be dismissed for lack of jurisdiction. Granting this request will resolve any  
18 jurisdictional issues, and will perfect the appeal as of the date of this court's order.

19  
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**CONCLUSION**

For the reasons stated above, Nationstar, U.S. Bank, and SFR respectfully request this Court dismiss SFR's slander of title claim, modify the April 30, 2020 Order to dismiss as moot U.S. Bank's unjust enrichment claim against SFR, and review the file and find no just cause for delay in certifying the Order as final pursuant to NRCP 54(b).

DATED June 30, 2020.

<b>KIM GILBERT EBRON</b>	<b>AKERMAN LLP</b>
<u>/s/ Jacqueline A. Gilbert</u> Jacqueline A. Gilbert, Esq. Nevada Bar No. 10593 Diana S. Ebron, Esq. Nevada Bar No. 10580 Karen L. Hanks, Esq. Nevada Bar No. 9578 7625 Dean Martin Drive, Suite 110 Las Vegas, Nevada 89139 Telephone: 702-485-3300 Facsimile: 702-485-3301 Email: jackie@kgelegal.com Email: diana@kgelegal.com Email: karen@kgelegal.com  <i>Attorneys for SFR Investments Pool 1, LLC</i>	<u>/s/ Donna M. Wittig</u> Melanie D. Morgan, Esq. Nevada Bar No. 8215 Donna M. Wittig, Esq. Nevada Bar No. 11015 1635 Village Center Circle, Suite 200 Las Vegas, Nevada 89134 Telephone: 702-634-5000 Facsimile: 702-381-8572 Email: melanie.morgan@akerman.com Email: donna.wittig@akerman.com  <i>Attorneys for Nationstar Mortgage LLC and U.S. Bank National Association as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund, erroneously pled as U.S. Bank, N.A.</i>

**ORDER**

The Court, having read the stipulation and having independently reviewed the papers on file in this case has determined that the Parties' stipulation to dismiss SFR's slander of title claim and request to modify the April 30, 2020 Findings of Fact, Conclusions of Law and Judgment, to include that the Court denies U.S. Bank's claim for unjust enrichment as moot should be granted. Further, the Court finds no just reason to delay certifying the April 30, 2020 as final as to the claims between the stipulating Parties. NRCP 54(b). Good cause appearing

IT IS HEREBY ORDERED that SFR's slander of title claim is dismissed.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and

**KIM GILBERT EBRON**  
7625 DEAN MARTIN DRIVE, SUITE 110  
LAS VEGAS, NEVADA 89139  
(702) 485-3300 FAX (702) 485-3301

1 Judgment entered on April 30, 2020, shall be modified to DENY U.S. Bank's unjust  
2 enrichment claim as against SFR as moot.

3 IT IS FURTHER ORDERED that final judgment be entered as to Nationstar  
4 Mortgage, LLC, U.S. Bank, N.A., and SFR Investments Pool 1, LLC on their claims  
5 against each other.

6  
7 DATE: July 1, 2020

8  
9 

10 DISTRICT COURT JUDGE  
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## Jackie Gilbert

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**Cc:** Michael L. Sturm; Alex Loglia; Diana Ebron; de715b910+matter1033047067@maildrop.clio.com  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Yes.

### Donna Wittig

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Sorry, one last thing. I would like to include the following:

The Parties also stipulate that SFR shall dismiss its Slander of Title claim against Nationstar and U.S. Bank.

IT IS ALSO ORDERED that SFR's claim for Slander of Title against Nationstar and U.S. Bank is hereby dismiss. (this right before the 54(b) cert.

Will that work for you?

*Jackie*

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**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Yes, please use my e-signature. Thanks!

### Donna Wittig

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*Jackie*

---

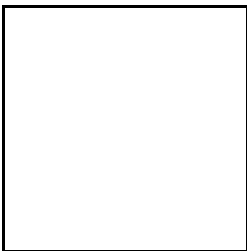
**From:** [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>  
**Sent:** Tuesday, June 30, 2020 3:02 PM  
**To:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>; [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>; [de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Let us know if you are agreeable to these edits.

**Donna Wittig**

Associate  
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134  
D: 702 634 5035  
[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)

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**From:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>  
**Sent:** Tuesday, June 30, 2020 2:37 PM  
**To:** Wittig, Donna (Assoc-Las) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>; Morgan, Melanie (Ptnr-Las) <[melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)>  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>;

Marsh Butte St. <[de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)>

**Subject:** Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

**Importance:** High

Hello, Donna,

As we discussed in prior emails, I am attaching a draft Stipulation and Order to certify the FFCLJ entered on April 30, 2020 as final as to US Bank, Nationstar, and SFR.

Please let me know if you have any revisions. If not, please reply to this email that I have your authority to use your electronic signature.

Thank you for your prompt attention to this matter.

Jackie

*Jacqueline A. Gilbert, Esq.*

**KIM GILBERT EBRON**

*fka Howard Kim & Associates*

7625 Dean Martin Drive, Suite 110

Las Vegas, Nevada 89139

Phone: (702) 485-3300

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Cell: (702) 400-4130

Our office is currently closed to clients and visitors in order to comply with best practices for minimizing the spread of COVID-19. KGE is committed to serving our clients and will continue to operate during this period, but most of our attorneys and staff are working remotely and there may be a delay in responses. The best way to contact us is by e-mail. Please copy Diana and Jackie on emails at [Diana@kgelegal.com](mailto:Diana@kgelegal.com) and [jackie@kgelegal.com](mailto:jackie@kgelegal.com). If you need to reach me (Jackie) directly, please call my cell: 702-400-4130.

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## Jackie Gilbert

---

**From:** donna.wittig@akerman.com  
**Sent:** Tuesday, June 30, 2020 4:28 PM  
**To:** Jackie Gilbert; melanie.morgan@akerman.com  
**Cc:** Michael L. Sturm; Alex Loglia; Diana Ebron; de715b910+matter1033047067@maildrop.clio.com  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Yes.

### Donna Wittig

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Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134  
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**From:** Jackie Gilbert <jackie@kgelegal.com>  
**Sent:** Tuesday, June 30, 2020 4:16 PM  
**To:** Wittig, Donna (Assoc-Las) <donna.wittig@akerman.com>; Morgan, Melanie (Ptnr-Las) <melanie.morgan@akerman.com>  
**Cc:** Michael L. Sturm <Mike@kgelegal.com>; Alex Loglia <alex@kgelegal.com>; Diana Ebron <diana@kgelegal.com>; de715b910+matter1033047067@maildrop.clio.com  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Sorry, one last thing. I would like to include the following:

The Parties also stipulate that SFR shall dismiss its Slander of Title claim against Nationstar and U.S. Bank.

IT IS ALSO ORDERED that SFR's claim for Slander of Title against Nationstar and U.S. Bank is hereby dismiss. (this right before the 54(b) cert.

Will that work for you?

*Jackie*

---

**From:** [donna.wittig@akerman.com](mailto:donna.wittig@akerman.com) <[donna.wittig@akerman.com](mailto:donna.wittig@akerman.com)>  
**Sent:** Tuesday, June 30, 2020 3:07 PM  
**To:** Jackie Gilbert <[jackie@kgelegal.com](mailto:jackie@kgelegal.com)>; [melanie.morgan@akerman.com](mailto:melanie.morgan@akerman.com)  
**Cc:** Michael L. Sturm <[Mike@kgelegal.com](mailto:Mike@kgelegal.com)>; Alex Loglia <[alex@kgelegal.com](mailto:alex@kgelegal.com)>; Diana Ebron <[diana@kgelegal.com](mailto:diana@kgelegal.com)>; [de715b910+matter1033047067@maildrop.clio.com](mailto:de715b910+matter1033047067@maildrop.clio.com)  
**Subject:** RE: Stipulation for Rule 54(b) Certification - 81923/A-14-705563-C SFR v US Bank/Nationstar (marsh butte/moore)

Yes, please use my e-signature. Thanks!

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I have no problem with those changes. They will change the formatting a bit, so the signature blocks are not split, but if you are okay with me making those changes, may I file with your e-signature.

*Jackie*

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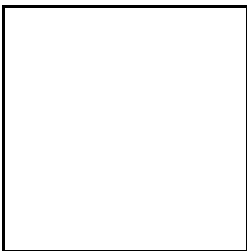
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