

Case No. 81293

IN THE SUPREME COURT OF NEVADA

SFR INVESTMENTS POOL 1, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,

Appellant,

vs.

U.S. BANK N.A., A NATIONAL
BANKING ASSOCIATION; AND
NATIONSTAR MORTGAGE, LLC, A
FOREIGN LIMITED LIABILITY
COMPANY,

Respondent.

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APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable GLORIA STURMAN, District Judge
District Court Case No. A-14-705563-C

JOINT APPENDIX VOLUME 3

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ALPHABETICAL INDEX

Vol.	Tab	Date Filed	Document	Bates Number
1	4	10/05/2015	Alessi & Koenig, LLC's Answer to U.S. Bank, N.A.'s Counterclaim	JA_0152
8	49	09/08/2020	Amended Case Appeal Statement	JA_1735
8	50	09/08/2020	Amended Notice of Appeal	JA_1742
7	36	10/22/2019	Amended Scheduling Order and Order Setting Civil Non-Jury Trial	JA_1514
6	30	01/14/2019	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	JA_1246
2	13	06/29/2018	Appendix of Exhibits for Nationstar Mortgage, LLC's Motion for Summary Judgment Pursuant to E.D.C.R. 2.27	JA_0343
3	13	Continued	Appendix of Exhibits for Nationstar Mortgage...	JA_0479
7	30	Continued	Appendix of Exhibits for Nationstar Mortgage...	JA_1435
1	1	08/14/2014	Complaint in Interpleader	JA_0001
3	14	06/29/2018	Cross-Defendant Nationstar Mortgage, LLC's Motion for Summary Judgment	JA_0583
6	29	01/14/2019	Defendant Nationstar Mortgage, LLC's Motion for Reconsideration and/or to Alter/Amend Judgment	JA_1215
7	31	01/24/2019	Errata to Defendant Nationstar Mortgage, LLC's Motion for Reconsideration and/or to Alter/Amend Judgment	JA_1449
5	27	11/29/2018	Findings of Fact and Conclusions of Law in favor of SFR	JA_1180
8	43	04/30/2020	Findings of Fact, Conclusions of Law and Judgment	JA_1675

7	39	02/05/2020	Joint Pretrial Memorandum	JA_1527
8	48	08/12/2020	Nationstar Mortgage LLC and U.S. Bank National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund's Notice of Cross-Appeal	JA_1731
8	47	08/12/2020	Nationstar Mortgage LLC and U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund's Case Appeal Statement	JA_1725
2	10	03/21/2016	Nationstar Mortgage, LLC and U.S. Bank N.A. as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund's Answer to SFR Investments Pool 1, LLC's Third Party Counterclaims	JA_0324
1	2	11/17/2014	Nationstar Mortgage, LLC's Answer	JA_0032
6	28	12/26/2018	Notice of Entry of Findings of Fact and Conclusions of Law in favor of SFR	JA_1196
8	44	05/04/2020	Notice of Entry of Findings of Fact, Conclusions of Law and Judgment	JA_1684
7	34	06/28/2019	Notice of Entry of Order Granting Nationstar Mortgage, LLC's Motion for Reconsideration and to Alter/Amend Judgment	JA_1501
8	46	08/11/2020	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	JA_1709
2	11	06/20/2016	Notice of Voluntary Dismissal of Kristin Jordal, as Trustee for the JBWNO Revocable Living Trust, a Trust without Prejudice	JA_0335
7	38	01/13/2020	Objections to Amended Pre-Trial Disclosures	JA_1522
5	25	08/23/2018	Objections to Pre-Trial Disclosures	JA_1139
5	24	08/16/2018	Objections to SFR Investments Pool 1, LLC's Pretrial Disclosures	JA_1133

3	17	07/19/2018	Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment	JA_0704
4	17	Continued	Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment	JA_0718
2	8	02/25/2016	Order Denying SFR's Motion to Dismiss Plaintiff's Third-Party Complaint Pursuant to NRCP 12(b)(6)	JA_0297
2	12	03/22/2018	Order Granting Nationstar Mortgage LLC's Motion to Reopen Discovery and Continue Trial Date	JA_0339
7	35	06/28/2019	Order Granting Nationstar Mortgage, LLC's Motion for Reconsideration and to Alter/Amend Judgment	JA_1509
7	41	02/06/2020	Proposed Findings of Fact, Conclusions of Law and Judgment	JA_1551
7	42	02/28/2020	Recorder's Transcript of 2/10/2020 Bench Trial	JA_1561
8	42	Continued	Recorder's Transcript of 2/10/2020 Bench Trial	JA_1674
8	51	09/11/2020	Recorder's Transcript of 3/26/2019 Hearing on Pending Motion for Reconsideration and/or to Alter/Amend Judgment	JA_1747
5	26	09/14/2018	Recorder's Transcript of Hearing: Cross-Defendant Nationstar Mortgage, LLC's Motion for Summary Judgment Counter Claimant SFR Investment Pool 1, LLC's Motion for Summary Judgment	JA_1144
5	22	08/07/2018	Reply in Support of Cross-Defendant Nationstar Mortgage, LLC's Motion for Summary Judgment	JA_1047
7	33	03/19/2019	Reply in Support of Defendant Nationstar Mortgage, LLC's Motion for Reconsideration and/or to Alter/Amend Judgment	JA_1476
3	15	06/29/2018	SFR Investments Pool 1 LLC's Motion for Summary Judgment	JA_0611

4	18	07/20/2018	SFR Investments Pool 1 LLC's Opposition to Cross-Defendant Nationstar Mortgage LLC's Motion for Summary Judgment and U.S. Bank, N.A. as Trustee for the Certificate holders of the LXS 2006-4N Trust Fund's Joinder to Nationstar Mortgage, LLC's Motion (Errata)	JA_0723
7	32	02/01/2019	SFR Investments Pool 1 LLC's Opposition to Defendant Nationstar Mortgage, LLC's Motion for Reconsideration and/or to Alter/Amend Judgment	JA_1454
5	18	Continued	SFR Investments Pool 1 LLC's Opposition to...	JA_0956
5	20	07/24/2020	SFR Investments Pool 1 LLC's Reply in Support of its Motion for Summary Judgment	JA_1029
7	40	02/05/2020	SFR Investments Pool 1, LLC Trial Brief	JA_1538
2	9	03/14/2016	SFR Investments Pool 1, LLC's Answer to Third-Party Complaint, Counterclaim and Cross-Claim	JA_0301
1	5	12/23/2015	SFR Investments Pool 1, LLC's Motion to Dismiss Plaintiff's Third-Party Complaint Pursuant to NRCP 12(b)(6)	JA_0176
5	21	08/02/2018	SFR Investments Pool 1, LLC's Pre-trial Disclosures	JA_1042
2	7	01/27/2016	SFR Investments Pool 1, LLC's Reply in Support of Motion to Dismiss for Failure to Join Indispensable Parties	JA_0290
8	45	07/17/2020	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	JA_1697
7	37	10/23/2019	Stipulation to Reopen Closed Case and Reset Trial Dates	JA_1518
8	53	02/10/2020	Trial Exhibit 19- Trustee's Deed Upon Sale (WFZ00148-WFZ00149)	JA_1798
8	54	02/10/2020	Trial Exhibit 26 – Alessi & Koenig File	JA_1801

9	54	Continued	Trial Exhibit 26 – Alessi & Koenig File	JA_1913
8	52	2/10/2020	Trial Exhibit 3- Deed of Trust (WFZ0094-WFZ00121)	JA_1771
9	55	02/10/2020	Trial Exhibit 33- Notice of Default and Election to Sell under Deed of Trust (SFR29-SFR30)	JA_2100
9	56	02/10/2020	Trial Exhibit 34- Rescission of Notice of Default and Election to Sell under Deed of Trust (SFR32)	JA_2103
1	6	12/24/2015	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.’s Opposition to SFR Investment Pool 1, LLC’s Motion to Dismiss Pursuant to 12(b)(6)	JA_0184
2	6	Continued	U.S. Bank National Association as Trustee for the Certificateholders of the LXS 2006-4N...	JA_240
5	19	07/20/2018	U.S. Bank, N.A. as Trustee for the Certificate holders of the LXS 2006-4N Trust Fund’s Joinder to Nationstar Mortgage LLC’s Opposition to SFR Investments Pool 1, LLC’s Motion for Summary Judgment	JA_1025
3	16	07/02/2018	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	JA_0700
5	23	08/08/2018	U.S. Bank, N.A. as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund’s Joinder to Nationstar Mortgage LLC’s Reply in Support of Motion for Summary Judgment	JA_1129
1	3	08/18/2015	U.S. Bank, N.A.’s Answer, Counterclaim, and Third-Party Complaint	JA_0044

CHRONOLOGICAL INDEX

Vol.	Tab	Date Filed	Document	Bates Number
1	1	08/14/2014	Complaint in Interpleader	JA_0001
1	2	11/17/2014	Nationstar Mortgage, LLC's Answer	JA_0032
1	3	08/18/2015	U.S. Bank, N.A.'s Answer, Counterclaim, and Third-Party Complaint	JA_0044
1	4	10/05/2015	Alessi & Koenig, LLC's Answer to U.S. Bank, N.A.'s Counterclaim	JA_0152
1	5	12/23/2015	SFR Investments Pool 1, LLC's Motion to Dismiss Plaintiff's Third-Party Complaint Pursuant to NRCP 12(b)(6)	JA_0176
1	6	12/24/2015	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.'s Opposition to SFR Investment Pool 1, LLC's Motion to Dismiss Pursuant to 12(b)(6)	JA_0184
2	6	Continued	U.S. Bank National Association as Trustee for the Certificateholders of the LXS 2006-4N...	JA_240
2	7	01/27/2016	SFR Investments Pool 1, LLC's Reply in Support of Motion to Dismiss for Failure to Join Indispensable Parties	JA_0290
2	8	02/25/2016	Order Denying SFR's Motion to Dismiss Plaintiff's Third-Party Complaint Pursuant to NRCP 12(b)(6)	JA_0297
2	9	03/14/2016	SFR Investments Pool 1, LLC's Answer to Third-Party Complaint, Counterclaim and Cross-Claim	JA_0301
2	10	03/21/2016	Nationstar Mortgage, LLC and U.S. Bank N.A. as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund's Answer to SFR Investments Pool 1, LLC's Third Party Counterclaims	JA_0324

2	11	06/20/2016	Notice of Voluntary Dismissal of Kristin Jordal, as Trustee for the JBNWO Revocable Living Trust, a Trust without Prejudice	JA_0335
2	12	03/22/2018	Order Granting Nationstar Mortgage LLC's Motion to Reopen Discovery and Continue Trial Date	JA_0339
2	13	06/29/2018	Appendix of Exhibits for Nationstar Mortgage, LLC's Motion for Summary Judgment Pursuant to E.D.C.R. 2.27	JA_0343
3	13	Continued	Appendix of Exhibits for Nationstar Mortgage...	JA_0479
3	14	06/29/2018	Cross-Defendant Nationstar Mortgage, LLC's Motion for Summary Judgment	JA_0583
3	15	06/29/2018	SFR Investments Pool 1 LLC's Motion for Summary Judgment	JA_0611
3	16	07/02/2018	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	JA_0700
3	17	07/19/2018	Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment	JA_0704
4	17	Continued	Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment	JA_0718
4	18	07/20/2018	SFR Investments Pool 1 LLC's Opposition to Cross-Defendant Nationstar Mortgage LLC's Motion for Summary Judgment and U.S. Bank, N.A. as Trustee for the Certificate holders of the LXS 2006-4N Trust Fund's Joinder to Nationstar Mortgage, LLC's Motion (Errata)	JA_0723
5	18	Continued	SFR Investments Pool 1 LLC's Opposition to...	JA_0956
5	19	07/20/2018	U.S. Bank, N.A. as Trustee for the Certificate holders of the LXS 2006-4N Trust Fund's Joinder to Nationstar Mortgage LLC's Opposition to SFR Investments Pool 1, LLC's Motion for Summary Judgment	JA_1025

5	20	07/24/2020	SFR Investments Pool 1 LLC's Reply in Support of its Motion for Summary Judgment	JA_1029
5	21	08/02/2018	SFR Investments Pool 1, LLC's Pre-trial Disclosures	JA_1042
5	22	08/07/2018	Reply in Support of Cross-Defendant Nationstar Mortgage, LLC's Motion for Summary Judgment	JA_1047
5	23	08/08/2018	U.S. Bank, N.A. as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund's Joinder to Nationstar Mortgage LLC's Reply in Support of Motion for Summary Judgment	JA_1129
5	24	08/16/2018	Objections to SFR Investments Pool 1, LLC's Pretrial Disclosures	JA_1133
5	25	08/23/2018	Objections to Pre-Trial Disclosures	JA_1139
5	26	09/14/2018	Recorder's Transcript of Hearing: Cross-Defendant Nationstar Mortgage, LLC's Motion for Summary Judgment Counter Claimant SFR Investment Pool 1, LLC's Motion for Summary Judgment	JA_1144
5	27	11/29/2018	Findings of Fact and Conclusions of Law in favor of SFR	JA_1180
6	28	12/26/2018	Notice of Entry of Findings of Fact and Conclusions of Law in favor of SFR	JA_1196
6	29	01/14/2019	Defendant Nationstar Mortgage, LLC's Motion for Reconsideration and/or to Alter/Amend Judgment	JA_1215
6	30	01/14/2019	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	JA_1246
7	30	Continued	Appendix of Exhibits for Nationstar Mortgage...	JA_1435
7	31	01/24/2019	Errata to Defendant Nationstar Mortgage, LLC's Motion for Reconsideration and/or to Alter/Amend Judgment	JA_1449

7	32	02/01/2019	SFR Investments Pool 1 LLC's Opposition to Defendant Nationstar Mortgage, LLC's Motion for Reconsideration and/or to Alter/Amend Judgment	JA_1454
7	33	03/19/2019	Reply in Support of Defendant Nationstar Mortgage, LLC's Motion for Reconsideration and/or to Alter/Amend Judgment	JA_1476
7	34	06/28/2019	Notice of Entry of Order Granting Nationstar Mortgage, LLC's Motion for Reconsideration and to Alter/Amend Judgment	JA_1501
7	35	06/28/2019	Order Granting Nationstar Mortgage, LLC's Motion for Reconsideration and to Alter/Amend Judgment	JA_1509
7	36	10/22/2019	Amended Scheduling Order and Order Setting Civil Non-Jury Trial	JA_1514
7	37	10/23/2019	Stipulation to Reopen Closed Case and Reset Trial Dates	JA_1518
7	38	01/13/2020	Objections to Amended Pre-Trial Disclosures	JA_1522
7	39	02/05/2020	Joint Pretrial Memorandum	JA_1527
7	40	02/05/2020	SFR Investments Pool 1, LLC Trial Brief	JA_1538
7	41	02/06/2020	Proposed Findings of Fact, Conclusions of Law and Judgment	JA_1551
7	42	02/28/2020	Recorder's Transcript of 2/10/2020 Bench Trial	JA_1561
8	42	Continued	Recorder's Transcript of 2/10/2020 Bench Trial	JA_1674
8	43	04/30/2020	Findings of Fact, Conclusions of Law and Judgment	JA_1675
8	44	05/04/2020	Notice of Entry of Findings of Fact, Conclusions of Law and Judgment	JA_1684

8	45	07/17/2020	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	JA_1697
8	46	08/11/2020	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	JA_1709
8	47	08/12/2020	Nationstar Mortgage LLC and U.S. Bank, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund's Case Appeal Statement	JA_1725
8	48	08/12/2020	Nationstar Mortgage LLC and U.S. Bank National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund's Notice of Cross-Appeal	JA_1731
8	49	09/08/2020	Amended Case Appeal Statement	JA_1735
8	50	09/08/2020	Amended Notice of Appeal	JA_1742
8	51	09/11/2020	Recorder's Transcript of 3/26/2019 Hearing on Pending Motion for Reconsideration and/or to Alter/Amend Judgment	JA_1747
8	52	2/10/2020	Trial Exhibit 3- Deed of Trust (WFZ0094-WFZ00121)	JA_1771
8	53	02/10/2020	Trial Exhibit 19- Trustee's Deed Upon Sale (WFZ00148-WFZ00149)	JA_1798
8	54	02/10/2020	Trial Exhibit 26 – Alessi & Koenig File	JA_1801
9	54	Continued	Trial Exhibit 26 – Alessi & Koenig File	JA_1913
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9	56	02/10/2020	Trial Exhibit 34- Rescission of Notice of Default and Election to Sell under Deed of Trust (SFR32)	JA_2103

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.¹ 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."² In other words, costs of collecting includes more than "charges for late payment of assessments."³ 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.⁴ "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

¹ Charges for late payment of assessments comes from NRS 116.3102(1)(k) and is incorporated into NRS 116.3116(1).

² NRS 116.310313.

³ "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).

⁴ 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.⁵ 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

⁵ See NRS 116.310312(4) and (6).

of assessments. S.B. 174 was discussed in great detail and ultimately died in committee.⁶

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."⁷ 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;

⁶ See <http://leg.state.nv.us/Session/76th2011/Reports/history.cfm?ID=423>.

⁷ 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 Review⁸ article from 1992 discussing the Uniform Act. This article actually concludes that the Uniform Act language limits the

⁸ 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.⁹ It can include fines, interest, and late charges.¹⁰ 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.¹¹ 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

⁹ See *id.* at 367 (referring to the super priority lien as the "six months assessment ceiling" being computed from the periodic budget).

¹⁰ See *id.*

¹¹ See <http://leg.state.nv.us/Session/75th2009/Reports/history.cfm?ID=416>.

include the association's costs and attorneys' fees.¹² 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).¹³

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:

¹² See Minutes of the Meeting of the Assembly Committee on Judiciary, Seventy-fifth Session, March 6, 2009 at 44-45.

¹³ 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.

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.¹⁴ 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

¹⁴NRS 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.

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

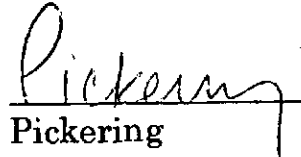
Bank of America gave perfect tender and foreclosed on the second notice of default, if the second notice addressed an entirely new set of defaults, or was intended as a recurring notice for the original default, and the district court made no findings on the issue. *See Prop. Plus Invs., LLC v. Mortg. 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

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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

APPELLANT'S APPENDIX VOLUME II

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CHRONOLOGICAL INDEX VOLUME II

Countermotion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment (Bank of America and ReconTrust, N.A.)	178
Reply in Support of Motion for Summary Judgment and Opposition to Defendants' Counter-motion for Summary Judgment.....	267
Reply in Support of Counter-motion for Summary Judgment (Bank of America and ReconTrust, N.A.)	283
Findings of Fact, Conclusions of Law, and Judgment.....	308
Notice of Entry of Findings of Fact, Conclusions of Law, and Judgment	315
Motion to Certify Judgment as Final	325
Notice of Entry of Order Granting Joint Motion to Certify Judgment as Final.....	330
Notice of Appeal	336
Case Appeal Statement	339

DATED this 31st day of August, 2016.

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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.

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

H 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 24th 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 Man Moh (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. DOMEVER *
Also Admitted in District of
Columbia & Virginia
TAMI S. CROSBY *
MATTHEW D. TOKARZ *
L. BRYANT JACQUEZ *
DANIEL L. CARTER *
BRIAN M. TRAN *
RYAN W. STOCKING *
GINA M. CORENA
ROBIN L. LEWIS
Also Admitted in California
WAYNE A. RASH *
ROCK K. JUNG
VY T. PHAM *
SCOTT B. OLIFANT
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. LISH
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.alessikoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA
PHONE: 818-733-9600

RENO NV
PHONE: 775-626-2323

&
DIAMOND BAR CA
PHONE: 909-243-6590

Nevada Licensed Qual/Rec Collection
Manager

AMANDA LOWMYER

FACSIMILE COVER LETTER

To:	Miles, Bauer, Bergstrom	Re:	994 River Walk CL/HO #18344
From:	Aileen Ruiz	Date:	Wednesday, April 14, 2010
Fax No.:		Pages:	1, including cover
		HO #:	REDAG

Dear Miles, Bauer, Bergstrom:

This cover will serve as an amended demand on behalf of Foxfield for the above referenced escrow; property located at 994 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
Total	\$765.00
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
Sub-Total:	\$1,635.00
Less Payments Received:	\$0.00
Total Amount Due:	\$1,635.00

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	0.66	235.82	Late Fee Processed
LF	12/30/2009	0.66	236.48	Late Fee Processed
MA	1/1/2010	50.00	289.48	QA
Late Fee	1/15/2010	10.00	299.48	Late Fee Processed
Late Fee	1/30/2010	0.88	297.30	Late Fee Processed
Late Fee	2/29/2010	0.88	298.24	Late Fee Processed
Late Fee	3/30/2010	0.88	299.12	Late Fee Processed
Assessment	4/1/2010	50.00	349.12	Assessment

Count: 1

Total Units: 163

4/12/2010 4:58:38 PM

Page 2 of 2

Apr. 14. 2010 2:38PM

No. 0660 P. 14

Resident Transaction Detail

Active Flag Yes

Void Flag No

FOXFIELD COMMUNITY ASSOCIATION

Account #/ RED# Property Address: 994 RIVER WALK CT

Code	Date	Amount	Balance	Check#	Memo
MA	10/1/2006	50.00	50.00		
PMT TXFR	9/18/2006	-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	7/28/2007	-234.50	0.00	ACH	0728071044.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	2/8/2008	50.00	171.50		INTENT TO LIEN
PMT	2/28/2008	-171.50	0.00	ACH	0228080845.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	0.88	235.38		Late Fee Processed

4/12/2010 4:58:36 PM

Page 1 of 2

EXHIBIT 4

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. DOMMEYER *
 Also Admitted in District of
 Columbia & Virginia
 TAMIS CROSBY *
 L. BRYANT JAQUEZ *
 DANIEL L. CARTER *
 GINA M. COBBNA
 WAYNE A. RASLI *
 ROCK K. TUNG
 VY T. PHAM *
 KRISTA J. NIELSON
 MARK S. BRAUN
 Also Admitted in Iowa & Missouri
 HADI B. SYED-ALI *
 ROSEMARY NGUYEN *
 JORY C. GARABEDIAN
 THOMAS M. MORLAN
 Admitted in California



* CALIFORNIA OFFICE
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 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
 MBBW File No. 1 REDACTED

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 \$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.

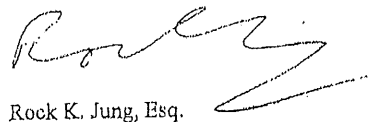
Based on Section 2(b), a portion of your HOA lien is arguably prior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that 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	REDACTED	To Cure HOA Deficiency	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
1100 N. Green Valley Parkway
Henderson, NV 89074
16-861220
1070
10-H0189
Loan # REDACTED 2

3484
Date: 5/11/2010
Amount \$**** 150.00

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

Check Void After 90 Days

REDACTED
ED

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.)

For the reasons discussed below, U.S. Bank's Motion is granted in part and denied in part. SFR and Emerald Ridge's Motions are denied.

II. BACKGROUND

The relevant facts in this case are, for the most part, undisputed. Ernie Alcaraz ("Borrower") obtained a loan ("the Loan") secured by a first deed of trust ("First DOT") on his property ("the Property"). (ECF No. 1 at 4.) The First DOT was subsequently assigned to U.S. Bank. (*Id.*) The Borrower defaulted on the Loan and U.S. Bank began the process of foreclosure and intends to foreclose under the First DOT. (*Id.*) In the meantime, Borrower failed to pay HOA's fees due to it. (*Id.*) On February 4, 2011, HOA recorded a notice of delinquent assessment, followed by a notice of default and election to sale, and a notice of trustee's sale. (*Id.*) The various notices state the amount due to HOA, including fees, interests and costs, but not the amount of the purported superpriority lien amount. (*Id.* at 4-5.) On March 25, 2011, Bank of America, N.A. ("Servicer"), the servicer of the Loan, attempted to obtain the superpriority lien amount and tendered what it calculated to be the superpriority lien amount to the HOA, who refused Servicer's tender. (*Id.* at 5-6.)

HOA foreclosed on the Property on August 21, 2014. (*Id.*) SFR purchased the Property. (*Id.*)

III. LEGAL STANDARD

"The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the pleadings, the discovery and disclosure materials on file, and any affidavits "show there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). An issue is "genuine" if there is a sufficient evidentiary basis on which a reasonable fact-finder could find for the nonmoving party and a dispute is "material" if it could affect the outcome of 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 § 116.3116.¹ 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., 78th 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

¹Section 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.² (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.

///

²The 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.³ *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 langue 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

³Black'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*.⁴

24 ⁴A 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 30th 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.

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**

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;

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 & 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 & 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 & Koenig, LLC 21 from First American Title Insurance Company, 5/14/10 I Letter to Miles, Bauer, 22 Bergstrom & 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 EBRON 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 & 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 12 N Grant Deed, 5/27/11 33 13 14 O Grant Deed, 5/27/11 34 15 16 P Assignment Of Deed Of Trust, 34 10/27/11 17 Q Notice Of Delinquent Assessment 35 Lien, 8/13/12 18 19 R Letter from Shadow Mountain 37 Ranch to Stacy Moore reflecting Assessments 20 21 S Letter to Stacy Moore from 39 Alessi & Koenig, 8/13/12 22 T Real Estate Listing Report 40 23 U Notice Of Default And Election 41 To Sell Under Homeowners 24 Association Lien, 9/11/12 25 V Notice Of Default And Election 42 To Sell Under Homeowners Association Lien, 6/3/13</p>

<div>Page 6</div> <div><div>1INDEX (CONT'D)</div><div>2EXHIBITS</div><table><tr><th>3LETTER</th><th>DESCRIPTION</th><th>PAGE</th></tr><tr><td>4W</td><td>Assignment Of Deed Of Trust, 7/1/13</td><td>45</td></tr><tr><td>5</td><td></td><td></td></tr><tr><td>6X</td><td>Notice Of Trustee's Sale, 9/11/2</td><td>46</td></tr><tr><td>7Y</td><td>Notice Of Trustee's Sale, 11/14/13</td><td>48</td></tr><tr><td>8</td><td></td><td></td></tr><tr><td>9Z</td><td>Trustee's Deed Upon Sale, 6/13/14</td><td>49</td></tr><tr><td>10AA</td><td>Email from George Bates to maximumfinancial@aol.com, 1/8/14</td><td>55</td></tr><tr><td>12BB</td><td>Alessi & Koenig multiple pages of fees and costs</td><td>55</td></tr><tr><td>13</td><td></td><td></td></tr><tr><td>14CC</td><td>Appraisal Of Real Property</td><td>56</td></tr><tr><td>15DD</td><td>Affidavit of David Alessi, 9/7/17</td><td>58</td></tr><tr><td>16</td><td></td><td></td></tr><tr><td>17</td><td></td><td></td></tr><tr><td>18</td><td colspan="2">QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:</td></tr><tr><td>19</td><td colspan="2">(NONE)</td></tr><tr><td>20</td><td></td><td></td></tr><tr><td>21</td><td></td><td></td></tr><tr><td>22</td><td colspan="2">INFORMATION TO BE SUPPLIED:</td></tr><tr><td>23</td><td colspan="2">(NONE)</td></tr><tr><td>24</td><td></td><td></td></tr><tr><td>25</td><td></td><td></td></tr></table></div>	3LETTER	DESCRIPTION	PAGE	4W	Assignment Of Deed Of Trust, 7/1/13	45	5			6X	Notice Of Trustee's Sale, 9/11/2	46	7Y	Notice Of Trustee's Sale, 11/14/13	48	8			9Z	Trustee's Deed Upon Sale, 6/13/14	49	10AA	Email from George Bates to maximumfinancial@aol.com, 1/8/14	55	12BB	Alessi & Koenig multiple pages of fees and costs	55	13			14CC	Appraisal Of Real Property	56	15DD	Affidavit of David Alessi, 9/7/17	58	16			17			18	QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:		19	(NONE)		20			21			22	INFORMATION TO BE SUPPLIED:		23	(NONE)		24			25			<div>Page 8</div> <div><div>1Have you seen this document before?</div><div>2A. Yes, I have, and I am prepared to testify</div><div>3on all the matters contained within it.</div><div>4Q. All right. Very good.</div><div>5I notice today you're not represented by</div><div>6counsel, although I understand you are an attorney,</div><div>7correct?</div><div>8A. I'm a California attorney, correct.</div><div>9Q. All right. I believe, if I'm not mistaken,</div><div>10Alessi & Koenig, LLC is the named plaintiff in this</div><div>11litigation.</div><div>12Do you know if they're represented by</div><div>13counsel in this matter?</div><div>14A. No. Alessi Koenig filed Chapter 7 in</div><div>15December of 2016. So Shelly Krohn is the trustee.</div><div>16Janette Pearson is the trustee's attorney.</div><div>17Q. But you're here today as the 30(b)(6)</div><div>18designee for Alessi & Koenig, are you not?</div><div>19A. Yes.</div><div>20Q. How much time did you spend preparing for</div><div>21this deposition, perhaps reviewing the collection</div><div>22file?</div><div>23A. As I do in all my depositions, I contacted</div><div>24Jona, J-o-n-a, LePoma, L-e-P-o-m-a, on my way to the</div><div>25deposition, and we went over both files, the depo I</div></div>
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<div>Page 7</div> <div><div>1DAVID ALESSI,</div><div>2having first been duly sworn to testify to the truth,</div><div>3the whole truth, and nothing but the truth, was</div><div>4examined and testified as follows:</div><div>5</div><div>6EXAMINATION</div><div>7BY MR. MILNE:</div><div>8Q. David, my name is Gary Milne. I represent</div><div>9Nationstar Mortgage in this litigation.</div><div>10I know immediately prior to today's</div><div>11deposition, your deposition was taken in another</div><div>12matter here in this office.</div><div>13At that time, were any admonitions</div><div>14provided, or you've probably done hundreds, if not</div><div>15thousands of these?</div><div>16A. That's correct, I have, and there's no need</div><div>17for any admonitions. We can just jump right in.</div><div>18Q. All right. Thank you.</div><div>19Let me hand you what we're going to mark as</div><div>20Defendant's Exhibit A.</div><div>21(Exhibit A was marked for</div><div>22identification by the reporter.)</div><div>23BY MR. MILNE:</div><div>24Q. David, you have in front of you what we've</div><div>25marked as Exhibit A to your deposition.</div></div>	<div>Page 9</div> <div><div>1just took and this one.</div><div>2It doesn't take me long at this point. I</div><div>3probably spent five or ten minutes on it.</div><div>4Q. Did you talk to anyone besides the</div><div>5individual identified?</div><div>6A. No.</div><div>7Q. Do you know how it is that Alessi & Koenig</div><div>8got involved with this HOA foreclosure sale?</div><div>9A. We would have been hired by the homeowners</div><div>10association.</div><div>11Q. I believe, if I'm recalling correctly,</div><div>12Shadow Mountain Ranch Community Association?</div><div>13A. Shadow Mountain, yes.</div><div>14So generally, there's a retainer between</div><div>15our firm and the association or the board by way of a</div><div>16motion at a properly quorumed HOA board meeting would</div><div>17hire us.</div><div>18Our main point of contact, though, is the</div><div>19HOA management company. It's usually not the board</div><div>20or the HOA itself.</div><div>21Q. Would you happen to know whether is the</div><div>22first matter you've handled for Shadow Mountain?</div><div>23Were there others? Do you have any idea?</div><div>24A. For Shadow Mountain, I don't know.</div><div>25Q. Do you know who the management company was?</div></div>																																																																		

<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 & 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 & Koenig -- or, did Alessi &</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 & Koenig?</p> <p>22 A. Of Alessi & 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 & 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&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 & 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 & 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 & Koenig and Miles Bauer Bergstrom & 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 & Koenig 14 received payoff requests from Miles Bauer Bergstrom & 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 & 2 Koenig has communicated with Miles Bauer, Alessi & 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 & 23 Koenig; the third page of which includes a Miles 24 Bauer check payable to Alessi & 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 & 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 & 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 & 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 &</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 &</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 & 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 & 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 & 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 & 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 & 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 & 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 & 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 & 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 & 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 & 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 & 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 & 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 & 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.</p> <p>2 (Exhibit DD was marked for</p> <p>3 identification by the reporter.)</p> <p>4 BY MR. MILNE:</p> <p>5 Q. Lastly, Exhibit DD is what appears to be a</p> <p>6 custodian of records certificate for Alessi & Koenig</p> <p>7 that I believe has your signature on page 2?</p> <p>8 A. Yes.</p> <p>9 Q. And if I'm not mistaken, and I need you to</p> <p>10 correct me if I am, this was produced in connection</p> <p>11 with Alessi & Koenig's bankruptcy filing and was a</p> <p>12 means whereby counsel involved in these various HOA</p> <p>13 pieces of litigation could obtain copies of Alessi &</p> <p>14 Koenig's collection files through a Dropbox.</p> <p>15 And this was the custodian of records</p> <p>16 certificate that was supposed to authenticate those</p> <p>17 collection files from Alessi & Koenig?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Including the documents we've seen today to</p> <p>20 the extent they were obtained from the collection</p> <p>21 file?</p> <p>22 A. Correct.</p> <p>23 Q. Thank you, sir.</p> <p>24 A. Thank you, sir.</p> <p>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,</p> <p>2 Exhibit J, in Exhibit B?</p> <p>3 A. Correct.</p> <p>4 Q. One of the other questions I have, when we</p> <p>5 look at Exhibit I, there's a letter here from Ryan</p> <p>6 Kerbow dated September 8th, 2010.</p> <p>7 What was the purpose of this letter being</p> <p>8 drafted by Ryan Kerbow?</p> <p>9 A. To communicate what his position was and to</p> <p>10 provide a breakdown of what he felt was owed.</p> <p>11 Q. And this letter is addressed to Miles Bauer</p> <p>12 Bergstrom & Winters, correct?</p> <p>13 A. Yes.</p> <p>14 Q. It appears to be the same address that</p> <p>15 although not in your records, Exhibit J actually</p> <p>16 retains an address for Miles Bauer Bergstrom &</p> <p>17 Winters in the letterhead that appears to match with</p> <p>18 Exhibit I, the specific address?</p> <p>19 A. Yes.</p> <p>20 Q. And is it my understanding that this letter</p> <p>21 reflects Alessi & Koenig's position regarding</p> <p>22 potential attempted payments by Miles, Bauer,</p> <p>23 Bergstrom & Winters such as the one that is listed on</p> <p>24 Exhibit J?</p> <p>25 A. This would have just been Ryan's -- our</p>
<p style="text-align: right;">Page 59</p> <p>1 questions.</p> <p>2 THE WITNESS: Thank you.</p> <p>3</p> <p>4 EXAMINATION</p> <p>5 BY MR. MARTINEZ:</p> <p>6 Q. So the exhibits I'm going to be looking at</p> <p>7 are B, I, and J.</p> <p>8 A. Okay.</p> <p>9 Q. Now, B is the status report. We had talked</p> <p>10 about this earlier.</p> <p>11 If you look at page 2, all of the dates</p> <p>12 don't correspond perfectly. I'm looking at the</p> <p>13 fourth and fifth entry down, September 9th and</p> <p>14 September 13th of 2010?</p> <p>15 A. Yes.</p> <p>16 Q. Now, we had talked about these entries, and</p> <p>17 you thought that they would potentially be relating</p> <p>18 to Exhibit I; is that correct?</p> <p>19 A. Potentially, yes.</p> <p>20 Q. But you weren't sure of that?</p> <p>21 A. Correct.</p> <p>22 Q. And then, Exhibit J seems to be dated</p> <p>23 September 30th, 2010, and you had testified that this</p> <p>24 document was not within your records, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 61</p> <p>1 position was, as I testified earlier, to Miles Bauer</p> <p>2 was why don't you just make a payment for what you</p> <p>3 think is owed without the restrictive language. We</p> <p>4 would have cashed that payment and then a court</p> <p>5 determined the effect of that payment.</p> <p>6 With regard to our clients, we did not take</p> <p>7 the position that Ryan lays out here.</p> <p>8 Q. What do you mean by that specifically?</p> <p>9 A. Well, we didn't advise the client as to --</p> <p>10 where Ryan says that the -- I'm sorry, there was a</p> <p>11 letter from Ryan in the prior deposition I'm</p> <p>12 confusing.</p> <p>13 This was a position that we took, yes.</p> <p>14 This letter is accurate.</p> <p>15 Q. This letter basically says that Alessi &</p> <p>16 Koenig recognizes the interpretation that Miles Bauer</p> <p>17 may be taking as to the statute, specifically</p> <p>18 NRS 116.3116, but disagreeing with that position,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. And specifically, Alessi & Koenig took the</p> <p>22 position that the super-priority lien wasn't limited</p> <p>23 to nine months of assessments based on the site in</p> <p>24 this --</p> <p>25 A. I would say more specifically, Alessi &</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 & 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 & 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 & 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 & 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 & 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> <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.

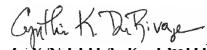
13 Reading and signing by the witness was
14 requested.

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

& & 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	14 4:14 48:14 14-705563 1:5 2:5 14th 20:8 15 16:21 17:17 30:16 50:3,7 150 56:14 16 1:20 2:20 4:16 32:6 18 4:17,18 1st 43:3	49:16,24 50:1,8 52:15 53:25 54:1 55:5 57:1,8 2016 8:15 2018 1:20 2:20 66:20 204 26:25 207 24:24 25:9 28:1,6 29:6 52:4 53:7 21 4:20 20:6 21st 13:17 20:17 22 4:22 23 18:9 19:2 27:14 27:24 28:9,15,21 38:3 24 5:4 2450 2:19 3:4 24th 36:10 26 32:5 38:14 27 5:6 33:20 34:8 40:18 42:2 2730 38:18 29 5:8 2908059 1:25	3:21 2:20 3rd 43:2
	2	21 4:20 20:6 21st 13:17 20:17 22 4:22 23 18:9 19:2 27:14 27:24 28:9,15,21 38:3 24 5:4 2450 2:19 3:4 24th 36:10 26 32:5 38:14 27 5:6 33:20 34:8 40:18 42:2 2730 38:18 29 5:8 2908059 1:25	4 4/15/08 4:15,16 40 5:20 4010 33:20 4011 34:8 41 5:21 42 5:23 45 6:4 451 1:24 2:21 66:23 46 6:5 48 6:7 485-3300 3:11 49 6:8
	2 24:8,15,16 34:22 36:8 43:23 58:7 59:11 2,730 38:8 200 2:19 3:4 2005 13:17 2008 15:1 16:21 17:11 18:9 19:2 19:17 20:6 2009 11:7 19:3,17 20:7 27:11 2010 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 2011 30:16 31:8,21 32:5 33:6,20 34:8 34:22 37:24 38:14 52:1 2012 31:9 35:16 36:10 39:25 2013 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 2014 30:5 33:11 47:3 48:17 49:15	3	5 5 42:25 44:8 45:19 5,757 32:15 38:14 5/14/10 4:21 5/27/11 5:11,12 508,250 40:23 55 6:10,12 56 6:13 567-8658 1:23 5757 38:20 58 6:14 59 4:5 59,000 49:17 55:11 5:00 64:4 5th 43:22 44:1
1 1 3:7 19:5 37:24 37:25 45:13 49:18 1/8/14 6:11 10 4:11 41:18 46:3 48:12 10/27/11 5:14 100 26:23 105 58:25 10th 30:5 11 17:16 35:16 11/14/13 6:7 110 3:10 116 63:18 116.3116 61:18 11th 17:11 12 39:9 50:7 12/16/10 5:10 12th 11:7 13 4:13 39:25 42:24 49:15 13th 59:14	1	3 41:4 43:23,23,25 3,554 25:6 3,806 30:6 30 1:17 4:10 8:17 19:3 24:22 31:11 31:13 66:20 306,000 57:9 30th 59:23 32 5:10 33 5:11 34 5:12,13 35 5:15 37 5:16 39 5:18	6 6 1:17 4:10 8:17 21:18 6,448 35:18 37:4 39:4 6,631.41. 41:17 6/13/14 6:9 6/21/08 4:19

6/3/13 5:24 60,536.80. 55:9	absent 30:10 accept 62:22 63:12	12:16 14:9 18:10 22:4,10,13 24:1,2	40:11 47:16 49:16 58:5 60:14,17
7	accepted 54:2 account 21:2,5 24:8,15 25:4 52:25	24:22,24 25:9,13 26:21 28:5 29:5 29:21 30:9 35:5 38:21 41:8 45:20 49:20 50:13 53:7 55:8 56:3,8 58:6 58:11,13,17 60:21 61:15,21,25 62:4 62:12,24 63:11,15 65:5,9	appraisal 6:13 56:24 appraiser 57:6 appropriate 35:6 approve 30:8 approved 30:1,4 april 16:21 17:11 17:16,17 19:3 20:7,8 area 62:3
7 4:4,9 8:14 7/1/13 6:4 702 3:5,11 7625 3:10 796-4000 3:5 7th 15:1	accounting 13:6,9 accrued 37:13 accurate 61:14 action 65:6 66:16 66:17 actual 31:15 49:4 ad 50:21 addition 21:8 additional 55:12 address 12:13 16:22,23 26:21 45:3,5,7 51:18 60:14,16,18 64:1 addressed 60:11 addresses 12:21 13:3,4 47:22 admittedly 43:6 43:12 admonitions 7:13 7:17 advise 61:9 affidavit 6:14 affix 65:6 agent 43:20 ago 20:24 51:9 agree 28:3,23 ahead 10:17 aileen 4:16 ak 36:11 al 1:12 2:12 alessi 1:3,17,18 2:3,17 4:2,10,20 5:4,19 6:12,14 7:1 8:10,14,18 9:7 11:21,22 12:9,16	american 4:21 18:8 21:16,18,20 amount 14:15 15:9,10 16:5,7 24:4 25:7 27:17 28:20,21 32:13 35:18 37:4,8 38:13 39:3 40:22 41:16 47:1 48:15 48:23 49:7,17 50:23 51:17 52:14 54:3 55:10,13 amounts 27:10 49:24 answer 6:18 11:5 12:12 46:15 answering 26:20 anybody 15:22 32:7,24 35:22 47:5 aol.com 6:10 apn 51:16 apparently 23:7 appear 28:14 36:7 37:5 43:7 56:8 appears 21:14,17 27:9 28:7,19 29:19,23 31:7 35:14 37:19 38:2	assess 40:11 47:16 49:16 58:5 60:14,17 assessment 6:13 56:24 assessments 57:6 assessments 35:6 assessments 30:8 assessments 30:1,4 assessments 16:21 17:11 17:16,17 19:3 20:7,8 assessments 62:3 ascertain 12:21 16:6 18:12 aside 58:1 asked 48:21 assessed 37:9 56:7 assessment 4:14 5:15 14:25 15:23 17:2 20:22 27:10 27:25 28:9 35:15 36:3,23 38:3 39:11,14 40:1 assessments 5:7 5:17 15:16 27:14 27:17 28:15,21 29:8 37:7,13 39:7 39:12 61:23 62:24 63:7 assigning 34:22 45:13 assignment 5:13 6:4 34:21 40:25 43:19 44:12,14,25 45:12 assignments 14:19 47:25 52:13 assist 10:14 assistant 17:25 association 1:9 2:9 4:12,19 5:22,24
8			
8 22:5,19 47:3 48:17 49:16,23 54:1 55:5 57:1,8 8,000 47:6 8,017.11 47:1 48:15 8/13/12 5:15,19 800 1:23 89074 3:5 89139 3:11 8th 60:6			
9			
9 22:13,18 28:15 33:6 9/11/12 5:22 9/11/2 6:6 9/30/10 5:5 9/7/17 6:15 9/8/10 4:23 9500 26:22 957 15:9 9th 59:13			
a			
aa 6:10 55:1,5 able 15:24 32:8,17 32:21 33:1 35:22 46:15 47:6,11 absence 25:22			

<p>9:10,12,15 18:24 30:4,7 31:4 34:24 62:22 63:1,5,15 assume 11:13 46:25 assuming 28:5 47:24 attach 42:16 attached 24:9,15 41:17 44:6 53:11 attempt 28:17 attempted 52:13 60:22 attempting 28:7 28:19 63:6 attend 49:25 attention 19:19 30:15 attorney 8:6,8,16 43:3 48:13 66:17 attorney's 15:11 15:14 35:19 atypical 13:23 audit 15:20 august 39:25 authenticate 58:16 author 28:25 authorization 5:8 29:20 30:12 authorize 31:4 authorized 30:20 aware 43:15</p>	<p>41:22 50:21 52:1 52:4,16 balance 15:15 17:4 38:7,18 bank 1:8 2:8 11:25 34:24 41:1 42:4 43:9,14,20 44:3,15 44:17,18 45:3 47:18 48:4 bank's 42:8 banking 1:9 2:9 bankruptcy 58:11 based 12:2 22:12 25:18 28:8,21 33:10 47:16 50:4 50:5 53:16 56:7 61:23 62:10,17 basically 52:16 61:15 basis 57:10 bates 6:10 51:3 55:6,18 bauer 4:22 22:10 22:14,23 23:2,12 23:15,18,22 24:2,3 24:22,24 25:8 26:13,14 27:18 28:1,6 52:3,11,25 53:4,7 54:13,15 60:11,16,22 61:1 61:16 62:5 63:13 bb 6:12 55:24 56:2 beginning 20:25 30:25 50:8 behalf 2:18 10:4 55:21 believe 8:9 9:11 10:12 11:1 25:24 51:7 54:12 58:7 believing 22:21</p>	<p>beneficiary 35:6 bergstrom 4:23 22:10,14 60:12,16 60:23 best 19:6 20:19 36:21 38:1 better 22:8 beyond 12:23 bid 50:18,20,23 51:17 55:10 bidder 50:17,23 bidders 49:24 50:10,15,25 bidding 49:24 50:24 bit 11:11 19:23 21:4,6 39:23 board 9:15,16,19 30:20,21 bottom 20:17 43:1 48:13 break 15:10 32:17 47:6 48:23 breakdown 24:14 52:25 60:10 broken 35:19 business 62:8 butte 27:2 35:17 37:22 57:8</p>	<p>capture 11:23 care 37:21 carried 37:8 38:24 carry 49:5 carryover 37:5 case 1:5 2:5 cases 24:1 cash 54:11,14 cashed 30:4,6 53:8 53:20 54:12 61:4 62:16 cashier's 29:5 causing 63:14 cc 6:13 56:21,24 cc&rs 15:5 ccr 1:24 2:21 66:23 certain 41:25 certainly 21:1 32:24 36:18 56:19 certificate 58:6,16 65:1 66:1 certified 17:12,13 17:14 41:19 46:23 66:2 certify 65:5 66:4 66:15 cetera 15:12 56:4 change 36:24 47:6 changed 38:5 chapter 8:14 charged 19:15,24 56:10 charges 56:6 check 24:24 25:8 25:17,19,20,23,25 26:1,17 28:1,14 29:5 30:4,5 52:4 53:13,22 54:13 55:8,21 62:16</p>
b		c	
<p>b 1:17 4:10,11 8:17 10:22 11:1 11:11 17:7 20:6 20:17 22:8 23:8 30:17 36:8 59:7,9 60:2 back 12:25 17:8 21:19 23:11 30:14</p>		<p>c 1:5 2:5 3:1,3 4:13 13:12,16 34:24 california 8:8 16:24 call 17:6 31:2,18 46:7 called 40:10 calling 26:8 51:14 calls 57:16 captioned 41:4</p>	

checks 54:15 55:7 55:13 chronologically 29:23 claim 1:14 2:14 claimed 25:7 clark 1:2 2:2 client 30:11,24 31:12 61:9 63:15 clients 61:6 close 21:5 collect 63:7 collection 8:21 10:3 13:19 14:8 14:11 15:11,11,14 15:15 18:10 22:16 25:1 34:1,14,15 35:1,3,19,20 36:11 56:16 58:14,17,20 colorado 45:4,6 47:18 colors 10:20 come 12:9 comfortable 26:20 54:10 coming 21:16 commencing 2:20 common 51:17 communicate 60:9 communicated 24:2 communication 10:15 23:11,15 24:3 52:4,16 communications 10:9 11:25 22:9 community 9:12 companies 21:22 company 1:10 2:10 4:21 9:19,25 10:4 13:1 15:19	15:19 18:8 21:17 21:18 32:25 40:16 43:20 44:19,25 54:9 company's 38:22 compare 22:7,18 41:24 completed 56:25 component 32:18 47:7 48:23 computer 11:15 computes 27:25 concede 53:18 conclude 5:8 29:20 concluded 64:3 conclusively 25:24 condition 63:13 conduct 5:9 29:21 conference 50:1,8 confused 22:20 confusing 61:12 connection 44:18 52:14 53:23 56:5 58:10 considering 62:14 cont'd 5:1 6:1 contact 9:18 10:2 11:6 21:4 contacted 8:23 contacting 23:18 contained 8:3 contemporaneous 31:20 continues 37:25 63:4 continuing 27:11 contrary 43:16 conversation 42:16	copies 55:7 58:13 copper 4:11 copy 13:21 14:5,6 14:7,10,24 17:12 25:17,19,23 26:18 34:25 42:11 53:14 63:23 correct 7:16 8:7,8 10:4 15:13 18:17 20:4 21:9,10,24,25 22:21 23:10 25:9 27:1,12 31:22 32:15 33:4 35:7,9 35:20 36:1 37:2 38:15 40:4,16,20 40:23 41:1,6,10,20 43:9 44:10,15 45:21 47:1,2,4 48:6,15 49:1,10,18 52:5,9,10 55:14,19 55:22 58:10,22 59:18,21,24,25 60:3,12 61:19 62:7 corrected 65:6 correctly 9:11 11:2 29:14 37:6 63:9 correspond 59:12 costs 6:12 15:12 15:15 32:14 35:20 38:22,23 39:7,13 56:4 counsel 8:6,13 58:12 counterclaim 1:14 2:14 counting 45:18 countrywide 18:16 21:24	county 1:2 2:2 couple 23:6 24:12 52:12 53:3 55:7 course 41:3 court 1:1 2:1 10:19 61:4 cover 17:1 27:16 cox 3:3 cox.com 3:6 cry 51:16 culminated 53:24 curious 37:4 current 12:18,21 52:12 custodian 58:6,15 cut 30:5 cynthia 1:24 2:21 66:2,23
d			
d 4:1,14 5:1 6:1 14:22,24 15:3,23 20:3 39:14 date 16:9,10 17:5 22:18,23 29:22 31:20 33:6,8 35:18 39:3 41:25 42:13 45:23 46:4 46:5,7,8,8 48:17 56:14,25 66:18 dated 16:21 22:5 24:21 39:25 42:2 46:21 48:12 55:5 59:22 60:6 66:20 dates 17:16,24 19:8 22:20 26:10 31:8 43:1,6 59:11 david 1:18 2:17 4:2 6:14 7:1,8,24 10:25 13:15 15:3 16:20 18:6,22 21:14 22:4 24:21			

27:8 29:19 32:4 33:19 34:6,20 35:13 37:18 39:19 40:9 41:15 42:21 45:11 46:20 48:10 49:14 55:4 56:2 57:15 65:5,9 day 22:19 41:18 49:23 50:3 51:1 51:13 days 17:18 31:11 31:13 45:18 51:7 dba 1:11 2:11 dd 6:14 58:2,5 dean 3:10 debate 62:1 december 8:15 32:6 46:3 48:12 declare 65:5 deed 4:13 5:11,12 5:13 6:4,8 13:16 13:21 14:5,10,20 18:16 21:23 33:9 33:19 34:7,22,23 35:7 36:15 37:11 37:14 39:5 40:22 43:19 44:14,23,25 45:13,14 49:14 deeds 41:4 47:25 default 4:18 5:21 5:23 18:14,23 19:1,3,4,10,16 20:7,8,12,15,20 21:7 27:18 41:16 41:18,24 42:1,3,23 43:5,13,13,22 44:1 44:3,7 45:7,19,20 45:25 48:3 defendant 2:18 3:2,7	defendant's 7:20 defendants 1:13 2:13 defer 28:24 delinquency 47:1 delinquent 4:14 5:15 14:25 15:16 15:23 17:2,4 20:21 29:8 32:13 35:15 36:3 37:7 38:13 39:11 40:1 48:14,23 63:8 delivered 17:8 demand 24:7 department 51:5 depends 54:8 depo 8:25 deponent 65:1,5,9 deposition 1:16 2:17 4:9 7:11,11 7:25 8:21,25 13:16 18:7 22:17 34:21 37:19 45:12 48:11 61:11 64:3 65:6,7 depositions 8:23 23:7 24:12 25:18 53:3,16 54:12 dept 1:5 2:5 description 4:8 5:3 6:3 11:16 designee 8:18 determine 15:24 18:14 32:8 35:23 47:11 49:8 determined 28:20 61:5 difference 19:6 38:16 different 18:25 19:8 31:8 42:22	43:1,6 57:20 64:1 direction 30:11 66:11 directors 30:20 disagreeing 61:18 discussed 53:13 discussing 30:2 57:7 discussion 42:16 disposal 1:11 2:11 dispute 57:13,15 62:4 district 1:1 2:1 document 8:1 10:13 16:4,6 17:15 18:12 21:15 23:4,6,19 24:25 28:24,25 33:23 34:11 35:1,2,4 38:11 40:9 42:17 45:24 48:21 50:18 57:3 59:24 60:1 documented 50:14 documents 12:11 14:4 18:25 19:7 20:12 32:25 47:17 51:11,12 52:3 56:7 58:19 dollar 19:7 28:9 38:10 50:20 55:12 domestic 1:11 2:11 dozen 50:2 drafted 17:23 60:8 drawing 30:15 drive 3:10 45:4,6 dropbox 14:4 58:14 due 15:9 16:5 17:4 17:5,5 35:18 39:3 41:16	dugan 56:25 dugan's 57:6 duly 7:2 66:8 durivage 1:24 2:21 66:2,23
			e
			e 3:1,1 4:1,16 5:1 6:1 8:24 16:17,20 17:8,12,17 23:8 earlier 22:19 36:16 52:21 59:10 61:1 early 27:11 31:8 52:15 easy 51:16 ebon 3:9 effect 11:8 61:5 effective 18:9 21:18 40:18 56:25 effort 19:22 54:17 efforts 36:11 either 13:1,24 25:17,18 33:2 39:7 42:9 62:4 election 4:18 5:21 5:23 18:23 electronic 63:25 email 6:10 50:17 55:5,11 64:1 employee 66:16 employees 11:19 enclosed 17:3 29:4 encumbrances 18:13 ensure 14:20 entering 18:1 entire 50:24 entities 40:13 41:19 46:24 entity 1:12 2:12

entries 11:19 13:8 17:23 59:16 entry 11:7,15 17:10 31:3,7,11,17 31:18 36:9 59:13 equal 28:14 escrow 57:20 especially 20:24 30:25 62:5 esq 3:3,9 estate 5:20 40:10 41:23 42:1 43:8 estimate 50:2 estimates 32:21 et 1:12 2:12 15:12 56:4 event 18:1 events 11:23 evidence 25:11 28:12 42:6 43:15 44:6 52:19 54:6 54:20 62:9 exact 14:6,6 32:21 examination 4:3 7:6 59:4 examined 7:4 exhibit 7:20,21,25 10:20,22 11:1,11 13:12,16 14:22,24 15:3,23 16:17,20 17:7,8,12,17 18:3 18:7,15,19,22 20:3 20:6,14,17 21:11 21:14,23 22:1,4,8 22:19,22 24:5,6,8 24:11,16,18,21 25:5,14 26:6 27:1 27:5,9 28:18 29:16,19 30:17 31:19 32:1,4,7,14 33:16,19 34:3,7,17	34:21,24 35:10,14 36:8,23 37:15,19 38:7,11,17,17,19 38:20 39:2,12,14 39:16,20 40:6,9 41:12,15,22 42:9 42:18,22 43:8,12 43:24,25 44:2,6,8 44:13 45:1,8,12 46:16,20 48:7,11 48:22 49:2,8,11,14 52:17,22 53:11 55:1,24 56:2,21,24 58:2,5 59:18,22 60:2,2,5,15,18,24 62:8,11,13,15,18 exhibits 4:7 5:2 6:2 59:6 expect 25:16 53:17 expenses 32:14 63:2 expert 57:17 explains 55:11 extent 58:20	feel 54:9 fees 6:12 15:11,12 15:14,15 21:2 35:20 38:21,22 39:6,12 56:4 63:2 felt 60:10 fifth 59:13 figures 19:7 38:17 file 8:22 10:10 11:14,24 12:3,14 13:19 14:1,8,11 18:11 19:17,17 22:17 25:1,19,19 25:23 30:24 31:12 34:1,14,15 35:1,3 46:11 56:16 58:21 filed 8:14 files 8:25 30:25 58:14,17 filing 58:11 filler 31:2,18 financial 55:6 financially 66:15 find 29:4 finlay 57:1 firm 9:15 11:20 first 4:21 7:2 9:22 15:4 19:1 20:3,11 20:17 21:17 24:11 39:13 42:24 43:2 46:6,25 51:25 five 9:3 flamingo 26:22 fluid 50:19 follows 7:4 foreclose 15:25 foreclosed 38:25 foreclosing 13:22 32:9 foreclosure 5:8 9:8 11:24 13:7	20:23 29:20 41:10 49:25 51:25 52:7 53:23 56:5 57:22 foregoing 65:5 66:5,7,11 foreign 1:10 2:10 form 12:19 14:12 15:17 16:2,14 17:19 19:12 22:25 23:16 25:10,15 26:9 27:20 28:2 28:11,22 29:12 31:23 32:10,19 33:3 35:8,25 36:5 37:1,10 42:5,10 43:17 44:9,20 47:8,13 48:5,25 49:9 51:21 52:18 53:9 54:4,19 56:11 57:16 63:17 forth 11:16 23:11 32:14,25 50:21 52:4 62:18 66:6 forthcoming 11:10 forward 19:21 30:10 31:5 63:19 forwarded 25:8 four 17:18 fourth 59:13 front 7:24 10:25 12:11 18:6 20:13 27:8 33:9 full 25:7 50:2,9 function 40:12 further 63:4,21 66:15 futile 54:17,23
	f		
	f 4:17 18:3,7,15 facilitated 23:17 fact 25:6 39:2 facts 25:10 28:11 42:5 52:18 54:6 54:19 failed 26:2,17 fairly 50:2 far 12:14 fast 50:19 favor 18:16 21:24 february 40:18 42:2 fee 15:19,20 55:14 55:17 56:9		
			g
			g 3:9 4:18 18:19 18:22 20:14

<p>gary 3:3 7:8 general 52:24 generally 9:14 10:15 13:3,5 24:7 24:13 generated 11:18 21:17 24:5 63:3 george 6:10 51:3 51:11 55:6,18 gerrard 3:3,6 gilbert 3:9 give 32:20,21 given 51:13 66:12 gmilne 3:6 go 10:17 21:19 23:14 30:14 31:15 33:7 41:22 48:19 52:2 going 7:19 11:13 19:18 20:23 46:25 59:6 good 8:4 gotera 1:6 2:6 4:16 5:6 10:7 12:4 16:21 33:21 36:13 37:8 government 1:12 2:12 grant 5:11,12 33:19 34:7 41:4 great 27:23 guarantee 4:17 18:8 21:15 40:12 guess 30:14,14 39:10</p>	<p>42:21 45:11 48:10 55:4 handled 9:22 handwritten 51:6 happen 9:21 harm 63:14,17 heads 36:22 heard 30:7 held 49:20 help 10:14 19:9 38:16 41:9 42:15 helps 18:12,13 henderson 1:19 2:19 3:5 hire 9:17 hired 9:9 hoa 9:8,16,19,20 10:4 13:2 15:25 27:10 28:9 29:9 30:1 32:8 37:21 56:3 57:21 58:12 hoa's 13:22 holder 44:22 home 18:16 homeowner 10:6 10:15 11:6,9 12:1 12:18 17:4 19:20 20:21 21:4,8 homeowners 4:11 4:19 5:21,23 9:9 18:24 39:8 hoping 19:9 hundred 23:7 41:25 hundreds 7:14 53:3</p>	<p>i idea 9:23 identification 7:22 10:23 13:13 14:23 16:18 18:4,20 21:12 22:2 24:19 27:6 29:17 32:2 33:17 34:4,18 35:11 37:16 39:17 40:7 41:13 42:19 45:9 46:17 48:8 49:12 55:2,25 56:22 58:3 identified 9:5 22:11 42:8 55:18 identifies 43:9 identifying 40:13 41:18 imagine 17:22 immediately 7:10 54:13 important 35:5 improper 52:19 54:5,20 inasmuch 26:11 include 14:4 46:22 included 39:12 includes 24:23 55:7 62:23 including 32:13 58:19 indicate 12:14 38:12 indicated 15:5 indicates 35:17 57:6 indicating 49:15 individual 1:6,7 2:6,7 9:5 individuals 46:24</p>	<p>industry 62:6 information 6:22 12:18 14:14 15:4 22:23 36:9,10 informing 17:3 initial 51:25 inquiry 13:1 instances 31:14 instructed 6:18 instrument 33:20 34:8 insurance 4:21 21:22 57:21 intent 15:19 interest 40:13 interested 66:16 interpret 28:25 interpretation 61:16 investments 3:7 49:17 55:22 investors 50:3,20 invoice 56:2 involved 9:8 58:12 involving 53:3 ish 52:1 issue 20:10 53:4 items 56:6</p>
<p>h h 4:20 21:11,14,23 hand 7:19 10:17 handed 13:15 18:22 34:6,20 35:13 37:18 39:19</p>	<p>hypothetical 28:12 52:19 54:5 54:20</p>		<p>j j 5:4 8:24 24:18,21 25:14 27:1 28:18 53:11 59:7,22 60:2,15,24 62:8,13 62:15 janette 8:16 january 27:11 30:5 32:5 33:11 38:14 47:3 48:17 49:15,16,23 53:25 54:1 55:5 57:1,8</p>

jason 3:9,12 57:11 jbwno 1:7 2:7 33:22 34:9 job 1:25 jona 8:24 jordal 1:7 2:7 judicial 5:8 july 18:9 19:2,5 20:15 42:25 43:3 43:22 44:1,8 45:19,25 jump 7:17 june 20:6,17 37:24 37:25 42:24 43:2 jung 5:4	42:13 45:23 47:22 49:4 50:7,10,18 51:3 53:18 54:22 56:14,18 57:12,23 knowing 26:15 knowledge 49:22 koenig 1:3,17 2:3 4:10,20 5:4,19 6:12 8:10,14,18 9:7 11:21,22 12:9 12:16,17 14:10 22:5,10,13 24:2,3 24:23,24 25:9,13 26:21 28:6 29:6 29:21 35:5 38:21 41:8 45:21 49:20 50:13 53:7 55:8 56:3,9 58:6,17 61:16,21 62:1,4,12 62:24 63:15 koenig's 18:10 30:9 58:11,14 60:21 63:11 kristin 1:7 2:7 krohn 8:15	lays 61:7 lead 25:24 ledger 13:4,6,9 24:9,15 27:9 37:20,24 53:1 left 62:25 legal 1:22 17:24 lender 21:9 52:12 lenders 48:3 lepoma 8:24 letter 4:8,16,20,22 5:3,4,6,16,18 6:3 16:25 17:1,2 22:4 22:11,16,24 23:1,9 23:14 24:5,21 26:6,11,13,14,16 28:6,18 39:24 52:22 53:2 54:9 60:5,7,11,20 61:11 61:14,15 62:2 letterhead 22:5 29:22 37:21 60:17 letters 16:20 27:18 level 37:21 levied 21:2 liability 1:10 2:10 lien 4:15,19 5:15 5:22,24 13:22 14:25 15:19,23 16:1,4,11 17:1,2 17:11,22,25 18:24 19:11 20:1,3 27:17 28:8 32:9 35:15 36:4,23 39:11,14,22 40:1 47:12 51:20 61:22 62:25 likewise 54:1 limited 1:10 2:10 61:22	line 22:6 linger 31:1 listed 60:23 listing 5:20 40:10 41:23 42:1 43:8 46:23 litigation 7:9 8:11 58:13 little 11:11 19:23 21:4,6 22:20 39:23 littleton 45:4,5 live 12:10 lived 12:4 living 1:8 2:8 33:22 34:10 llc 1:3,9 2:3,9,18 3:2,8 4:10,20 8:10 29:6 45:14 49:18 loans 18:16 log 50:22 lone 47:18 long 9:2 20:24 look 19:15,23 21:3 22:18 39:2 41:22 59:11 60:5 looked 36:15 looking 14:19 15:3 15:23 29:2 30:24 31:12 32:7 36:8 38:17 43:11,18 56:6 57:11 59:6 59:12 looks 11:6 16:9 20:5,9 22:12 33:10 39:20,22 45:17 48:1 56:2 lost 63:6 lump 47:9
k			
k 1:24 2:21 5:4,6 23:8 27:5,9 66:2 66:23 kaboodle 39:13 keep 38:3 50:22 51:1 kerbow 4:23 23:8 26:7 52:22 60:6,8 62:11 kgelegal.com 3:12 kim 3:9 kind 22:7 39:20,22 48:1 kit 39:13 knew 31:12 know 7:10 8:12 9:7,21,24,25 10:1 10:6,11,19 12:4 13:23 14:5 15:7 15:25 16:9 19:13 19:14 20:10 21:21 23:8 25:13,16 26:4,20 31:21 33:25 34:25 35:5 36:6,14 37:6	l 5:8 8:24 29:16,19 31:19 43:4 l.l.c. 1:17 5:4 laid 62:11 63:13 lam 43:4 48:13 language 11:2 29:10 54:8 61:3 larsen 3:3 las 3:11 16:22 lastly 58:5 late 15:12,15 31:8 31:21 52:15 law 11:20 27:23 lay 28:12 52:19 54:5,21		

m	45:8,11 46:16,20 48:7,10 49:11 55:1,5,24 56:21 58:2	meeting 9:16 30:22	monthly 27:14,24
m 5:10 8:24 32:1,4 32:7,14 38:11,17 38:20 43:4	55:1,5,24 56:21 58:2	memo 54:9	months 27:25 28:14 29:7 31:1 31:14 39:9 45:18 45:19 61:23
machine 66:9	marsh 27:2 35:17 37:22 57:8	middle 29:3	moore 1:6 2:6 4:12 5:17,18 34:10 36:13 37:22 39:25 41:5
madam 10:19	martin 3:10	miles 4:22 22:10 22:14,23 23:2,12 23:15,18,21 24:2,3 24:14,22,23 25:8 26:13,14 27:18 28:1,6 52:3,11,25 53:4,7 54:13,15 60:11,16,22 61:1 61:16 62:4 63:13	mortgage 1:9 2:9 2:18 3:2 7:9 45:14 47:19
magnolia 1:6 2:6 4:16 5:6 10:7 12:4 16:21 33:21 36:13	martinez 3:9 4:5 12:19 14:12 15:17 16:2,14 17:19 19:12 22:25 23:16 25:10,15 26:9 27:20 28:2,11,22 29:12 31:23 32:10 32:19 33:3 35:8 35:25 36:5 37:1 37:10 42:5,10 43:17 44:9,20 47:8,13 48:5,25 49:2,9 51:21 52:18 53:9,12 54:4,19 56:11 57:12,16 58:25 59:5 63:21,25	milne 3:3 4:4 7:7,8 7:23 10:17,24 12:22 13:14 14:16 15:2,21 16:8,19 18:5,21 20:2 21:13 22:3 23:13 23:23 24:20 25:12 26:5,12 27:7,22 28:4,16 29:1,13,18 32:3,12,23 33:5,18 34:5,19 35:12 36:2,17 37:3,17 39:18 40:8 41:14 42:7,12,15,20 44:4 44:11 45:2,10 46:18 47:10,15 48:9 49:6,13 51:23 53:5,10,21 54:16 55:3 56:1 56:13,19,23 57:14 57:25 58:4	move 30:10 31:5 moving 19:21 63:18
mail 14:14,21 17:12,13,14 18:14 41:19 46:23	29:12 31:23 32:10 32:19 33:3 35:8 35:25 36:5 37:1 37:10 42:5,10 43:17 44:9,20 47:8,13 48:5,25 49:2,9 51:21 52:18 53:9,12 54:4,19 56:11 57:12,16 58:25 59:5 63:21,25	month 28:9,21 30:24 38:3	mortgage 1:9 2:9 2:18 3:2 7:9 45:14 47:19
mailed 21:8,9 35:6 42:4 43:13 44:22 45:7,20 47:18 48:2,3	match 60:17		motion 9:16
mailing 12:18,25 13:3 17:9,13,25 44:3,6	mathematician 27:24		mountain 5:6,16 9:12,13,22,24 27:10 30:6 37:20 56:3
mailings 12:13 19:25 20:11 41:18 43:21 44:1,2 46:13,22	matter 7:12 8:13 9:22 51:24		move 30:10 31:5 moving 19:21 63:18
main 9:18	matters 8:3		multiple 6:12 19:15 20:20 21:21
making 12:17	maximum 29:7 55:6		n
management 9:19 9:25 10:3 13:1 15:18,19 32:25 37:22 38:22	maximumfinanc... 6:10		n 3:1 4:1 5:1,11 6:1 8:24 33:16,19
march 33:6	meadows 45:4,6		n.a. 1:8 2:8
mark 7:19	mean 25:13 28:17 28:18,23 31:3 61:8		name 7:8 42:8 66:19
marked 7:21,25 10:22 11:1 13:12 13:15 14:22 16:17 18:3,7,19 21:11 22:1 24:18 27:5,9 29:16 32:1 33:16 34:3,6,17,20 35:10 35:13 37:15,18 39:16,19 40:6,9 41:12 42:18,21	means 58:12 meant 11:22		named 8:10
			national 1:9 2:9 34:24
			nationstar 1:9 2:9 2:18 3:2 7:9 45:14 47:19
			nauseum 50:21
			near 38:8
			necessarily 31:3
			necessitated 36:24
			need 7:16 19:10 58:9 63:23

<p>neither 66:15 nevada 1:2,19 2:2 2:19 3:5,11 66:3 never 30:7 32:24 51:8 new 35:14 36:8,10 36:12,14,22,23 37:9,12 38:24 39:6,21,24 40:2 52:8 nine 27:25 28:14 29:7 61:23 nod 42:14 nods 44:22 non 5:8 nonjudicial 29:20 nora 55:8 north 18:8 21:16 21:19 note 19:25 23:3 26:3,18 36:12 noted 10:16 18:17 23:9 33:6 notes 50:16 notice 4:9,14,18 5:10,15,21,23 6:5 6:7 8:5 14:25 15:3 15:10,22 16:10 17:2 18:14,23 19:1,3,4,10,11,16 19:24 20:6,7,12,15 21:1,7 27:17,18 32:4 35:15 36:3 36:12,14 38:12,19 39:11,13,21 40:1 41:16,18,24 42:1,3 43:12,13,22 44:1,2 44:7 45:7,19,20,25 46:1,6,13,20,22 47:5,17 48:2,3,11 48:21,22</p>	<p>notices 11:25 14:14,21 19:19,25 20:1,20 35:6 42:22 43:5 nots 46:22 november 13:17 34:22 48:14 nrcp 4:10 nrs 61:18 63:18 number 14:1 17:13,14 49:24 50:5 51:17 numbers 32:22</p> <p>o</p> <p>o 5:12 8:24,24 23:8 34:3,7 43:24 object 15:17 objection 12:19 14:12 16:2,14 17:19 19:12 22:25 23:16 25:10,15 26:9 27:20 28:2 28:11,22 29:12 31:23 32:10,19 33:3 35:8,25 36:5 37:1,10 42:5,10 43:17 44:9,20 47:8,13 48:5,25 49:9 51:21 52:18 53:9,12 54:4,19 56:11 57:16 observation 40:11 obtain 13:5,21 14:14 58:13 obtained 14:4,7 45:24 58:20 obviate 37:12 39:5 obviously 62:2,12 occasions 14:2 october 11:7 27:12 45:13</p>	<p>offer 62:23 office 7:12 10:9 23:2,11,18 26:2,17 offsite 12:13 13:4 oftentimes 13:24 oh 38:21 49:5 okay 23:25 24:10 31:19 43:25 44:5 49:5 57:25 59:8 old 19:17 ones 63:13 online 13:24 opening 51:17 opinion 57:7,17 order 29:23 42:17 outlier 24:6 52:23 owed 14:15 60:10 61:3 owned 37:8 owner 36:13 37:9 38:8,18,25 39:24 52:8 63:8 owner's 37:12 39:6 ownership 36:8,10 36:24</p> <p>p</p> <p>p 3:1,1 5:13 8:24 34:17,21 44:13 45:1 p.m. 2:20 64:4 page 4:3,8 5:3 6:3 18:15 19:1,2,4 20:14,17 24:8,11 24:15,16,23 25:4 29:2 36:8 40:25 41:4,19 42:9,24 43:23,23,25 57:6 58:7 59:11 pages 6:12</p>	<p>paid 55:12 paragraph 15:4 62:21 parenthesis 20:9 park 45:4,6 parkway 2:19 3:4 part 18:1 23:10 33:25 38:25 44:6 44:8 53:11 54:18 partial 22:6 23:20 26:8 52:17 63:12 particular 43:23 51:24 particulars 49:23 parties 14:21 parts 32:18 47:7 48:24 party 1:14 2:14 3:7 66:17 passed 51:4 pay 20:21 37:13 39:6 payable 24:24 25:9 55:8 payment 11:9 23:20,21 26:8 53:19 61:2,4,5 63:12 payments 12:1,1 22:6 52:17 60:22 payoff 22:14,23 24:14 25:7 pearson 8:16 pending 15:5 people 50:7 percent 41:25 peremptorily 23:14 perfectly 59:12 period 27:16 31:21 38:3</p>
---	--	---	---

person 16:5 pertain 44:7 pertinent 11:23 pieces 58:13 place 14:13 33:11 66:6 plaintiff 1:4 2:4 8:10 please 63:25 pocket 63:2 point 9:2,18 12:9 54:23 policies 62:19 policy 30:9,9 52:24 54:14 pool 3:7 49:18 portion 35:23 47:12 position 60:9,21 61:1,7,13,18,22 62:1,11,12,17 63:11 possibility 26:1 possible 26:6,16 possibly 63:17 potential 60:22 63:14,18 potentially 59:17 59:19 predates 26:11 preparation 22:17 46:12 prepared 8:2 11:12,12 57:1 preparing 8:20 pretty 50:18 51:16 62:5 previously 34:23 55:19 print 13:25	prior 7:10 25:18 37:13 38:8,18 39:6 53:16 61:11 66:8 priority 16:1,3,6 24:4 28:8,20 32:9 35:23 47:12 49:7 51:20 52:14 54:2 61:22 probably 7:14 9:3 procedures 49:23 62:19 proceed 36:11 41:9 proceeding 30:1 proceedings 66:5 66:7,9 process 10:3 13:7 13:22 17:25 18:1 20:25 30:25 39:22 50:19,24 51:16,25 52:8 53:23 produced 10:13 34:16 35:3 58:10 production 10:13 25:20 program 26:3 prompt 20:21 properly 9:16 properties 19:21 39:9 property 6:13 12:5,5 14:15 16:23 18:13 27:2 33:7,21 34:9 35:16 36:18,25 37:8,9,21,23 40:14 41:5 49:16 50:11 52:9 56:24 57:7 57:19,21,24	prosecute 41:9 protocol 52:24 provide 40:11 60:10 provided 7:14 56:9 providing 39:25 pub 46:7 public 12:20 47:24 publication 46:5,6 purchased 57:20 57:21 purports 15:10 33:20 34:8 purpose 60:7 put 36:22	reading 16:6 28:18 66:13 real 5:20 6:13 40:10 41:23 42:1 43:8 56:24 really 19:18 reason 21:19 recalling 9:11 55:10 receipt 23:15,21 26:7 55:8 receipts 41:20 46:23 receive 24:3 25:25 received 12:1 15:22 22:14,22 23:1 25:14 28:6 28:13 32:8 36:7,9 36:11 41:9 52:15 53:19,22 62:10,15 receiving 35:22 47:5 recess 54:24 recipient 22:11 33:1 recognizes 61:16 recollection 20:19 recon 43:19 44:19 44:24 record 17:7 66:8 66:12 recordation 17:11 recorded 13:17 14:25 15:4 19:2,3 19:4 21:1 32:5 33:19 34:7,22 35:16 42:11,24,25 43:6,7,22 44:1,7 45:13,17,25 46:3 46:21 48:12,21 49:3,15
		q	
		qualify 50:15 qualifying 50:25 question 11:5 12:12 31:24 44:17 questions 6:18 48:20 59:1 60:4 63:22 quitclaim 36:15 37:11,14 39:5 quitclaiming 39:8 quorumed 9:16 quote 29:3	
		r	
		r 3:1 5:16 23:8 37:15,19 38:7,17 38:19 56:25 raise 50:20 ranch 5:6,17 9:12 27:10 30:6 37:21 rate 28:5 read 29:14 38:1 63:9 65:6	

recording 11:24 16:9 20:10 55:14 55:17 recordings 20:11 records 12:21 13:11 47:24 58:6 58:15 59:24 60:15 62:9 recoverable 29:9 reference 25:3,20 25:22 27:1 44:24 60:1 referenced 11:4 20:7 32:14 56:15 references 20:1 23:19 25:6 referencing 20:5 44:13 reflect 43:25 reflected 13:4 20:16 23:12 reflecting 5:7,17 23:21 reflects 38:7 60:21 refunded 54:13 regard 61:6 regarding 60:21 regular 17:12 regularly 19:22 rejection 22:6 23:19 52:17 related 1:14 2:14 relating 59:17 relative 51:19 66:16 relevance 57:23 relevant 11:23 remember 46:10 remitted 55:21 rental 12:5	repeat 39:20 report 4:12 5:20 10:12,16 11:2,8 17:7,17,23 18:2 20:6,16 22:8,13 23:4,5,9,12,21 25:21,23 26:3,18 30:16 31:10 33:10 36:10 40:10 41:23 42:1 43:8 53:14 56:15 59:9 62:10 reported 1:24 reporter 7:22 10:19,23 13:13 14:23 16:18 18:4 18:20 21:12 22:2 24:19 27:6 29:17 32:2 33:17 34:4 34:18 35:11 37:16 39:17 40:7 41:13 42:19 45:9 46:17 48:8 49:12 55:2 55:25 56:22 58:3 63:23 66:1,3 represent 7:8 14:3 46:1 representative 1:17 represented 8:5 8:12 represents 29:7 republic 1:10,11 2:10,11 request 22:22 24:14 requested 13:9 66:14 requesting 24:4 requests 22:14 required 30:13	requirement 16:13,15 39:6 requiring 31:5 research 12:23 resort 20:24 respond 52:24 response 24:7,13 responsibility 37:12 responsive 26:7 restrictive 54:8 61:3 result 36:15 retain 62:13 retained 51:8,12 retainer 9:14 retains 60:16 review 10:10 12:20 13:18,24 25:1 reviewed 46:11 56:8 reviewing 8:21 12:3 revocable 1:8 2:8 33:22 34:9 richardson 44:19 right 7:17,18 8:4,9 14:21 38:6 52:8 55:4 rights 63:18 road 26:22 rock 5:4 room 50:2,8 rose 2:19 3:4 ruiz 4:16 ryan 4:23 23:3,5,7 23:8 26:7,8 52:22 53:2 60:5,8 61:7 61:10,11	ryan's 60:25 s s 3:1 5:18 39:16,20 sale 4:17 5:9,10 6:5,7,8 9:8 18:8 19:18,21 20:23 21:1,15 29:21 30:2,4,8,10,19 31:4 32:5 33:6,7 33:11 38:12,19 40:12 41:10 46:1 46:6,8,9,14,21 47:3,5,17 48:2,12 48:17,19,21,22 49:15,20 51:5,15 52:2 53:24 56:14 57:22,24 sales 49:25 50:5,14 51:4,9,13 salinas 16:23 sands 4:11 saw 10:10 12:12 38:10,11 39:14 51:24 52:7,17 53:11 says 11:8 20:9 38:20 61:10,15 62:21 scan 13:25 26:2 scanned 23:5 school 27:23 scott 56:25 scribbled 50:16 script 51:14 second 17:10 19:2 25:4 29:2 34:7 35:15 39:11 40:2 40:25 42:9,25 43:2 52:7 57:6 62:21
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see 12:14 13:8,18 17:10,14 18:15 19:24 22:16 23:20 24:8,13,15 25:1,4 25:17 29:10,22 32:13 40:22,25 41:3 42:3,8 43:19 44:24 45:3,5,6,15 47:20 52:3 56:15 seeing 46:10,14 seeking 15:25 seen 8:1 12:3 14:1 14:8 23:6 24:11 24:25 32:24 33:23 34:11,23 39:21 43:11 46:13 50:16 51:8 52:12 53:2 57:3 58:19 sell 4:19 5:21,23 18:23 send 64:1 sending 52:25 sense 26:10 sent 16:20 17:11 23:2,8 26:2,17 53:7 62:13 september 22:5,13 22:18,19 24:22 26:22 30:16 35:16 59:13,14,23 60:6 62:3 servicer 44:22 services 1:11 2:11 56:4,9 set 47:3 58:1 62:18 66:6 sfr 3:7 49:17 55:22 shadow 5:6,16 9:12,13,22,24 27:10 30:5 37:20 56:3	shake 19:22 21:6 sheet 51:6 sheets 50:16 shelly 8:15 shorthand 66:3,10 show 30:23 39:3 44:3 46:19 showing 27:10,16 44:14 56:4 shown 43:23 shows 21:23 41:16 46:23,25 48:14 signature 43:1,3 48:13 58:7 65:7 66:22 signed 16:11 30:13 32:5 43:6,7 signing 66:13 silver 1:10 2:10 similarly 53:22 sir 58:18,23,24 site 61:23 sold 49:16 solutions 1:22 somewhat 35:19 sorry 33:15 37:20 38:10 39:23 61:10 sort 31:2,11,17 spanish 37:20 speaks 28:18,24 specific 10:20 29:22 30:10 60:18 specifically 31:4 38:18 61:8,17,21 61:25 64:2 speculating 54:7 54:10 speculation 52:20 54:5,20 spend 8:20	spent 9:3 spoke 11:9 st 2:19 3:4 stacy 1:6 2:6 4:12 5:17,18 34:10 36:13 37:22 39:25 41:5 standard 54:14 started 52:1,8 starts 37:24 39:22 state 1:10 2:10 66:3 statement 25:3 56:3 status 4:12 10:12 10:16 11:2,7 17:7 17:7,23 18:2 20:5 20:16 22:8,12 23:4,5,9,12,20 25:20,23 26:3,18 30:16 31:10 33:10 36:9 53:14 56:15 59:9 62:10 statute 16:13,16 61:17 step 13:6 steps 31:15 stewart 40:15 41:23 stickers 10:20 street 27:3 57:8 subject 22:6 subpoena 4:9 subscribed 66:19 substantial 63:1 substantive 11:14 subtract 15:14 success 17:9 successful 50:17 50:22,23 55:10	successive 19:10 suite 2:19 3:4,10 26:23,24,25 sum 29:6 47:9 summarize 48:1 super 16:1,3,6 24:4 28:8,20 32:9 35:23 47:12 49:7 51:20 52:14 54:2 61:22 supplied 6:22 suppose 48:20 57:3 supposed 58:16 sure 12:17 17:16 26:4 44:5 59:20 surprised 23:3 suspects 50:7 sworn 7:2 66:8
t			
t 5:20 40:6,9 41:22 43:8 take 9:2 13:6 33:11 61:6 taken 2:17 7:11 31:16 54:23,24 66:5 talk 9:4 27:2 talked 59:9,16 talking 27:19 29:24 tax 55:15 taxes 55:14 tell 11:11 17:6 19:6 30:23 tells 30:19 ten 9:3 tender 28:7,19 52:13 53:22 54:2 54:18			

terms 10:2 12:17 29:24 31:19 40:12 51:14 55:12 testified 7:4 52:21 59:23 61:1 testify 7:2 8:2 43:21 50:1 54:11 testifying 66:8 testimony 25:18 57:19 66:12 texas 44:19 thank 7:18 57:15 58:23,24 59:2 things 39:21 think 12:24 14:18 16:22 17:20 20:16 27:25 50:6 55:11 61:3 third 1:14 2:14 3:7 18:15 19:4 20:14 24:23 40:15 41:19 42:9 thought 57:25 59:17 thousands 7:15 three 16:10 18:24 33:14,15 45:18,19 62:14 time 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 times 19:16 27:24 28:15 title 4:21 18:8 21:16,18,20,21 34:9 40:15,15 41:23 57:21	today 8:5,17 27:2 29:24 36:21 46:12 56:8 57:7 58:19 today's 7:10 35:18 39:3 top 38:8 total 15:9 16:4 35:17 touched 31:10 track 50:24 51:1 transcribed 66:10 transcript 63:24 66:11 transcription 65:6 transfer 34:9 55:15 transferred 33:21 transferring 41:5 tree 47:18 trees 19:23 21:6 tried 22:7 true 66:11 trust 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 trustee 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 trustee's 4:17 5:10 6:5,7,8 8:16 29:21 33:9 46:1 49:14	truth 7:2,3,3 try 19:19 trying 21:5 two 16:20 38:17 41:3 42:22 typical 13:21,23 13:25 16:12 typically 24:1 u u 5:21 41:12,15 42:9 43:12,24,25 44:6 u.s. 1:8 2:8 ultimately 41:5 undated 41:15 understand 8:6 12:10 16:13,16 19:9 44:21 understanding 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 understood 44:5 unrecorded 41:16 48:22 unsettled 62:3 unsigned 29:19 41:15 43:12 updated 13:5,9 updates 13:3 updating 13:10 upstairs 26:25 use 10:21 21:21 usual 50:7 usually 9:19 10:5 50:6	v v 5:23 42:18,22 44:2,8 value 57:19,24 valued 57:8 various 11:25 41:18 56:4 58:12 vegas 3:11 16:22 veritext 1:22 vs 1:5 2:5 w w 6:4 23:8 45:8,12 waiving 63:18 want 14:10 30:14 wanted 30:23 31:10,17 wanting 10:21 way 8:24 9:15 12:6,7 13:10 16:5 26:15 we've 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 wednesday 1:20 2:20 50:6,14 weeks 16:10 62:14 went 8:25 27:23 west 26:22 whereof 66:18 willing 53:18 winters 4:23 22:10 22:15 60:12,17,23 witness 4:2,10 6:18 12:20 14:13
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14:24 15:18 16:3 16:15 17:20 19:13 23:1,17 25:16 26:10 27:21 28:3 28:12,13,23 32:11 32:20 33:4 35:9 36:1,6 37:2,11 42:13 43:18 44:10 44:21 47:9,14 48:6 49:1,10 51:22 52:19,21 53:13 54:5,7,21,22 56:12 57:13,18 59:2 66:13,18 witnesses 66:7 word 15:5 37:6 57:11 words 14:6 16:3 30:12 worth 29:8 wright 57:1 write 50:19 wrote 51:11	z z 6:8 49:11,14 zak 57:2
x	
x 4:1 5:1 6:1,5 46:16,20 48:22 49:2 xvii 1:5 2:5	
y	
y 6:7 48:7,11 49:8 yeah 28:13 30:21 31:10 37:11 39:5 40:5 44:21 year 19:20 33:13 years 21:22 31:1,1 31:15 33:14,15 51:8 yellow 51:6 yep 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

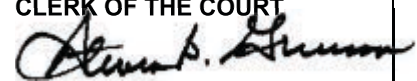
Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents 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.

TAB 14



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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.

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 29th day of June, 2018.

GERRARD COX LARSEN

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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 29th day of June, 2018.

GERRARD COX LARSEN

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Attorneys for Defendant /Counterclaimant Nationstar Mortgage, LLC

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 This lawsuit arises out of a dispute between the parties over the legal effect of a non-judicial
5 foreclosure of real property located at 5327 Marsh Butte, Las Vegas, Nevada 89148 (the “Property”)
6 that was conducted by Shadow Mountain Ranch Community Association (“Shadow Mountain” or
7 the “HOA”) through its agent, Alessi & Koenig, LLC (“Alessi” or “HOA Trustee”) allegedly
8 pursuant to Nevada Revised Statutes Chapter 116 (“NRS 116” or the “HOA Lien Statute”).
9 Nationstar is entitled to summary judgment for all of the following reasons, any one of which is
10 sufficient to support summary judgment in favor of Nationstar on its claims and on all of SFR’s
11 claims for relief.

12 **First**, Nationstar is entitled to summary judgment because BAC, Nationstar’s predecessor-
13 in-interest to the deed of trust (“Deed of Trust”), tendered a check to the HOA in an amount
14 sufficient to fully satisfy the super-priority portion of the HOA’s lien prior to the HOA’s foreclosure
15 sale, rendering the HOA’s sale either void or subject to the Deed of Trust. The Nevada Supreme
16 Court made it clear in *SFR Investments* that a senior mortgagee can tender the super-priority amount
17 of an association’s lien prior to the association’s foreclosure sale to maintain the priority of its deed
18 of trust. *See SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 418 (Nev. 2014).
19 Because BAC tendered an amount equal to the statutory super-priority amount of the HOA’s lien
20 before the HOA’s foreclosure sale, the HOA lacked authority to proceed on any foreclosure of the
21 super-priority lien and could only foreclose its sub-priority lien and convey an interest in the
22 Property subordinate to the senior Deed of Trust at that sale. Because Plaintiff’s property interest is
23 junior to the senior Deed of Trust, Plaintiff’s claims for quiet title and declaratory relief necessarily
24 fail.

25 **Second**, the sale of the Property for 19.2% of its fair market value, coupled with the blatant
26 unfairness of proceeding with the foreclosure sale after BAC had tendered a check to fully satisfy
27 the super-priority portion of the HOA’s lien, rendered the HOA’s foreclosure sale commercially
28 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 (6th 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 ("1st 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 \$5,757.00¹ 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 ¹ 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"**.

1 County, Nevada, as Inst. No. 20120911-0002023 ("Second HOA Lien"). The Second HOA Lien
2 stated the amount due Shadow Mountain HOA was \$6,448.00 **which included assessments, late**
3 **fees, interest, collection costs and balance transfer from the prior owner, Gotera, in the**
4 **amount of \$2,730.00.** A true and correct copy of the Second HOA Lien is attached hereto as
5 **Exhibit "L".** See also Shadow Mountain HOA's Ledger attached hereto as **Exhibit "M".**

6 15. The HOA Ledgers show that no payments were made on this HOA account after the
7 1st HOA Lien was recorded May 7, 2008, and that **all of the same assessments included in the**
8 **First HOA Lien were included in the Second HOA Lien** recorded September 11, 2012. See HOA
9 Ledgers attached as **Exhibits "G" and "M".**

10 16. On or about July 5, 2013, Shadow Mountain HOA and its agent, Alessi, recorded
11 against the Property, a Notice of Default and Election to Sell in the Official Records of Clark
12 County, Nevada, as Inst. No. 20130705-0000950 ("Second HOA NOD"). The Second HOA NOD
13 stated the amount due Shadow Mountain HOA was \$6,631.41 which included assessments, late
14 fees, interest, and collection costs. A true and correct copy of the Shadow Mountain HOA is
15 attached hereto as **Exhibit "N".**

16 17. On October 1, 2013, MERS assigned its remaining interest as the servicer of the
17 Loan to Nationstar Mortgage, LLC by virtue of that certain Assignment of Deed of Trust recorded
18 in the Official Records of Clark County, Nevada ("Second Assignment") as Inst. No. 20131001-
19 0002401. A true and correct copy of the Assignment is attached hereto as **Exhibit "O".**

20 18. On or about December 10, 2013, Shadow Mountain HOA and its agent, Alessi,
21 recorded a Notice of Trustee's Sale against the Property, as Inst. No. 20131210-0001308, in the
22 Official Records of Clark County, Nevada (the "Second HOA NOS"). The Second HOA NOS
23 stated the amount due to Shadow Mountain HOA was \$8,017.11 which included assessments, late
24 fees, interest, and collection costs. A true and correct copy of the Second HOA NOS is attached
25 hereto as **Exhibit "P".**

26 19. On May 7, 2014, Shadow Mountain HOA and its agent, Alessi, conducted a
27 foreclosure sale of the Property, whereat SFR Investments Pool 1, LLC ("SFR") purported to be the
28 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 I, 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 I, 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 (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 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 7.² 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.*

² 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

1 **B. THE FORECLOSURE SALE IS INVALID BECAUSE THE SALES PRICE WAS**
2 **GROSSLY INADEQUATE AND PATENTLY UNFAIR**

3 The decision of the Nevada Supreme Court in *Shadow Wood. v. NYCB*, 366 P.3d 1105,
4 (Nev. 2016), examined the issue of commercial reasonableness and provides that a grossly
5 inadequate purchase price compared to the fair market value at the time of the HOA Sale can be
6 sufficient to set aside a sale when coupled with unfairness. The *Shadow Wood* decision recognized
7 the Restatement (Third) of Property: Mortgages § 8.3 ant. b (1997) position that while "[g]ross
8 inadequacy cannot be precisely defined in terms of a specific percentage of fair market value,
9 (generally ... a court is warranted in invalidating a sale where the price is less than 20 percent of fair
10 market value and, absent other foreclosure defects, is usually not warranted in invalidating a sale
11 that yields in excess of that amount."

12 The Nevada Supreme Court recently confirmed that to hold that an association's foreclosure
13 sale did not extinguish a senior deed of trust on equitable grounds, there "must [] be a showing of
14 fraud, unfairness, or oppression." *See Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227*
15 *Shadow Canyon*, 133 Nev. Adv. Op. 91, 405 P.3d 641, 642 (2017). The Nevada Supreme Court
16 made clear that the foreclosure-sale price is a highly relevant factor, explaining that "very slight
17 additional evidence of unfairness" is all that is needed if the price "inadequacy is palpable and
18 great". It is universally recognized that inadequacy of price is a circumstance of greater or lesser
19 weight to be considered in connection with other circumstances impeaching the fairness of the
20 transaction as a cause of vacating it, and that, where the inadequacy is palpable and great, very slight
21 additional evidence of unfairness or irregularity is sufficient to authorize the granting of the relief
22 sought. *Id.* (emphasis added) (internal citation omitted).

23 In *Shadow Wood*, the Nevada Supreme Court explained that a foreclosure-sale price below
24 20% of fair market value is "obviously inadequate." *See Shadow Wood*, 366 P.3d at 1116. If
25 construed as a super-priority foreclosure, then the HOA's sale of the Property for \$59,000.00 did not
26 extinguish the Deed of Trust because it was both oppressive and unfair. A sale price of \$59,000.00
27 is a "palpabl[y] and great[ly]" inadequate sales price when compared to the fair market value of the
28 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,

rendering the sale price grossly inadequate. These facts are not in dispute, as SFR has not provided any evidence that the purchase price was greater than 20 percent of the fair market value of the Property at the time of the HOA Sale. In light of this "palpabl[y] and great[ly]" inadequate sales price, "very slight evidence of unfairness" is all that is needed to show the sale did not extinguish the Deed of Trust on equitable grounds. *See Nationstar*, 405 P.3d at 658. There is more than enough evidence to satisfy that standard here where the tender rendered the sale void, the HOA had no authority to proceed with the sale, and the HOA was artificially attempting to get around the tender by recording a new notice of lien for the same assessments for which the tender was received and rejected.

C. THE BONA FIDE PURCHASER DOCTRINE IS IRRELEVANT, AND SFR IS NOT A BONA FIDE PURCHASER FOR VALUE

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. Even if bona fide purchaser status could provide a windfall to an HOA-sale purchaser after a sub-priority sale, Plaintiff is not entitled to that windfall because it is not a bona fide purchaser.

1. SFR's Bona Fide Purchaser Status Is Irrelevant As The Sale Is 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 (6th 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”.**³ *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
voidable foreclosures, because in the former event bona fide purchasers are subject to
the risk of having the sale set aside.

15 Grant S. Nelson and Dale A. Whitman, *Reforming Foreclosure: The Uniform Nonjudicial*
16 *Foreclosure Act* Duke Law Journal Vol. 53 at 1501-1502 (March 2004). In 7912 *Limbwood*
17 *Court Trust v. Wells Fargo Bank, N.A.*, 2:13-CV-00506-APG-GWF (D. Nev. 2015), the
18 United States District Court for the District of Nevada held that under Nevada law, when a
19 sale is void no title passes to a purchaser, even if the purchaser is a bona fide purchaser. The
20 *Limbwood* Court stated that:

21 When a sale is void, it is ‘ineffectual.’ *Deep v. Rose*, 364 S.E.2d 228, 232 (Va.
22 1988). No title, legal or equitable, passes to the purchaser. *Id.*; *see, e.g., Gilroy v.*
23 *Ryberg*, 667 N.W.2d 544, 554 (Neb. 2003) (stating ‘**when a sale is void, ‘no title,**
24 **legal or equitable, passes to the sale purchaser or subsequent grantee’ even if the**
25 **property is bought by a bona fide purchaser** (quoting 1 Grant S. Nelson & Dale A.
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.

26
27 ³ Citation to the 11 cases referenced in the 1 Grant S. Nelson treatise in support of this statement are not listed. The
28 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

to protection as a bona fide purchaser is ordinarily regarded as an affirmative defense). The party asserting an affirmative defense always bears the burden of proving each element of that defense. *See Nev. Ass'n Servs., Inc. v. Eighth Judicial Dist. Court*, 130 Nev. Adv. Rep. 94, 338 P.3d 1250, 1254 (2014) (noting that the party asserting an **affirmative defense** bears the **burden** of proving each element of that defense); *Schwartz v. Schwartz*, 95 Nev. 202, 206 n.2, 591 P.2d 1137, 1140 n.2 (1979) (A party who asserts an **affirmative defense** has the **burden** to prove each element of the defense).

4. **SFR Is Not A Bona Fide Purchaser**

In *Huntington v. MILA, Inc.*, 119 Nev. 355, 357, 75 P.3d 354, 356 (2003), the Nevada Supreme Court stated that:

NRS 111.325, Nevada's statutory recording act, provides:

Every conveyance of real property within this state hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same real property, or any portion thereof, where his own conveyance shall be first duly recorded.

A subsequent purchaser with notice, actual or constructive, of an interest in property superior to that which he is purchasing is not a purchaser in good faith, and is not entitled to the protection of the recording act.

A duty of inquiry arises

“when the circumstances are such that a purchaser is in possession of facts which would lead a reasonable man in his position to make an investigation that would advise him of the existence of prior unrecorded rights. He is said to have constructive notice of their existence whether he does or does not make the investigation. The authorities are unanimous in holding that he has notice of whatever the search would disclose.” (emphasis added and citations omitted).

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).

1 Any investor purchasing property at an HOA Sale in 2014, especially SFR, was well aware
2 of the circumstances surrounding such sales and was aware that lenders were contending their liens
3 survived any HOA Sale (which was further evidenced by the ridiculously low price properties for
4 which properties were being sold), and taking steps to tender the super-priority lien amount. These
5 circumstances required any putative bona fide purchaser to conduct a “due investigation” before the
6 purchase or lose the possibility of bona fide purchaser status. Any “due investigation” in this case
7 would have disclosed (i) BAC’s unconditional offer to pay the full super-priority lien amount. In its
8 responses to Nationstar’s Interrogatories, SFR responded as follows concerning whether it
9 conducted a due investigation prior to the sale:

10 “After reviewing its file with due diligence, with the exception of the email
11 regarding properties scheduled for sale on a specific date, SFR does not recall
12 having any pre-sale communications with any entity, including but not limited to, the
13 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.”

14 See copy of Answer to Interrogatory No. 16 of SFR’s Responses to Nationstar’s First
Set of Interrogatories attached hereto as **Exhibit “W”**.

15 Consequently, SFR is not a bona fide purchaser, and thus cannot attempt to shield itself from
16 the effect of BAC’s super-priority-plus tender, the HOA’s decision to foreclose on only its sub-
17 priority lien, or the invalidity of the sale based on its commercial unreasonableness. Accordingly, to
18 the extent Plaintiff has any interest in the Property, that interest is subject to the Deed of Trust.

19 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 29th day of June, 2018.

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CERTIFICATE OF SERVICE

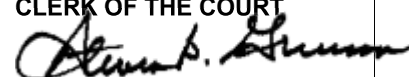
I hereby certify that I am an employee of GERRARD COX LARSEN, and that on the 29th day of June, 2018, I served a copy of the **CROSS-DEFENDANT NATIONSTAR MORTGAGE, LLC'S MOTION FOR SUMMARY JUDGMENT**, by e-serving a copy on all parties *listed in the Master Service List pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.*

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TAB 15



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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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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. ¹
November 21, 2005	Grant, Bargain and Sale Deed recorded transferring the Property to Magnolia Gotera ("Gotera"). ²
November 21, 2005	Deed of Trust listing Countrywide Home Loans, Inc. as Lender recorded as Instrument No. 20051121-0005567 ("DOT"). ³ 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. ⁴ 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." ⁵
May 27, 2011	A Grant Deed transferring the Property to JBWNO Revocable Living Trust recorded as Instrument No. 201105270004010. ⁶

¹ See excerpts from CC&Rs, attached to Hanks Decl. as **Exhibit A-1**.

² See Grant, Bargain and Sale Deed, attached to Hanks Decl. as **Exhibit A-2**.

³ See Deed of Trust, attached to Hanks Decl. as **Exhibit A-3**.

⁴ *Id*

⁵ *Id*.

⁶ 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. ⁷
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. ⁸
September 11, 2012	The Association, through its agent, Alessi & Koenig, LLC ("Alessi"), recorded a Notice of Delinquent Assessment Lien ("NODA") as Instrument No. 201209110002023. ⁹ The NODA was mailed to Moore. ¹⁰
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. ¹¹ U.S. Bank received the NOD. ¹²
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. ¹³
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. ¹⁴ 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. ¹⁵ The Notice of Sale was posted on the Property in a conspicuous place. ¹⁶ The Notice of Sale was published in the Nevada Legal News for three consecutive weeks. ¹⁷ The Notice of Sale was posted in three public

⁷ See Grant Deed, attached to Hanks Decl. as **Exhibit A-5**.

⁸ See Assignment of Deed of Trust attached to Hanks Decl. as **Exhibit A-6**.

⁹ See NODA, attached to Hanks Decl. as **Exhibit A-7**.

¹⁰ See Ex. 2 to Declaration of Non-Monetary Status on file herein.

¹¹ See NOD, attached to Hanks Decl. as **Exhibit A-8**.

¹² 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**.

¹³ See Assignment of Deed of Trust attached to Hanks Decl. as **Exhibit A-10**.

¹⁴ See Notice of Sale, attached to Hanks Decl. as **Exhibit A-11**.

¹⁵ See Ex. 4 to Declaration of Non-Monetary Status on file herein.

¹⁶ See Ex. 5 to Declaration of Non-Monetary Status on file herein.

¹⁷ *Id.*

	places. ¹⁸
January 8, 2014	Association foreclosure sale took place and SFR placed the winning bid of \$59,000.00. ¹⁹ SFR paid this amount to Alessi. ²⁰
January 13, 2014	Trustee's Deed Upon Sale vesting title in SFR was recorded as Instrument No. 201401130001460. ²¹ 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. ²² 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. ²³

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

¹⁸ *Id.*

¹⁹ See Trustee's Deed Upon Sale attached to Hardin Decl. as **Exhibit B-2**.

²⁰ See Cashier's Check attached to Hardin Decl. as **Exhibit B-1**.

²¹ Ex. B-2.

²² See Lis Pendens attached to Hanks Decl. as **Exhibit A-12**.

²³ 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.²⁴

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.²⁵ 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.²⁶

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.

²⁴ See Ex. 2, 4 and 5 to Declaration of Non-Monetary Status on file herein. See also, Ex. A-9.

²⁵ Ex. B-2.

²⁶ *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.²⁷ Despite this, on August 31, 2015, Nationstar recorded a lis pendens against the Property.²⁸ 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**;

²⁷ See Ex. A-9 at 12:21-23; 36:10-12.

²⁸ 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 benefitted 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

Akerman LLP Melanie.morgan@akerman.com

akermanLAS@akerman.com

thera.cooper@akerman.com

Alessi & Koenig	
Contact	Email
A&K eserve	eserve@alessikoenig.com
Wright, Finlay & Zak, LLP	
	Email sgreenberg@wrightlegal.net

/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.

Ex. A-1

EXHIBIT A-1

Ex. 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**

Ex. A-2

EXHIBIT A-2

Ex. 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.

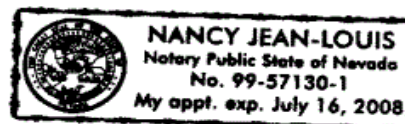
DATED: November 14, 2005

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. ²⁷
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)

Ex. A-3

EXHIBIT A-3

Ex. 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 *

JA_0632

(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

Initials: 

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

Initials: 

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

Initials 

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.

Initials: 

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.

Initials: 

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,

Initials 

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.

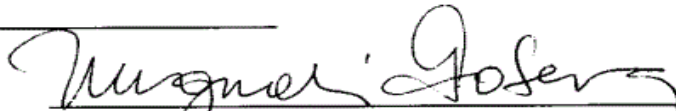
25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$ 300.00 .

Initials 

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)

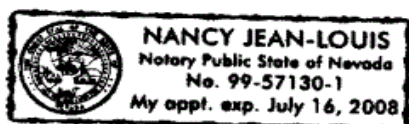
-Borrower

(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

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 *



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JA_0648

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.

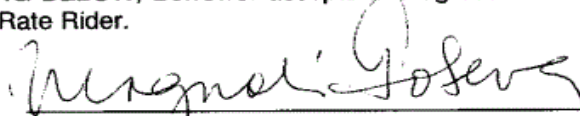
To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements 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/Freddle 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 *



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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 

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.

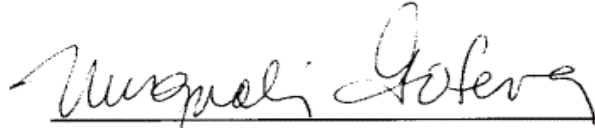
E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial 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

Ex. A-4

EXHIBIT A-4

Ex. 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.

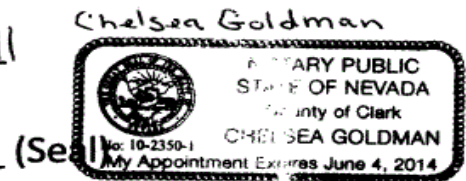
Magnolia Gotera
Grantor

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



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 _____

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: 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

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

(A) -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 27th, 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

Ex. A-6

EXHIBIT A-6

Ex. 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.

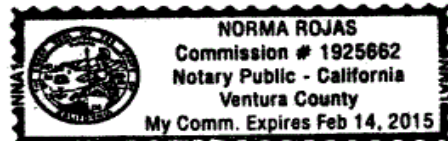
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public:

My Commission Expires: _____ (Seal)



Ex. A-7

EXHIBIT A-7

Ex. 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.

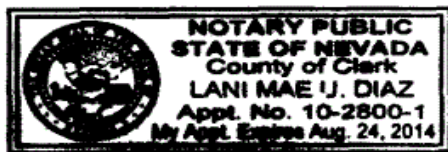
Date: **August 13, 2012**

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 ²³13, 2012

(Seal)



(Signature)

NOTARY PUBLIC

Ex. A-8

EXHIBIT A-8

Ex. 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 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**

JA_0674

Ex. A-9

EXHIBIT A-9

Ex. 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?

Page 33

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.

Page 34

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

Page 35

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

Page 36

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 that information.</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 A. Not that I'm aware of or was able to find.</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 A. That's not a topic I was provided in the</p> <p>10 deposition notices, so I'm not prepared to answer that.</p> <p>11 Q. So you didn't see any communications with the</p> <p>12 borrower about the association foreclosure?</p> <p>13 A. When I was going through the documents on this</p> <p>14 file, that's not something, based on the 12 topics, that</p> <p>15 I was looking for.</p> <p>16 Q. What about Topic No. 8?</p> <p>17 A. I mean, I -- even going through communications,</p> <p>18 I didn't see anything that mentioned an HOA sale. But,</p> <p>19 once again, that's not something I was specifically</p> <p>20 looking for at the time.</p> <p>21 Q. Okay.</p> <p>22 A. But nothing in the 6,000, 6,500 documents that I</p> <p>23 looked at -- there was nothing to the homeowner that</p> <p>24 popped out and said HOA, homeowners association even when</p> <p>25 searching by key words before manually opening every</p>	<p>1 see any emails between Bank of America and Miles, Bauer?</p> <p>2 A. Not that I recall.</p> <p>3 Q. Did you see any comments or notes from the MRT</p> <p>4 department?</p> <p>5 A. Not that I recall, other than a couple that</p> <p>6 said, you know, "Received Notice of Default from HOA,</p> <p>7 referred to outside counsel."</p> <p>8 Q. When was the Notice of Default received?</p> <p>9 MR. GERRARD: 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 A. There's -- I don't recall the exact date that</p> <p>14 they were received. And once again, these were -- like I</p> <p>15 said, they went from July -- I know July of 2008, and</p> <p>16 then the check was tendered on September 30th, 2010.</p> <p>17 Q. How do you know the check was tendered on</p> <p>18 September 30th, 2010?</p> <p>19 A. It's when the check was dated and the cover</p> <p>20 letter is dated that went to the HOA from Miles, Bauer.</p> <p>21 Q. Where were those documents contained in your</p> <p>22 business records?</p> <p>23 A. In FileNet, our imaging system.</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 document.</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 A. Yes.</p> <p>5 Q. Did Nationstar receive any documents from Bank</p> <p>6 of America related to the association?</p> <p>7 A. Yes.</p> <p>8 Q. What types of documents did Nationstar receive</p> <p>9 from Bank of America?</p> <p>10 A. Nationstar received a comment history --</p> <p>11 THE WITNESS: 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 A. Just in general?</p> <p>16 Q. No. Go ahead and state any ones that related to</p> <p>17 the association lien.</p> <p>18 A. Received their comment log; we received a copy</p> <p>19 of a check from Miles, Bauer who they had retained to</p> <p>20 handle the association lien; copies of some notices</p> <p>21 received from -- or regarding the HOA lien in 2008 to</p> <p>22 2010 before that check was tendered by Miles, Bauer.</p> <p>23 Q. Anything else?</p> <p>24 A. That's really about it.</p> <p>25 Q. Now, I'm not asking for the content, but did you</p>	<p>1 A. Yes.</p> <p>2 Q. Were there notes about the check in the letter?</p> <p>3 A. Not that I recall seeing. At that point, it</p> <p>4 would have been out of Bank of America's hands because</p> <p>5 Miles, Bauer would have been handling it.</p> <p>6 Q. Okay. Did you see any indication that the check</p> <p>7 was accepted?</p> <p>8 A. I did not. However, it appears that the</p> <p>9 process -- based on information I found in my</p> <p>10 preparation, that the process was restarted in early --</p> <p>11 or late 2012, rather.</p> <p>12 Q. Which process?</p> <p>13 A. The HOA -- the delinquent HOA process.</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 A. I'm sorry? Could you say that again. Sorry.</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 A. No.</p> <p>23 Q. How much was the check from September 30th of</p> <p>24 2010?</p> <p>25 A. I don't recall the exact amount without having</p>

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
3) ss
4 COUNTY OF CLARK)

5 I, Lori-Ann Landers, a duly commissioned
6 Notary Public, Clark County, State of Nevada, do hereby
7 certify:

8 That I reported the taking of the deposition
9 of the witness, KEITH KOVALIC, at the time and place
10 aforesaid;

11 That prior to being examined, the witness
12 was by me duly sworn to testify to the truth, the whole
13 truth, and nothing but the truth;

14 That I thereafter transcribed my shorthand
15 notes into typewriting and that the typewritten
16 transcript of said deposition is a complete, true and
17 accurate transcription of my said shorthand notes taken
18 down at said time to the best of my ability.

19 I further certify that I am not a relative
20 or employee of an attorney or counsel of any of the
21 parties, nor a relative or employee of any attorney or
22 counsel involved in said action, nor a person financially
23 interested in the action; and that transcript review FRCP
24 30(e) was requested.

25 IN WITNESS WHEREOF, I have hereunto set my
hand in the County of Clark, State of Nevada, this 11th
day of July 2017.

LORI-ANN LANDERS, CCR 792, RPR

Ex. A-10

EXHIBIT A-10

Ex. 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**



DocID# 18712143406842077

JA_0683

Ex. A-11

EXHIBIT A-11

Ex. 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. 6926

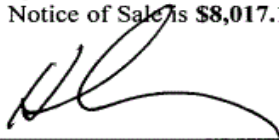
NOTICE IS HEREBY GIVEN THAT:

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, 2nd 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

Ex. A-12

EXHIBIT A-12

Ex. 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

JA_0687


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
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,

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

Plaintiff,

vs.

NOTICE OF LIS PENDENS

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.

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,

6 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

20 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
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.

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14. Neither SFR nor I have any relationship with or interest in Alessi, outside of my attending auctions, bidding and, occasionally, purchasing properties at these publicly held auctions, or having purchased some reverted properties through arm's-length transactions.

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

DATED June 28, 2018.

/s/ Christopher Hardin
Christopher Hardin

Ex. B-1

EXHIBIT B-1

Ex. 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
JA_0698

Ex. B-2

EXHIBIT B-2

Ex. 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

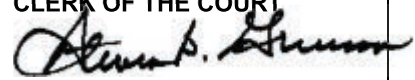
COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

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

TAB 16



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.*
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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

KGE E-Service List

KGE Legal Staff

Michael L. Sturm

E-Service for Kim Gilbert Ebron

Tomas Valerio

diana@kgelegal.com

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Esther Medellin

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fbiedermann@gerrard-cox.com

kjohnson@gerrard-cox.com

emedellin@gerrard-cox.com

ALESSI & KOENIG

A&K eserve

eserve@alessikoenig.com

WRIGHT FINLAY & ZAK, LLP

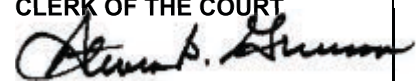
Sarah Greenberg Davis

sgreenberg@wrightlegal.net

/s/ Patricia Larsen

An employee of AKERMAN LLP

TAB 17



OPPS

Douglas D. Gerrard, Esq.

Nevada Bar No. 4613

dgerrard@gerrard-cox.com

Fredrick J. Biedermann, Esq.

Nevada Bar No. 11918

fbiedermann@gerrard-cox.com

GERRARD COX LARSEN

2450 Saint Rose Parkway, Suite 200

Henderson, Nevada 89074

(702) 796-4000

Darren T. Brenner, Esq.

Nevada Bar No. 8386

Donna 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: darren.brenner@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.

Case No.: A-14-705563-C

Dept.: XVII

**OPPOSITION TO SFR INVESTMENTS
POOL 1, 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
20 **OPPOSITION TO SFR INVESTMENTS POOL 1, LLC'S**
21 **MOTION FOR SUMMARY JUDGMENT**

22 COMES NOW, Defendant / Cross-Defendant, NATIONSTAR MORTGAGE, LLC
23 ("Nationstar" or "Defendant"), by and through its attorneys, GERRARD COX LARSEN and
24 AKERMAN, LLP, and hereby files this hereby files this Opposition to SFR Investments Pool 1,
25 LLC's Motion for Summary Judgment (the "Opposition"). This Opposition is made and based upon
the pleadings and papers on file, the exhibits, Points and Authorities attached hereto, the

26 ///

27 ///

28 ///

Declarations submitted herewith, and any oral argument the Court may entertain at the time of the hearing.

Dated this 19th day of July, 2018.

GERRARD COX LARSEN

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

SFR Investments Pool 1, LLC's ("SFR") Motion for Summary Judgment should be denied for the following reasons:

First, BAC Home Loan Servicing, LP ("BAC"), Nationstar's predecessor-in-interest to the deed of trust ("Deed of Trust"), made an offer to satisfy the super-priority portion of the HOA's lien prior to the HOA's foreclosure sale ("Tender"), rendering the HOA's sale subject to the Deed of Trust. As more fully explained below, the Nevada Supreme Court made it clear in *SFR Investments* that a senior mortgagee can tender the super-priority amount of an HOA's lien prior to an HOA foreclosure sale and, thus, 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). Therefore, through its foreclosure, the HOA could only convey an interest in Property subordinate to the senior Deed of Trust. Because the SFR's property interest is junior to the senior Deed of Trust, SFR's claims for quiet title and declaratory relief necessarily fail.

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14 **Third**, the SFR’s claims are contingent upon being cloaked in the folds of a bona fide
15 purchaser for value (“BFP”). As more fully set forth below, SFR, who has the burden of
16 establishing that it is a BFP,¹ cannot establish any facts to claim that it was a BFP because it had
17 BAC’s competing and superior interest in the Property. For each of these reasons, SFR’s quiet title
18 and declaratory judgment claims fail as a matter of law and summary judgment should be entered in
19 favor of Nationstar and denied as to SFR.

II.

STATEMENT OF UNDISPUTED FACTS

As the facts underlying Plaintiff's Motion for Summary Judgment have been set forth in full in prior filings with the Court, which are incorporated herein, the following chronology is provided for context.

25 11/21/2005 Grant, Bargain, Sale Deed recorded in favor of Magnolia Gotera.²

¹ - *Freedom Mortgage Corporation v. Trovare Homeowners Association*, 2:11-CV-01403-MMD-GWF (D. Nev. 2014), citing, *Berge v. Fredericks*, 591 P.3d 246, 248 (Nev. 1979).

28 ² - GBSD recorded on November 21, 2005 as Instrument No. 20051121-0005566, in the Official Records of Clark County, Nevada is attached to Nationstar's Mot. App.as **Ex. "A"**

11/21/2005 Deed of Trust (\$508,250.00) recorded in favor of Countrywide Home Loans, Inc. as Lender and CTC Real Estate Services as trustee.³

05/07/2008 Shadow Mountain Ranch Homeowners Association ("Shadow Mountain" or the "HOA"), though Alessi & Koenig, LLC ("Alessi" or the "HOA Trustee"), recorded a Notice Delinquent Assessment Lien (the "1st HOA Lien").⁴

07/01/2010 Shadow Mountain, through the HOA Trustee, recorded a Notice of Default and Election to Sell under the HOA Lien (\$3,140.00) ("HOA NOD").⁵

09/01/2010 Rock K. Jung, Esq. of Miles Bauer Bergstrom & Winters sends letter on behalf of BAC to the HOA and HOA Trustee offering to tender the full super-priority portion of the HOA's lien.⁶

09/08/2010 Alessi responds to Miles Bauer's letter with a payoff statement indicating that NRS 116.3116 limits the HOA's superpriority lien to nine months of assessments.⁷

09/28/2010 Miles Bauer delivered a check for \$207.00 to Alessi, representing 9 months of assessments at \$23.00 per month. Alessi rejected the tender.⁸

11/30/2010 Shadow Mountain, through the HOA Trustee, recorded a Release of Delinquent Assessment Lien ("Lien Release").⁹ The approximate lien amount on the date of the Lien Release was \$2,545.00.¹⁰

³ - Deed of Trust recorded on November 21, 2005 as Instrument No. 20051121-0005569, in the Official Records of Clark County, Nevada is attached to Nationstar's Mot. App. as **Ex. "B"**.

⁴ - The 1st HOA Lien recorded on May 7, 2008 as Instrument No. 20080507-0001378 in the Official Records of Clark County, Nevada is attached to Nationstar's Mot. App. as **Ex. "C"**.

⁵ - The HOA NOD recorded on July 1, 2010 as Instrument No. 20100701-0000190 in the Official Records of Clark County, Nevada is attached to Nationstar's Mot. App. as **Ex. "D"**.

⁶ - Miles Bauer Affidavit and Miles Bauer Letter dated September 2, 2010 is attached to Nationstar's Mot. App. as **Exs. "E" and "E-1"**, respectively.

⁷ - Alessi's Letter dated September 8, 2010 is attached to Nationstar's Mot. App. as **Ex. "E-4"**.

⁸ - See Shadow Mountain's Ledger attached to Nationstar's Motion Appendix as **Exhibit "E-2"** and the tendered check as **Exhibit "E-3"**. See also Miles Bauer Affidavit attached as **Exhibit "E" and "E-5"**.

⁹ - The Lien Release recorded in the Official Records of Clark County, Nevada as Instrument No. 20101130-0003315 is attached to Nationstar's Mot. App. as **Exhibit "F"**.

08/27/2013 Shadow Mountain, through the HOA Trustee, recorded a Notice of Trustee's Sale (\$5,757.00), ("HOA NOS").¹¹

05/27/2011 Gotera transferred her interest in the Property to JBNWO Revocable Living Trust.¹²

05/27/2011 Kristin Jordal, acting as Trustee of the JBNWO Revocable Living Trust transferred the Property to Stacy Moore.¹³

11/02/2011 Assignment of Deed of Trust recorded in favor of U.S. BANK, National Association, as Trustee for the Certificateholders of the LXS 2006-4N Trust Fund ("US Bank").¹⁴

09/11/2012 Shadow Mountain Ranch Homeowners Association ("Shadow Mountain" or the "HOA"), though Alessi & Koenig, LLC ("Alessi" or the "HOA Trustee"), recorded a Second Notice Delinquent Assessment Lien (the "2nd HOA Lien") which stated a balance of \$6,448.00 which included the balance of the lien from Gotera (\$2,730.00).¹⁵

07/05/2013 Shadow Mountain, through the HOA Trustee, recorded a Second Notice of Default and Election to Sell under the HOA Lien (\$6,631.41) (the "2nd HOA NOD").¹⁶

¹⁰ - See Shadow Mountain HOA Ledger attached to Nationstar's Mot. App. as **Exhibit "G"**.

¹¹ - The HOA NOS recorded on January 26, 2011 as Instrument No. 20110126-0002852 in the Official Records of Clark County, Nevada is attached to Nationstar's Mot. App. as **Ex. "H"**.

¹² - Grant Deed recorded in the Official Records of Clark County, Nevada, as Inst. No. 20110527-0004010 and attached to Nationstar's Mot. App. as **Exhibit "I"**.

¹³ - Grant Deed recorded in the Official Records of Clark County, Nevada, as Inst. No. 20110527-0004011 and attached to Nationstar's Mot. App. as **Exhibit "J"**.

¹⁴ - Assignment Deed of Trust recorded as Instrument No. 20111101-0000754 in the Official Records of Clark County, Nevada is attached to Nationstar's Mot. App. as **Ex. "K"**.

¹⁵ - The 2nd HOA Lien recorded on September 11, 2012 as Instrument No. 20120911-0002023 in the Official Records of Clark County, Nevada is attached to Nationstar's Mot. App. as **Ex. "L"**. See also **Ex. "G" and "M"**.

¹⁶ - The 2nd HOA NOD recorded on July 5, 2013 as Instrument No. 20130705-0000950 in the Official Records of Clark County, Nevada is attached to Nationstar's Mot. App. as **Ex. "N"**.

10/01/2013 Assignment of Deed of Trust recorded in favor of Nationstar Mortgage, LLC as servicer.¹⁷

12/10/2013 Shadow Mountain, through the HOA Trustee, recorded a Second Notice of Trustee's Sale (\$8,017.11), ("2nd HOA NOS").¹⁸

01/08/2014 Shadow Mountain, through the HOA Trustee, sold the Property at a foreclosure sale to SFR Investments Pool 1, LLC for \$59,000.00.¹⁹

01/08/2014 Retrospective market value appraisal by R. Scott Dugan, SRA appraised the Property for \$306,000.00 at the time of the HOA's foreclosure sale.²⁰

III.

LEGAL STANDARD

Summary judgment is proper when there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. NRCP 56(c); see also *Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005). After the movant has carried its burden to identify issues where there is no genuine issue of material fact, the non-moving party must "set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." *Wood*, 121 Nev. at 732. Summary judgment is particularly appropriate where issues of law are controlling and dispositive of the case. *American Fence, Inc. v. Wham*, 95 Nev. 788, 792, 603 P.2d 274, 277 (1979).

"Summary judgment is appropriate if, when viewed in the light most favorable to the nonmoving party, the record reveals there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *DTJ Design, Inc. v. First Republic Bank*, 130 Nev.

¹⁷ - Assignment Deed of Trust recorded as Instrument No. 20131001-0002401 in the Official Records of Clark County, Nevada is attached to Nationstar's Mot. App. as **Ex. "O"**.

¹⁸ - The 2nd HOA NOS recorded on December 10, 2013 as Instrument No. 20131210-0001308 in the Official Records of Clark County, Nevada is attached to Nationstar's Mot. App. as **Ex. "P"**.

¹⁹ - TDUS recorded on January 13, 2014 as Instrument No. 20140113-0001460 in the Official Records of Clark County, Nevada is attached to Nationstar's Mot. App. as **Ex. "Q"**.

²⁰ - Declaration of R. Scott Dugan, SRA and Mr. Dugan's Appraisal Report are attached to Nationstar's Mot. App. as **Exs. "R" and "R-1"**.

1 Adv. Op. 5, 318 P.3d 709, 710 (2014) (citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713,
2 57 P.3d 82, 87 (2002)). The plain language of Rule 56(c) “mandates the entry of summary
3 judgment, after adequate time for discovery and upon motion, against a party who fails to make a
4 showing sufficient to establish the existence of an element essential to that party’s case, and on
5 which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323,
6 106 S. Ct. 2548, 2552 (1986) (adopted by *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026,
7 1031 (2005)). In such a situation, there can be “no genuine issue as to any material fact” because a
8 complete failure of proof concerning an essential element of the nonmoving party’s case necessarily
9 renders all other facts immaterial. *Id.*

10 While the party moving for summary judgment must make the initial showing that no genuine
11 issue of material fact exists, where, as here, the non-moving party will bear the burden of persuasion
12 at trial, the party moving for summary judgment need only: “(1) submit evidence that negates an
13 essential element of the nonmoving party’s claim, or (2) ‘point out ... that there is an absence of
14 evidence to support the nonmoving party’s case.’” *Francis v. Wynn Las Vegas, LLC*, 127 Nev. Adv.
15 Op. 60, 262 P.3d 705, 714 (2011). Once this showing is met, summary judgment must be granted
16 unless “the nonmoving party [can] transcend the pleadings and, by affidavit or other admissible
17 evidence, introduce specific facts that show a genuine issue of material fact.” *Cuzze v. Univ. &*
18 *Cnty. Coll. Sys. of Nevada*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007).

19 Based on the arguments set forth herein, SFR has failed to meet its burden of persuasion by
20 showing there are “no genuine issues of material fact”. Accordingly, this Court should deny SFR’s
21 Motion for Summary Judgment.

22 IV.

23 LEGAL ARGUMENT

24 A. RECITALS IN THE FORECLOSURE DEED ARE NOT CONCLUSIVE PROOF 25 THAT HOA FORECLOSURE SALE WAS PROPERLY NOTICED

26 SFR argues that it is entitled to summary judgment on the ground that recitals in the
27 foreclosure are conclusive proof of sufficient pre-sale notice and that the foreclosure deed and sale
28 are presumed valid. SFR’s MSJ, at 7. However, SFR’s position that deed recitals have conclusive
force was unambiguously rejected by the Nevada Supreme Court in *Shadow Wood*, 366 P.3d at
Page 8 of 18

1 1110-1112. In *Shadow Wood*, the court held, as a matter of law, deed recitals under NRS 116.3116
2 cannot be conclusive as to the facts of whether statutory requirements were met. *Id.* The
3 foreclosure deed in *Shadow Wood* contained a recital substantially identical to the recital in this
4 case. Yet, the *Shadow Wood* court concluded that the mere fact that an HOA's foreclosure deed
5 contains the "conclusive recitals" of NRS 116.3116 did not preclude a challenge to the HOA
6 trustee's foreclosure. *Id.*

7 According to SFR's logic, an HOA could fail to record any of the three notices the HOA
8 Lien Statute requires, falsely recite that they did in fact record the notices, and the court would be
9 forced to hold that notice of the HOA foreclosure was properly given, even if the opposing party
10 produced irrefutable evidence that proved the recitals were false. And there is no limiting principle
11 to SFR's position; a dishonest HOA could collude with a dishonest purchaser to sell property
12 without any proper announcement to the current owner or other security holders and still take title to
13 the property free and clear under the aegis of a patently false, yet "irrefutable" recitation. The
14 Nevada Legislature could not have possibly intended such unjust consequences. As such, SFR is not
15 entitled the presumptions of a properly conducted foreclosure sale that it claims.

16 **B. THE TENDER BY THE HOMEOWNER REDEEMED THE PRIORITY OF THE**
17 **DEED OF TRUST**

18 **1. Nationstar's Predecessor In Interest Tendered The Full Superpriority Lien Amount**
19 **To The HOA**

20 Under NRS 116.3116, the HOA's lien is split into two pieces: one with super-priority over a
21 first deed of trust, and another which is subordinate to a first deed of trust. *See* NRS 116.3116(2).
22 As explained by the Nevada Supreme Court: "The superpriority piece, consisting of the last nine
23 months of unpaid HOA dues and maintenance and nuisance-abatement charges, is 'prior to' a first
24 deed of trust." *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 411 (2014)
25 (emphasis added). *See also Horizon at Seven Hills Homeowners Association v. Ikon Holdings, LLC*,
26 373 P.3d 66, 72 (Nev. 2016) (The actual super-priority amount "is limited to an amount equal to the
common expense assessments due during the nine months before foreclosure.")

27 ///

28 ///

1 The Nevada Supreme Court has explained that:

2 A valid tender of a mortgage lien invalidates a foreclosure sale on that lien, because
3 the sale purports to extinguish the tenderer's interest in the property. Thus when a
4 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.

5 *Bank of America, et al. v. Ferrell Street Trust*, Case No. 70299 at *3 (Nev. April 27, 2018)
6 (unpublished order). In *Ferrell Street* the Supreme Court based its finding, that the super-priority
7 portion of an HOA lien could be redeemed separate from the rest of the HOA lien, on "the purpose
8 behind the unconventional HOA split-lien scheme, prompt and efficient payment of the HOA's
9 assessment fees on defaulted properties. *Id.* at *2-*3. In order for that purpose to be achieved it is
10 necessary that once sufficient funds have been received by the HOA or the homeowner, the HOA
11 lien be considered redeemed. *See, Saticoy Bay LLC Series 2141 Golden Hill v. JPMorgan Chase*
12 *Bank*, No. 71246, 2017 WL 6597154 (Dec. 22, 2017) (finding that tender by the homeowner has
13 the same effect as tender by a bank). While the HOA Trustee unjustifiably rejected BAC's super-
14 priority payment, that payment still discharged the super-priority lien under the tender doctrine.

15 On September 2, 2010, Rock K. Jung, Esq. of the law firm Miles, Bauer, Bergstrom &
16 Winters, LLP wrote on behalf of MERS as nominee for BAC Home Loans Servicing, LP, fka
17 Countrywide Home Loans, Inc. ("BAC") to the HOA's trustee prior to the foreclosure sale and
18 tendered a check in the amount of \$207.00 which represented the statutory super-priority amount of
19 the HOA's lien at \$23.00 per month for months. *See* Nationstar's Mot. App. at **Exhibit "E-3"**. The
20 letter enclosing the check stated the payment was intended to satisfy only the super-priority lien,
21 stating the check was meant to "fulfill [BAC]'s obligations as 1st lienholder[.]" *Id.* Alessi &
22 Koenig, LLC ("Alessi"), the HOA Trustee, rejected the tendered check. *See* Nationstar's Mot. App.
23 at **Exhibit "E-4" and "E-5"**. The HOA Trustee's rejection of BAC's check was unjustified given
24 that the tendered amount of \$207.00 was sufficient to discharge the super-priority lien, despite the
25 HOA Trustee's policy of rejecting partial payments to the entire lien. Thus, the Deed of Trust was
26 not extinguished by the HOA's sale because of BAC's tendered check for the exact amount of the
27 HOA's super-priority lien preserved the Deed of Trust.
28

1 **2. BAC's Tendered Was Sufficient And Not Conditional**

2 The term “tender” means “an offer of payment that is coupled either with no conditions or
3 only with conditions upon which the tendering party has a right to insist.” *Fresk v. Kraemer*, 99 P.3d
4 282, 286-87 (Or. 2004); see also 74 Am.Jur.2d Tender § 22 (2014). Two important points come
5 from this general rule: (1) an offer of payment is sufficient—actual payment is not even required;
6 and (2) conditions are allowed, if the tendering party has the right to insist to such conditions. As
7 explained in *Guthrie*, “[t]he failure of the agent to count out the cash or to present a cashier’s check
8 in the actual amount does not destroy the tender. We have held that when a party, able and willing
9 to do so, offers to pay another a sum of money and is told that it will not be accepted, the offer is a
10 tender without the money being produced.” *Guthrie v. Curnutt*, 417 F.2d 764, 765-66 (10th Cir.
11 1969). Nevada law is in accord.

12 A tender is not rendered ineffective by the tendering party’s demand for matters to which it
13 is entitled. “[The definition of tender] is more precisely stated as an offer of payment that is coupled
14 either with no conditions or only with conditions upon which the tendering party has a right to
15 insist.” *Fresk v. Kraemer*, 337 Or. 513, 522, 99 P.3d 282, 287 (2004) (emphasis added) (finding
16 that under a statute precluding an attorney’s fee award to a party to whom full damages were
17 tendered prior to litigation, tender was not invalidated by conditioning payment upon a release of
18 liability); *Millhollin v. Conveyor Co.*, 287 Mont. 377, 383, 954 P.2d 1163, 1166 (1998); *Dull v.*
19 *Dull*, 138 Ariz. 357, 359, 674 P.2d 911, 913 (Ct. App. 1983).

20 Nevada’s federal courts have also held that BAC’s Miles Bauer tenders are unconditional
21 tenders that extinguish an association’s super-priority lien. *U.S. Bank, N.A. v. SFR Investments Pool*
22 *I, LLC*, 2016 WL 4473427 at *6 (D. Nev. Aug. 24, 2016) (rejecting the foreclosure-sale purchaser’s
23 argument that Bank of America’s tender was conditional, explaining that “a reasonable jury could
24 not interpret the evidence that way.”); *U.S. Bank, N.A. v. Bacara Ridge Assoc.*, 2016 WL 5334655 at
25 *3 (D. Nev. Sep. 22, 2016) (same); *U.S. Bank, N.A. v. Emerald Ridge Landscape Maintenance*
26 *Ass’n*, 2:15-cv-00117-MMD-PAL (D. Nev. Sep. 30, 2016). In *Emerald Ridge*, the court explained
27 that the Miles Bauer tender letter was not conditional because accepting the tender did not require
28 the association or its collection agent to “take any actions or waive any rights,” explaining:

1 The language Miles Bauer included with their cashier's check states that Miles
2 Bauer, and presumably their client, will understand endorsement of the check to
3 mean they have fulfilled their obligations. It simply delineates how the tenderer will
4 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.

5 *Emerald Ridge*, 2:15-cv-00117-MMD-PAL, at 7.²¹ Because BAC's super-priority tender was
6 unconditional, the *Emerald Ridge* Court held the tender "was proper," meaning the tender
7 extinguished the super-priority portion of the association's lien. *Id.*

8 The tender facts in this case are nearly identical to those in *U.S. Bank, Bacara Ridge*, and
9 *Emerald Ridge*, where courts held that Miles Bauer's tenders are unconditional tenders that
10 extinguish an association's super-priority lien if the tendered amount is greater than or equal to the
11 statutory super-priority amount. Examining the language of the Miles Bauer letter proves the *U.S.*
12 *Bank, Bacara Ridge*, and *Emerald Ridge Courts* are correct.

13 BAC reiterated when it tendered the check that it wished to satisfy only the super-priority
14 portion of the HOA's lien, stating that it "is the beneficiary/servicer of the first deed of trust loan
15 secured by the property" and "wishes to make a good faith attempt to fulfill [BAC's] obligations" to
16 the HOA. *Id.* (emphasis added). By the letter's unequivocal terms, the \$207.00 check: (1) was
17 meant to extinguish the super-priority lien only, and would have no effect on the HOA's ability to
18 collect and foreclose the sub-priority portion of its lien, as it clearly explained NRS 116.3116's
19 split-lien dichotomy, and (2) would have no effect on the HOA's ability to collect assessments and
20 fees from the Deed of Trust holder if that holder ever obtained title to the Property through its own
21 foreclosure sale, as the letter explicitly stated that the tender was meant to satisfy BAC's
22 "obligations" only "as 1st lienholder." *See Id.*

23 **3. The HOA's Second Notice of Lien Does Not Trigger A New Super-**
24 **Priority Lien**

25 The fact that the HOA released its First HOA Lien on November 30, 2010 (after
26 receiving the tender), and recorded the Second HOA Lien on September 11, 2013, does not change

27
28 ²¹ 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"**.

1 the fact that the HOA's super-priority lien was discharged through the tender described above. The
2 Nevada Supreme Court recently clarified that NRS 116.3116 does not limit an HOA to one lien
3 enforcement action or one super-priority lien per property forever. *See Property Plus Investments,*
4 *LLC v. Mortgage Electronic Registration Systems Inc.*, 401 P.3d 728, 730-732, 133 Nev. Ad. Op. 62
5 (2017). However, under *Property Plus* to trigger a new super-priority lien, the HOA must
6 commence a new enforcement action. This can occur in two ways: (1) by completing a prior
7 enforcement action through foreclosure, or (2) by recording a rescission of a prior lien. *Id. Property*
8 *Plus* states, "[t]herefore, when an HOA rescinds a superpriority lien on a property, the HOA may
9 subsequently assert a separate superpriority lien on the same property based on monthly HOA dues,
10 and any maintenance and nuisance abatement charges, accruing *after the rescission of the previous*
11 *superpriority lien.*" *Id.* at 732-733 (emphasis added). The *Property Plus* Court, however, clearly
12 held that "[a]n HOA cannot simply reject payment and release the lien, only to turn around
13 and record another lien based on the same unpaid assessments in order to safeguard the
14 superpriority status." *See Id.* at 9. Yet, that is precisely what occurred in this case.

15 Based on the undisputed facts, it is clear that Alessi rescinded the May 7, 2008 First HOA
16 Lien after rejecting the tender payment in order to safeguard the super-priority status of its lien. On
17 September 28, 2010, Miles Bauer delivered a check to Alessi to satisfy the super-priority lien. That
18 check was wrongfully rejected. On November 30, 2010, Alessi recorded the Release of Lien. On
19 September 11, 2012, the HOA recorded the Second HOA Lien **which included all of the**
20 **assessments, late fees, interest, collection costs and balance included in the First HOA Lien.**
21 *See* Second HOA Lien at **Exhibit "L"** and the HOA's Ledger at **Exhibits "G" and "M"**.

22 Based on the HOA's records, it is clear that the Second HOA Lien's balance of \$6,448.00
23 included the entire balance from the First HOA as evidenced by Alessi's demand statement that was
24 to Miles Bauer on September 13, 2010 and by Shadow Mountain's account ledgers. Accordingly,
25 the HOA's release of lien was accomplished to safeguard the superpriority status of the lien, in
26 violation of *Property Plus*. There can be no dispute the amount paid was sufficient to fully
27 discharge the super-priority portion of the HOA's lien and the payment was wrongfully rejected by
28