MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
2260 Corporate Circle, Suite 480
Henderson, Nevada 89074
(702) 642-3113 / (702) 642-9766 FAX

Attorney for appellant

SUPREME COURT

STATE OF NEVADA

SATICOY BAY LLC SERIES 8149 PALACE MONACO Appellant, vs. WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE STRUCTURED ADJUSTABLE RATE MORTGAGE LOAN TRUST, MORTGAGE PASS THROUGH CERTIFICATES SERIES 2005-11; Respondent	CASE NO.: 81453

JOINT APPENDIX 4

Michael F. Bohn, Esq.
Law Office of Michael F. Bohn, Esq., Ltd.
2260 Corporate Circle, Suite 140
Henderson, Nevada 89074
(702) 642-3113/ (702) 642-9766 FAX

Attorney for Appellant

Aaron D. Lancaster, Esq.
WRIGHT, FINLAY & ZAK, LLP
7785 W. Sahara Ave., Ste. 200
Las Vegas, NV 89117

Attorney for Respondent

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OPPS
MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
ADAM R. TRIPPIEDI, ESQ.
Nevada Bar No.: 12294
atrippiedi@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
2260 Corporate Circle, Suite 480
Henderson, Nevada 89074
(702) 642-3113/ (702) 642-9766 FAX
Attorneys for Plaintiff/Counterdefendant
Saticoy Bay LLC Series 8149 Palace Monaco

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 8149 PALACE MONACO, a Nevada limited liability company, Plaintiff, vs. ROBERT NARDIZZI a/k/a ROBERT A. NARDIZZI; MONACO LANDSCAPE MAINTENANCE ASSOCIATION, INC.; WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE STRUCTURED ADJUSTABLE RATE MORTGAGE LOAN TRUST, MORTGAGE PASS THROUGH CERTIFICATES SERIES 2005-11, Defendants.	CASE NO.: A-18-770245-C DEPT. NO.: XXVIII **SATICOY BAY LLC SERIES 8149 PALACE MONACO'S OPPOSITION TO WELLS FARGO'S MOTION FOR SUMMARY JUDGMENT**
WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE STRUCTURED ADJUSTABLE RATE MORTGAGE LOAN TRUST, PASSTHROUGH CERTIFICATES SERIES 2005-11, Counterclaimant, vs. SATICOY BAY LLC SERIES 8149 PALACE MONACO; MONACO LANDSCAPE MAINTENANCE ASSOCIATION; and RED ROCK FINANCIAL SERVICES, LLC, Counterdefendants.	

Plaintiff/Counterdefendant, Saticoy Bay LLC Series 8149 Palace Monaco, by and through its attorneys, the Law Offices of Michael F. Bohn, Esq., Ltd., hereby submits its opposition to Wells Fargo Bank National Association, as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Pass-Through Certificates Series 2005-11's ("**Wells Fargo**" or "**defendant**") motion for summary judgment filed October 28, 2019. This opposition is based upon the points and authorities contained herein.

FACTS

1. Facts regarding the foreclosure sale.

Plaintiff/Counterdefendant, Saticoy Bay LLC Series 8149 Palace Monaco is the owner of the real property commonly known as 8149 Palace Monaco Avenue, Las Vegas, Nevada 89117 ("**the Property**"). Palace Monaco acquired the Property by entering and paying the high bid of $17,400.00, at a public auction held on December 3, 2013. A copy of the foreclosure deed, recorded on December 27, 2013, is Exhibit 1. The foreclosure deed arose from a delinquency in assessments due from the former owners to the Monaco Landscape Maintenance Association ("**the HOA**"), pursuant to NRS Chapter 116.

Defendant/Counterclaimant, Wells Fargo Bank, National Association, as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Passthrough Certificates Series 2005-11 is the beneficiary of a Deed of Trust which was recorded as an encumbrance against the Property, on March 15, 2005. A copy of the deed of trust is Exhibit 2. The recorded deed of trust denotes IndyMac Bank, FSB, as the original lender. Wells Fargo did not hold a recorded interest in the Property, on the date of the December 3, 2013 HOA foreclosure sale.

On February 24, 2014, after the HOA foreclosure sale, Mortgage Electronic Registration Systems, Inc. ("**MERS**") recorded an Assignment of Deed of Trust Nevada, on behalf of IndyMac Bank, F.S.B, in favor of Aurora Commercial Corp, as Successor Entity to Aurora Bank, FSB, F/K/A Lehman Brothers Bank, FSB. A copy of the assignment is Exhibit 3. On January 26, 2017, over three years **after** the foreclosure sale, Wells Fargo acquired a recorded interest in the Property, by virtue of a Corporate Assignment of Deed Trust recorded by Ocwen Loan Servicing, LLC, under the signature of MERS, on behalf of IndyMac Bank, FSB, in favor of Wells Fargo Bank, National Association, as Trustee for the Structured

Adjustable Rate Mortgage Loan Trust, Passthrough Certificates Series 2005-11. A copy of the assignment is Exhibit 4. Wells Fargo did not hold a recorded interest in the Property prior to January 26, 2017.

On April 9, 2009, Red Rock Financial Service, LLC, the foreclosure agent, sent the former owners the pre-lien letter. A copy of the pre-lien letter and the proof of mailing is Exhibit 5.

On May 20, 2009, the foreclosure agent recorded a Lien for Delinquent Assessments against the Property. A copy of the lien is Exhibit 6.

On July 7, 2009, the foreclosure agent recorded a Notice of Default and Election to Sell against the Property. A copy of the recorded notice of default is Exhibit 7. The foreclosure agent also mailed the notice to the former owners, IndyMac Bank, Wells Fargo and other interested parties. Wells Fargo did not become an assignee of record until January 26, 2017, after the recordation of the default and the foreclosure sale. The proof of mailing of the notice of default is Exhibit 8.

On April 8, 2013, the foreclosure agent recorded a Notice of Foreclosure Sale against the Property. A copy of the recorded notice is Exhibit 9. The foreclosure agent also mailed a copy of the notice of sale to the former owners, IndyMac Bank, Wells Fargo and other interested parties. The proof of mailing of the notice of sale is Exhibit 10.

Pursuant to the recitations in the foreclosure deed, the foreclosure agent complied with all requirements of law respecting the posting of the Notice of Sale. The Notice of Sale was posted on the property and in three locations within Las Vegas, Nevada. Copies of the affidavits of posting and service are Exhibit 11.

The Notice of Sale was published on three dates in the Nevada Legal News. A copy of the affidavit of publication is Exhibit 12. The foreclosure agent complied with all requirements of law respecting postponement of the foreclosure safe from the original date of May 2, 2013 to December 3, 2013.

On February 2, 2018, Plaintiff filed its three (3) count complaint, which included a single count against Wells Fargo, seeking quiet title and declaratory relief, under Nevada law, pursuant to NRS Chapter 40. On October 15, 2018, after a failed attempt to remove the case to federal court, Wells Fargo filed its Answer to Plaintiff's Complaint, Counter-claims, Cross-claims and Third Party Complaint. Well's Fargo's

Answer included nine (9) affirmative defenses, none of which asserted a claim of payment (tender) or federal interest.

Well's Fargo's counterclaims against Palace Monaco were enumerated as: 1) First Cause of Action (Quiet Title/Declaratory Relief), 2) Second Cause of Action (Permanent and Preliminary Injunction versus Saticoy Bay); and Third Cause of Action (Unjust Enrichment). With regard to its quiet title cause of action, Well's Fargo's counterclaim relies entirely on the application of Nevada law, pursuant Nevada statutes, inclusive of NRS Chapter 116, as interpreted by the Nevada Supreme Court.

In doing so, Wells Fargo counterclaim averred as follows, pursuant to various provisions of NRS 116.3116, NRS 30.010 and NRS 40.010, in pertinent part:

> "41. Pursuant to NRS 116.3116(6), a lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.
> 42. Upon information and belief, **the full amount of the assessments became due on or before May 20, 2012**, such that the HOA lien became extinguished on or before May 20, 2012.
>
> 53. **Under NRS Chapter 116**, a lien under NRS 116.3116(1) can only include costs and fees that are specifically enumerated in the statute.
>
> 54. A homeowner's association **may** only collect as a part of the super priority lien(a) **nuisance abatement charges incurred by the association pursuant to NRS 116.310312 and (b) nine months of common assessments** which became due prior to the institution of an action to enforce the lien.
>
> 58. The HOA Sale did not comply with NRS 116.3102 et seq. because none of the aforementioned notices identified above identified what portion of the claimed lien were for alleged late fees, interest, fines/violations, or collection fees/costs.
>
> 66. The circumstances of the HOA Sale of the Property breached the HOA's obligations of good faith under NRS 116.1113 and its duty to act in a commercially reasonable manner.
>
> 70. Pursuant to NRS 116.31162(1) an association may only proceed with foreclosure under NRS 116.31162-116.31168 if the declaration or CC&Rs so provide.
>
> 86. Wells Fargo's Deed of Trust is the first secured interest on the Property as intended by and whose priority is **protected by NRS 116.3116(2)(b)**.
>
> 90. Because, upon information and belief, the HOA and the HOA Trustee attempted to sell the Property under an expired and extinguished HOA lien pursuant to NRS 116.3116(6) more than three (3) years after the full amount of the assessments became due, the HOA Sale could not have extinguished the Deed of Trust or displaced it from its first position status in the chain of title, such that Saticoy Bay took subject to the Deed of Trust. Or in the alternative, the HOA Sale is void, invalid and/or should be set aside.

95. Based upon the foregoing, Wells Fargo is entitled to a determination from this Court, **pursuant to NRS 30.010 and NRS 40.010**, that the purported HOA Sale did not extinguish the Deed of Trust because it was conducted in violation of NRS 116.3116 *et seq.* and the CC&Rs.

96. Wells Fargo is entitled to a determination from this Court, **pursuant to NRS 30.010 and NRS 40.010**, that Wells Fargo's secured interest by virtue of its Deed of Trust is superior to the interest, if any, acquired by Saticoy Bay through the Foreclosure Deed and all other parties, if any.

97. In the alternative, **if it is found under *state* law** that Wells Fargo's interest could have been extinguished by the HOA Sale, for all the reasons set forth above and in the Factual Background, Wells Fargo is entitled to a determination from this Court, **pursuant to NRS 30.010 and NRS 40.010**, that the HOA Sale was void, invalid and/or should be set aside and conveyed no legitimate interest to Saticoy Bay." *See* Answer to Plaintiff's Complaint, Counter-claims, Cross-claims and Third Party Complaint. (Emphasis added).

The interests of all parties, under the Deed of Trust, were extinguished by reason of the foreclosure sale, resulting from a delinquency in assessments due from the former owners to the HOA, pursuant to NRS Chapter 116. Notwithstanding the fact that Wells Fargo did not have a recorded interest in the Property until January 26, 2017, Wells Fargo and its predecessors in interest were on actual notice of the 2009 default and the 2013 HOA foreclosure. Wells Fargo and its predecessors in interest failed to take any action to their own detriment. Palace Monaco moves for summary judgment on its complaint and for dismissal Wells Fargo's counterclaim.

LEGAL ARGUMENT

1. Wells Fargo's causes of action are barred by either the three or four year statute of limitations.

The HOA's foreclosure in this matter took place on December 3, 2013. Defendant filed its counterclaim on October 10, 2018, more than four years after the HOA foreclosure.

The defendant bank's counterclaim alleges two (2) substantive causes of action against plaintiff asserting: 1) a claim for quiet title/declaratory relief; and 2) a tort claim for unjust enrichment. With regard to the quiet title cause of action, the counterclaim relies entirely on the application of Nevada law, pursuant Nevada statutes, under NRS Chapter 116. The applicable statutes of limitations are three and four years, respectively, either of which would require dismissal of both of defendant's causes of action against plaintiff.

/ / /

i. NRS 11.190(3)'s three-year statute of limitations applies to and bars the defendant bank's quiet title claim.

NRS 11.190 contains a three-year statute of limitations which applies to actions founded upon a statute:

> **NRS 11.190 Periods of limitation**. Except as otherwise provided in NRS 40.4639, 125B.050 and 217.007, actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows:
> ...
> 3. Within 3 years:
> (a) An action upon a liability created by statute, other than a penalty or forfeiture.

According to the Nevada Supreme Court, "[t]he phrase 'liability created by statute' means a liability which would not exist but for the statute." Torrealba v. Kesmitis, 124 Nev. 95, 178 P.3d 716, 722 (2008). As previously set forth, the defendant bank's quiet title claims are based entirely upon statutory sources of authority, primarily pursuant to NRS 116.3116.

In the case of Bank of America, N.A. v. SFR Investments Pool 1, LLC, 134 Nev. Adv. Op. 72, 427 P.3d 113 (2018), the Nevada Supreme Court noted that the HOA liens and foreclosures were creatures of statute, stating:

> Generally, the creation and release of a lien cause priority changes in a property's interests as a result of a written legal document. But Bank of America's tender discharged the superpriority portion of the HOA's lien by operation of law. See NRS 116.3116; 53 C.J.S. Liens § 14 (2017) ("A statutory lien is created and defined by the legislature. The character, operation and extent of a statutory lien are ascertained solely from the terms of the statute."). NRS Chapter 116's statutory scheme allows banks to tender the payment needed to satisfy the superpriority portion of the HOA lien and maintain its senior interest as the first deed of trust holder. NRS 116.3116(l)-(3); ....(emphasis added).

In a host of cases, Nevada's federal courts have consistently deemed violations of NRS Chapter 116 to constitute "actions upon a liability created by statute" and to carry a three-year statute of limitations pursuant to NRS 11.190(3)(a). Nationstar Mortgage LLC v. Safari Homeowners Association, Case No. 2:16-cv-02542-RFB-CWH (D. Nev. January 5, 2019)("Plaintiff's claims under NRS 116.1113 are clearly based upon a liability created by statute, the three-year statute of limitations applies. Nev. Rev. Stat. § 111.190(3)(a)"); Deutsche Bank National Trust Company v. SFR Investments Pool 1, LLC, Case No. 2:17-cv-01504-RFB-CWH (D. Nev. March 31, 2019) ("Insofar as Deutsche Bank's pleading relates to any

right protected by NRS 116.3116 and the violation of that right, [the] claims carry a three-year statute of limitations pursuant to NRS 11.190(3)(a)..."); and Bank of New York Mellon v. Foothills at Southern Highlands Homeowners Association, Case No. 2:17-cv-01918-RFB-VCF (D. Nev. March 30, 2019) (finding that the bank's claim "carries a three-year statute of limitations under NRS 11.190(3) insofar as it relates to any rights protected by NRS 116.3116.").

The defendant bank did not file its counterclaim for quiet title until October 15, 2018, more than four (4) years after the foreclosure sale occurred, on December 3, 2013, and the foreclosure deed was recorded, on December 27, 2013. Accordingly, the defendant bank's quiet title claims are barred under NRS 11.190(3).

The Honorable Judge Joanna Kishner of the Eighth Judicial District Court of Nevada has also recently held the three year statute of limitations under NRS 11.190(3)(a) applies to identical tender claims such as plaintiff's. See Exhibit 13, Judge Kishner's findings of fact, conclusions of law, and order filed June 18, 2019. At page 13 of her order, Judge Kishner explains why the three year statute of limitations applies to tender claims:

> 31. ... This duty to accept tender arises implicitly from NRS 116 because as the Nevada Supreme Court noted, it is the statute, i.e. NRS 116.3116 that governs liens against units for HOA assessments and details the portion of the lien that has superpriority status." *Bank* of *America, N.A. v. SFR Investments Pool* 1, *LLC,* 427 P .3d 113, 116 (Nev. *2018*).
> ...
>
> 32. In other words, but for the statute, there would be no superpriority portion and, in turn, no duty on the part of the Association to accept payment of this portion from a bank.... All told, the Association's lien is created by statute; the superpriority mechanism of that lien is created by statute; the superpriority portion is fixed by statute; and the Association's implicity duty to accept payment of the superpriority portion is created by statute. ...
>
> 33. Based on this, U.S. Bank's tender claim is subject to the three-year statute of limitations prescribed by NRS 11.190(3)(a).

Additionally, the Honorable Judge Tierra Jones of the Eighth Judicial District Court of Nevada has held that quiet title claims based on tender of the super-priority amount are subject to NRS 11.190's three year statute of limitations. See Exhibit14, order granting motion to dismiss in Case No. A-18-771055-C, page 4, paragraphs 13 through 17.

The Honorable Judge Jim Crockett of the Eighth Judicial District Court of Nevada has also found that bank claims in the HOA foreclosure context "notwithstanding how they are denominated, are properly characterized as arising from the violation of the statutes contained in NRS Chapter 116." See Exhibit 15, order granting motion to dismiss counterclaims in Case No. A-13-690930-C, page 2, paragraph 6. Accordingly, Judge Crockett applied a three year statute of limitations to bank claims arising out of HOA foreclosures. Id., paragraph 7.

ii. In the alternative, NRS 11.220's four-year statute of limitations applies to and bars the defendant bank's claims.

If this court does not find NRS 11.190(3)'s three-year statute of limitations applies to the defendant bank's claims, then NRS 11.220's four-year statute of limitations instead applies and has the same effect - dismissal of the defendant bank's counterclaim.

NRS 11.220 states as follows:

> **Action for relief not otherwise provided for.** An action for relief, not hereinbefore provided for, must be commenced within 4 years after the action shall have accrued.

NRS 11.220 is often described as the "catch-all" because it applies to actions which do not fall under the other statutes of limitations found in NRS Chapter 11. This court should apply NRS 11.220's four-year statute of limitations to the defendant bank's counterclaim.

In the instant case, the defendant bank is not actually seeking to quiet title in its name. Rather, Wells Fargo seeks declaratory relief that the deed of trust still encumbers the Property. Thus, in the alternative, NRS 11.220's four year statute of limitations applies.

It is anticipated the defendant bank will argue that the five year statute of limitations, under NRS 11.070 applies. It does not for the reasons stated herein.

The statute provides:

> **No cause of action effectual unless party or predecessor seized or possessed within 5 years.** No cause of action or defense to an action, founded upon the title to real property, or to rents or to services out of the same, shall be effectual, unless it appears that the person prosecuting the action or making the defense, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor, or grantor of such person, was seized or possessed of the premises in question within 5 years before the committing of the act in respect to which said action is prosecuted or defense made.

The statute does not apply to the defendant bank's quiet title claims because the defendant bank only claims to hold a lien interest in the Property. It is undisputed that Wells Fargo does not have a claim of title to the Property, and the defendant bank only to seeks to validate a purported lien.

Nevada's federal district courts have held in the past that both the three- and four-year statutes of limitations to a bank's claims in the HOA foreclosure context because the substance of the claims are not for quiet title, but instead are seeking equitable relief. See Exhibit 16, Order Granting Summary Judgment for the Defendants Based on Untimeliness of Claims, page 5, lines 11-14, wherein The Honorable Judge Jennifer Dorsey applies a four year statute of limitations because "the Bank's is not an action for the recovery of property or possession of property. If the Bank wins, it only gets a declaration that its lien remains on the property." This is exactly what plaintiff is seeking to do here. See also Exhibit 17 wherein Judge Dorsey applied NRS 11.220's four year statute of limitations to a bank's declaratory relief claims.

Other judges in Nevada's federal district have similarly applied three and/or four year statutes of limitations to similar bank claims. See Exhibit 18, the Honorable Judge Richard Boulware's order granting motion to dismiss in case 2:18-cv-00363-RFB-VCF, filed March 26, 2019. The Honorable Judge Andrew Gordon has also found the four-year statute of limitations applies to bank claims seeking to validate a deed of trust after an HOA foreclosure. See Exhibit 19, Order Granting Motion to Dismiss filed March 14, 2018, Case No. 2:17-cv-01850-APG-CHW. Judge Gordon found NRS 11.220 applied to a lender's claim to protect its lien because, in that case, "Bank of America's quiet title/declaratory relief claim does not seek to enforce the deed of trust. Rather, it seeks to determine whether its lien was extinguished."

Thus, the defendant bank's claims are not " founded upon the title to real property," and the defendant bank was never "seized or possessed of the premises." As the defendant bank's claims are barred by the statute of limitations, defendant's motion for summary judgment should be denied.

2. The HOA did not comply with NAC 116.090 to be treated as a limited-purpose association.

Defendant argues that based on NRS 116.1201(2) and the language of the HOA's Declaration of Covenants, Conditions, Restrictions, Reservations, and Easements" ("**the CC&Rs**"), the HOA is a limited-purpose association that is not governed by NRS Chapter 116. However, the CC&Rs do not meet the

statutory requirements to grant the HOA limited-purpose association status. Accordingly, the HOA was not and is not a limited purpose association in reality.

NRS 116.1201(5) states in part:

> 5. The Commission shall establish, by regulation:
>
> > (a) The criteria for determining whether an association, a limited-purpose association or a common-interest community satisfies the requirements for an exemption or limited exemption from any provision of this chapter....

NRS 116.015 defines the word "Commission" to mean "the Commission for Common-Interest Communities and Condominium Hotels created by NRS 116.600."

NRS 116.600(1) created the Commission, and NRS 116.600(2) describes its membership and appointments. On its website, the Nevada Real Estate Division defines the Commission as "a seven-member body, appointed by the governor that acts in an advisory capacity to the Division, adopts regulations, and conducts disciplinary hearings."

As provided by NRS 116.1201(5)(a), the Nevada Real Estate Division and the Commission adopted NAC 116.090, which provides in part:

> **NAC 116.090 "Limited-purpose association" interpreted.** (NRS 116.1201, 116.615)
>
> 1. An association is a limited-purpose association pursuant to subparagraph (1) of paragraph (a) of subsection 6 of NRS 116.1201 if:
>
> > (a) The association has been created for the sole purpose of maintaining the common elements consisting of landscaping, public lighting or security walls, or trails, parks and open space;
> >
> > (b) The declaration states that the association has been created as a landscape maintenance association; **and**
> >
> > (c) The declaration expressly prohibits:
> >
> > > (1) The association, and not a unit's owner, from enforcing a use restriction against a unit's owner;
> > >
> > > (2) The association from adopting any rules or regulations concerning the enforcement of a use restriction against a unit's owner; **and**
> > >
> > > (3) The imposition of a fine or any other penalty against a unit's owner for a violation of a use restriction. (emphasis added)

NAC 116.090 sets forth the requirements for determining whether an HOA is a limited-purpose association, and NRS 116.1201(5)(a) expressly incorporates the Commission's criteria. Thus, in determining whether the HOA is truly a limited-purpose association under NRS 116.1201, this Court must look to the requirements of NAC 116.090.

NAC 116.090(1) has three sub-parts that are connected by the word "and" that appears at the end of NAC 116.090(b). NAC 116.090(c) has three sub-parts that are connected by the word "and" at the end of NAC 116.090(c)(2). As a result, there are five (5) separate requirements that must be met before an association qualifies for the exception from NRS Chapter 116 provided by NRS 116.1201(2).

i. According to the express provisions in the CC&Rs, the HOA was not created for the sole purpose of maintaining common elements as required by NAC 116.090(1)(a).

The first requirement under NAC 116.090(1)(a) is that the association "has been created **for the sole purpose** of maintaining the common elements", including landscaping. (emphasis added)

Although the preamble on page 2 of the CC&Rs states that "the Project shall be deemed to be a limited expense planned community under NRS Sections 116.110368 and 116.1203(1)(b)," the CC&Rs do not state the HOA was formed for the sole purpose of landscape maintenance. Thus, by the wording of NAC 116.090(a), the CC&Rs do not meet this specific statutory requirement.

Additionally, by the very words contained in the CC&Rs, the HOA was not created for the sole purpose of maintaining common areas. The CC&Rs grant the HOA the power to enforce various use restrictions (see below); grant easements (Article 5); obtain insurance (Article 12); annex property (Article 13; bring civil actions (Article 17.3); and others. This is far afield of simply maintaining landscape.

ii. The CC&Rs do not comply with NAC 116.090(1)(c)(2).

NAC 116.090(1)(c)(2) also requires that the CC&Rs expressly prohibit the association from "adopting any rules or regulations concerning the enforcement of a use restriction against a unit's owner." The CC&Rs in the present case do not include this required language.

To the contrary, pages 8 through 12 of the CC&Rs contain 16 different use restrictions, some of which contain different subparts. These use restrictions range from prohibiting "noxious or offensive activity or noise" at the properties (Section 3.2); prohibiting using homes for "a public boarding house, sanitarium,

hospital, asylum, or institution of any kindred nature" (Section 3.3); prohibiting mining and drilling (3.4); restricting the use of off-road vehicles (3.6); restrictions on the height of fences, walls, and the like (3.7); extensive description of drainage requirements (3.9); allowing the declarant (the builder) to access each individual lot to remedy any issues (3.11); and many more.

Not only do the CC&Rs fail to state, as required by NAC 116.090(1)(B), that the HOA cannot enforce use restrictions; to the contrary, the CC&Rs contain a litany of use restrictions. In fact, Section 3.11 of the CC&Rs states "Each Owner of a Lot agrees that he will permit free access upon such Lot by Declarant for the purpose of remedying any default under, or **enforcing any provision of, this Declaration**.... (Emphasis added). Section17.3 also states that "the Association... shall have the right, but not the duty, to enforce any or all of the provisions of this Declaration...." Thus, the HOA does not meet limited purpose association status.

iii. The CC&Rs do not comply with NAC 116.090(1)(c)(3).

Finally, NAC 116.090(1)(c)(3) requires the CC&Rs to explicitly prohibit the imposition of a fine against a unit owner for violation of a use restriction. The CC&Rs contain no such prohibition. This omission in and of itself disqualifies the HOA from limited purpose association status. Notably, the fine prohibition is separate and distinct from NAC 116.090(1)(c)(1)'s prohibition on enforcing use restrictions. Accordingly, the CC&Rs do not contain a prohibition on fines. This means the HOA may choose to enforce fines for violations of the use restrictions, many of which have nothing to do with the common areas. Thus, the CC&Rs do not meet the conjunctive NAC requirements on this basis, and the HOA is not limited-purpose.

Because multiple provisions in the CC&Rs violate the limitations imposed by NAC 116.090 for the HOA to be a "limited-purpose association," the exception in NRS 116.1201(2) does not apply to the HOA or the foreclosure sale held in the present case.

3. Defendant has not proven the former owner's payments extinguished the HOA's super-priority lien.

Beginning at page 13 of its motion for summary judgment, defendant argues "[t]he partial

payments made by Nardizzi satisfied the superpriority portion of the HOA's lien." However, defendant has not provided any proof that the HOA actually applied Nardizzi's payments to the super-priority portion of the HOA lien. Accordingly, defendant's motion for summary judgment, insofar as it is based on homeowner payments, fails.

In Nguyen v. Calhoun, 105 Cal. App. 4th 428, 129 Cal. Rptr. 2d 436 (2003), the court stated:

> "The trustor-mortgagor or the person who alleges that a debt has been paid has the burden of proving payment." (4 Miller & Starr, Cal. Real Estate, supra, Deeds of Trusts and Mortgages, § 10:71, p. 217, fn. omitted.)

In Resources Group, LLC, as Trustee of the East Sunset Road Trust v. Nevada Association Services, Inc., 135 Nev. Adv. Op. 8, 437 P.3d 154, 158-159 (2019), the Nevada Supreme Court cited Nguyen v. Calhoun and held that the property owner in that case failed to meet his burden to prove that the cure payment mailed by the property owner was received by the foreclosure agent before the purchaser at the foreclosure sale paid the high bid. Thus, it is defendant's burden to show the homeowner payments were made, were applied to the super-priority lien, and were sufficient to extinguish the entire super-priority lien.

In the facts section of its motion for summary judgment, defendant goes through painstaking detail and breaks down deposition testimony from Red Rock. Defendant also attaches as exhibits various ledgers and "payment allocation reports" from Red Rock. On that basis, defendant argues that it has proven Nardizzi's payments were applied to the super-priority portion of the HOA lien. The problem with defendant's evidence and argument is that none of it comes from the HOA. Red Rock is not the HOA. Red Rock's ledgers and reports are not the HOA's ledgers and reports. If defendant had provided a statement, accounting, or deposition testimony from the HOA stating that the HOA applied Nardizzi's payments to the super-priority portion of the HOA's lien, that would be a different scenario. But all we have in this case are documents and statements from Red Rock. Red Rock's internal documents do not prove what the HOA did with any payments it may have received. Thus, defendant has failed to meet its burden that there is no genuine issue of material fact on the homeowner payment issue because defendant has not provided any evidence as to what the HOA did with the payments it may have received.

Attached as Exhibit 9 to defendant's motion for summary judgment is the deposition transcript of Sara Trevino, the witness appearing on behalf of Red Rock. Defendant cites extensively to Ms. Trevino's deposition transcript. However, again, because Ms. Trevino is an employee of Red Rock, and not of the HOA or its management company, Ms. Trevino cannot make any legitimate representations regarding how the HOA applied any payments it may have received.

Red Rock's documentation indicates it received a total of $909.00 from Nardizzi. See Exhibit 6 to defendant's motion for summary judgment, which is an "Account Detail" from Red Rock dated December 3, 2013. Specifically, pages 4 and 5 of Red Rock's Account Detail states Red Rock received a $404.00 payment on May 30, 2013; a $169.00 payment on July 5, 2013; a $168.00 payment on July 26, 2013; and a $168.00 payment on August 27, 2013, totaling $909.00.

Ms. Trevino testified in her deposition that of the $404.00 payment, Red Rock kept $275.00 and sent $129.00 to the HOA. Page 80, lines 8-11. Of the $169.00 payment, Red Rock sent $94.00 to the HOA. Page 83, lines 16-22. Of the first $168.00 payment, Red Rock sent the entire $168.00 to the HOA. Page 85, lines 15-19. And of the second $168.00 payment, Red Rock forwarded the entire $168.00 to the HOA. Page 87, lines 11-13. This is a total of $559.00. However, defendant has failed to provide any testimony or evidence <u>from the HOA</u> as to how the HOA applied these payments to Mr. Nardizzi's account. By the time of these payments - well into 2013 - Mr. Nardizzi's account had been delinquent since January 1, 2009, a period of approximately four and a half years. By July 2010, Mr. Nardizzi had missed four semi-annual $114.00 assessments, as well as six semi-annual $120.00 assessments, for a total of $1,176.00. Further, the HOA charging interest and late fees for four and a half years. The late fees were $20.00 per year, for a total of $100.00. The interest totaled $146.55. Thus, the amount due to the HOA was $1,422.55. Mr. Nardizzi's payments of $559.00 are less than 40% of the total amount owed. Thus, clearly Mr. Nardizzi never paid off the entire HOA lien and defendant needs to show further evidence proving the payments were applied to the super-priority portion of the lien. Accordingly, without having a ledger or testimony from the HOA as to how the HOA applied Nardizzi's payments to his account, defendant has not met its burden.

At page 13 of its motion for summary judgment, defendant cites to Saticoy Bay LLC Series 2141 Golden Hill v. JPMorgan Chase Bank, 408 P.3d 558 (Nev. 2017), better known as Golden Hill, in support of its argument that Nardizzi's payments extinguished the super-priority lien. However, Golden Hill is distinguished from the instant matter because in Golden Hill, the Nevada Supreme Court stated that "[t]he record contains undisputed evidence that the former homeowner made payments sufficient to satisfy the superpriority component of the HOA's lien **and that the HOA applied those payments to the superpriority component of the former homeowner's outstanding balance**." Id. at 1 [Emphasis added]. Thus, the difference is that in Golden Hill, there was undisputed evidence that the HOA applied the homeowner payments to the super-priority component of the HOA lien, whereas here, we essentially have no evidence as to how the HOA applied the payments it received. See also Deutsche Bank Nat'l Tr. Co. as Tr. for Registered Holders of Morgan Stanley ABS Capital I Inc. Tr. 2006-HE5 v. Vegas Prop. Servs., Inc., 439 P.3d 959 (Nev. 2019), where the Nevada Supreme Court distinguished Golden Hill in the exact same manner:

> Golden Hill relies on undisputed evidence that the HOA applied the homeowner's payments to the superpriority portion of the homeowner's outstanding balance. Here, Deutsche failed to demonstrate that McGahney's payments addressed the ongoing superpriority portion of the lien, or that the HOA applied her payments to that portion, based on the amount that still remained past-due following McGahney's completion of the payment plan. Thus, Golden Hill is distinguishable from this case and is not "clearly controlling," such that it would warrant our intervention.

Thus, according to the Nevada Supreme Court, Golden Hill does not apply unless there is undisputed evidence that the HOA applied homeowner payments to the super-priority portion of the HOA lien. Here, defendant has failed to supply any such evidence. Accordingly, without more, defendant cannot adequately support or rely on its argument that Nardizzi's payments extinguished the HOA's super-priority lien, and defendant's motion for summary judgment should be denied.

4. The legislative intent as evidenced by the commentary to the UCIOA shows that the bank, not the homeowner must satisfy the super priority portion of the lien.

"When a statute is ambiguous, legislative intent is the controlling factor, and reason and public policy may be considered in determine what the Legislature intended. Kaplan v. Chapter 7 Trustee 132

Nev. Adv. Op. 80, 384 P.3d 491, 493 (2016); Mendoza-Lobos v. State 125 Nev. 634,642, 218 P.3d 501, 506 (2009) Savage v. Pierson 123 Nev. 86, 89, 157 P.3d 697, 699 (2007).

The superpriority portion of an association lien is "a specially devised mechanism designed to "strike [ ] 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." SFR Investments Pool 1, LLC v. U.S. Bank N.A. 130 Nev. 742, 748, 334 P.3d 408, 412 (2014).

Extinguishing a deed of trust is a powerful tool. Without it, holders of first deeds of trust have no incentive to ever pay associations their borrowers' overdue assessments. The very goal was to bring the lender to the table, so "the first mortgage lender would promptly institute foreclosure proceedings and pay the prior six months of unpaid assessments to the association to satisfy the limited priority lien–thus permitting the mortgage lender to preserve its first lien position and deliver clear title in its foreclosure sale." See Report of the Joint Editorial Board for Uniform Real Property Acts, *The Six-Month "Limited Priority lien" for Association Fees Under the Uniform Common Interest Ownership Act* at p.4 (June 1, 2013). In other words, have the lender foreclose and get a paying owner in the property.

Lenders are disincentivized to protect a deed of trust if a homeowner's partial payment can satisfy the superpriority amount. The lenders sit back, wait for a foreclosure sale, then challenge the sale in hopes the association tried to work out a payment plan with the homeowner or the homeowner made some payments, thereby rendering the sale one of the remaining subpriority portion only. This is not how the statutes were intended to work. Therefore, giving first deed of trust holders credit for payments made by former owners serves to completely undermine the objective of compelling a first deed of trust holder to share in the burden of preserving a community while foreclosing on its deed of trust.

The Legislature and the UCIOA did not intend that lenders would sit idly by and my sheer luck find the presumptively extinguished deed of trust somehow survives the foreclosure sale. The only way for the statute to properly work and meet the drafter' and the Legislature's intent, is to make the lender the only person that can satisfy the superpriority amount.

To determine otherwise would be to create a circumstance where an association would need to stop the foreclosure process any time it began working on a payment plan with a homeowner, otherwise, it

would lose its superpriority position, causing the potential for even further loss. Once the foreclosure process begins, and the matter is turned over to collections, the association is liable for the costs incurred. Starting and stopping the process simply puts the homeowner and the association further in debt. Doing so while a first deed of trust holder takes no action to foreclose and does nothing to protect a property, defeats the purpose of the superpriority lien.

In SFR Investments Pool 1, LLC v. U.S. Bank N.A. 130 Nev. 742, 748, 334 P.3d 408, 412 (2014) the Court quoted from the official comments to UCIOA as follows:

> But the official comments to UCIOA § 3-116 forthrigthly acknowledge that the split-lien approach represents a "significant departure from existing practice." 1982 UCIOA § 3-116 cmt. 1; 1994 & 2008 UCIOA § 3-116 cmt. 2. **It is a specially devised mechanism designed to strike [ ] an equitable balance** between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interest of lenders." *Id.* The comments continue: "As a practical matter, secured lenders will most likely pay the 6 [in Nevada, nine, *see supra* note 1] months' assessments demanded by the association *rather than having the association foreclose on the unit*." *Id*. (emphasis added). **If the superpriority piece of the HOA lien just established a payment priority, the reference to a first security holder paying off the superpriority piece of the lien to stave off foreclosure would make no sense.**

(Emphasis added)

Likewise, if payments made by a unit owner can be applied to satisfy the HOA's superpriority lien, then "the reference to a first security holder paying off the superpriority piece of the lien" would make no sense.

The 2014 comments to Section 3-116 of the UCIOA comments further illuminate the intent of the drafters of the "specially devised mechanism" and the "equitable balance" that Section 3-116 creates. The 2014 comments state that the drafters of the UCIOA foresaw and anticipated that first deed of trust holders would pay off the super-priority lien rather than allowing a property be foreclosed upon. The comments also expressed concern for the inequity that exists when a lender takes no action to prevent an HOA foreclosure and instead drags its feet and relies on the rest of the property owners in the community to pay the costs of maintaining the community:

> The six-month limited priority for association liens constituted a significant departure from pre-existing practice, and was viewed as striking an equitable balance between the need to enforce collection of unpaid assessments and the need to protect the priority of the security interests of lenders in order to facilitate the availability of first mortgage credit to unit owners in common interest communities. **This equitable balance was premised on the assumption**

> **that, if an association took action to enforce its lien and the unit owner failed to cure its assessment default, the first mortgage lender would promptly institute foreclosure proceedings and pay the unpaid assessment (up to six months' worth) to the association to satisfy the association's limited priority lien**. This was expected to permit the mortgage lender to preserve its first lien and deliver clear title in its foreclosure sale - **a sale that was expected to be completed within six months** (in jurisdictions with non-judicial foreclosure) **or a reasonable period of time thereafter**, thus minimizing the period during which unpaid assessment would accrue for which the association would not have first priority. Likewise, it was expected that in the typical situation a unit would have a value sufficient to produce a sale price high enough for the foreclosing lender to recover both the unpaid mortgage balance and six months assessments.
>
> . . . .
>
> In many situations, however, mortgage lenders strategically delayed the institution or completion of foreclosure proceedings on units affected by common interest assessments. When a lender acquires a unit at a foreclosure sale by way of credit bid, it becomes legally obligated to pay assessments arising during the lenders' period of ownership. Some lenders have chosen to delay scheduling or completing a foreclosure sale, fearful that they may be unable to resell the unit quickly for an appropriate return in a depressed market. During this period of delay, neither the unit owner nor the mortgage lender is paying the common expense assessments – the unit owner is often unable or unwilling to do so, and the mortgagee is not legally obligated to do so prior to acquiring title. In the meantime, the association (and the remaining unit owners) bear the full financial consequences of this situation, because the association must either force the remaining owners to bear increased assessments to meet budgeted expenses or reduce expenditures for (or the level of) community maintenance, insurance and services.
>
> If other unit owners have to pay the burden of increased assessments to preserve community services or amenities, **the delaying lender receives a benefit in that the value of its collateral is preserved while the lender waits to foreclose**. Yet this preservation comes through the community's imposition of assessments that the lender does not have to pay or reimburse. **This benefit constitutes unjust enrichment of the mortgage lender**, particularly to the extent that the lender enjoys this benefit by virtue of conscious decision to delay completing a foreclosure sale.
>
> . . . .
>
> By allowing the association to extend its priority for six months per year throughout any period of delay by a foreclosing lender, subsection (c)(1) strikes a more appropriate and equitable sharing of the costs of preserving the value of the mortgagee's security.
>
> (emphasis added)

The same "unjust enrichment" occurs when a lender claims that payments made by a unit owner after the HOA commences foreclosure of its assessment lien must be applied to pay the superpriority assessments even though the lender "does not have to pay or reimburse" the unit owner for making those payments.

The comments to the UCIOA - from which NRS 116.3116 was derived - prove that the superpriority lien was created to require that lenders pay the super-priority lien and not rely on the

property owners to do so. Instead, lenders sat on distressed properties and did nothing, allowing thousands of properties to end up in HOA foreclosures based on a gamble that housing prices would rebound.

> In SFR Investments Pool 1, LLC v. U.S. Bank, N.A., the Court also stated:
> U.S. Bank's final objection is that it makes little sense and is unfair to allow a relatively nominal lien—nine months of HOA dues—to extinguish a first deed of trust securing hundreds of thousands of dollars of debt. But as a junior lienholder, U.S. Bank could have paid off the SHHOA lien to avert loss of its security; it also could have established an escrow for SHHOA assessments to avoid having to use its own funds to pay delinquent dues. 1982 UCIOA § 3116 cmt. 1; 1994 & 2008 UCIOA § 3–116 cmt. 2.
> 334 P.3d at 414.

This quote recognizes that the lender must take action to avoid losing its security interest.

The court in SFR Investments Pool 1, LLC v. U.S. Bank N.A. 130 Nev. 742, 334 P.3d 408 (2014) acknowledged the drafters' intent that the superpriority piece of the HOA lien would be paid by lenders and not the unit owner.

The Court also stated at page 418:

> And from what little the record contains, nothing appears to have stopped U.S. Bank from determining the precise superpriority amount in advance of the sale or paying the entire amount and requesting a refund of the balance.

The Court again required lenders to take action before the HOA foreclosed its superpriority lien and not seek to obtain a windfall at a later date by claiming that some other person paid the superpriority amount on its behalf.

Additionally, the Nevada Supreme Court identified in Shadow Wood other actions that a lender could take to prevent an HOA foreclosure sale from extinguishing a first deed of trust: (1) attending the sale; (2) requesting arbitration to determine the amount owed; (3) enjoining the sale pending judicial determination of the amount owed; (4) seeking a temporary restraining order and preliminary injunction; and (5) filing a lis pendens.

Here, defendant used none of these alternatives despite being apprised of the sale. Defendant failed to even communicate with the foreclosure agent. Given the Nevada Supreme Court's iteration and reiteration of the principle that the first deed of trust holder has many options to prevent the foreclosure sale, and its citation to the UCIOA comments which anticipate lenders paying the super-priority amount, it is clear that the first deed of trust holder was responsible for paying the super-priority amount. Thus,

defendant's argument that the homeowner paid the superpriority lien, which was raised only after defendant allowed the HOA foreclosure sale to take place without objection, directly conflicts with the statements made by the Nevada Supreme Court and the drafters of the UCIOA.

The UCIOA in its comments, and the Nevada Supreme Court in its decisions, are critical of lenders for allowing HOA dues to go unpaid and for doing nothing to prevent HOA foreclosures. The UCIOA comments indicate that the UCIOA would disapprove of a situation such as the instant matter, where, according to defendant's argument, a lender which did nothing to protect its own interest would benefit from payments made by a former homeowner. The UCIOA and the Nevada Supreme Court wanted lenders to take action to prevent foreclosure and protect their interests, and in the instant matter, defendant did virtually nothing to protect its interest.

To allow defendant to benefit from homeowner payments, while defendant did nothing itself, would fly in the face of the UCIOA's goal of an "equitable sharing of the costs of preserving the value of the mortgagee's security." The super-priority lien is designed to compel the lender holding a first deed of trust to make the payments and share in the costs incurred by the HOA to maintain the community where the Property is located.

5. The legislative amendments also evidence the legislative intent that the bank is to pay the super priority portion of the lien.

In Bielar v. Washoe Health System, Inc. 129 Nev. 459, 469, 306 P.3d 360, 367 (2013), the Supreme Court stated:

> "Where a legislature amends a former statute, or clarifies a doubtful meaning by subsequent legislation, such amendment or subsequent legislation is strong evidence of the legislative intent behind the first statute." 2B Norman J. Singer & J.D. Shambie Singer, Sutherland Statutory Construction § 49:10, at 129 (7th ed.2012); see also Pub. Emps.' Benefits Program v. Las Vegas Metro. Police Dep't, 124 Nev. 138, 157, 179 P.3d 542, 554–55 (2008) (stating that when the Legislature clarifies a statute "through subsequent legislation, we may consider the subsequent legislation persuasive evidence of what the Legislature originally intended")

In 2015, the Legislature amended NRS 116.3116, *et. seq*. which clarified that the holder of the first security interest is the party that must satisfy the super priority portion of the lien. The amendments to NRS 116.31162, regarding the language in the notice of default include:

(3) State that:

(I) **If the holder of the first security interest on the unit** does not satisfy the amount of the association's lien that is prior to that first security interest pursuant to subsection 3 of NRS 116.3116, the association may foreclose its lien by sale and that the sale may extinguish the first security interest as to the unit; and

(II) If, not later than 5 days before the date of the sale, **the holder of the first security interest on the unit satisfies the amount of the association's lien that is prior to that first security interest pursuant to subsection 3 of NRS 116.3116** and, not later than 2 days before the date of the sale, a record of such satisfaction is recorded in the office of the recorder of the county in which the unit is located, the association may foreclose its lien by sale but the sale may not extinguish the first security interest as to the unit.

The amendment to the statutes clarify the legislative intent that the holder of the first security interest is the party that must satisfy the super priority portion of the lien.

6. The HOA and its foreclosure agent complied with every notice requirement in NRS 116.31162 to 116.31168, and by incorporation, NRS 107.090.

At page 17 of its motion for summary judgment, defendant argues the sale was void because Red Rock "failed to provide the requisite notices to MERS...." Defendant claims MERS was the beneficiary of the deed of trust in question at the time Red Rock was noticing the sale, and thus MERS was an interested party entitled to notice of the HOA foreclosure. However, while page 2 of the deed of trust does in fact state that MERS is the beneficiary, it also states "MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns." Additionally, the first page of the deed of trust identifies IndyMac Bank as the Lender and contains addresses for IndyMac Bank

As discussed in the Facts section above, Red Rock mailed copies of the notice of default and notice of sale to Nardizzi; IndyMac Bank; and Wells Fargo Bank, N.A.

Defendant cites extensively to NRS 107.090 and states on page 18 of its motion that "NRS 116.31168 incorporates NRS107.090, which requires that notices be sent to a deed of trust beneficiary". However, NRS 107.090 does not identify "the deed of trust beneficiary" as the person entitled to be served with either the notice of default or the notice of sale. NRS 107.090(3) instead required that a copy of the notice of default be mailed to "[e]ach person who has recorded a request for a copy of the notice" (NRS 107.090(3)(a)) and "[e]ach other **person with an interest** whose interest or claimed interest is subordinate to the deed of trust." (NRS 107.090(3)(b)) (emphasis added)

NRS 107.090(4) required that "a copy of the notice of time and place of sale" be mailed to "each person described in subsection 3."

NRS 107.090(1) states:

> As used in this section, "person with an interest" means **any person who has or claims any right, title or interest in, or lien or charge upon, the real property** described in the deed of trust, as evidenced by any document or instrument recorded in the office of the county recorder of the county in which any part of the real property is situated. (emphasis added)

In the present case, the "person with an interest" in the deed of trust recorded on March 15, 2005, was not MERS. The "person with an interest" was instead the Lender named in the deed of trust: IndyMac Bank.

In particular, although MERS was named as the beneficiary in the deed of trust, the deed of trust expressly stated that MERS was acting "solely as nominee for Lender and Lender's successors and assigns."

The recitals at page 4 of the deed of trust also stated:

> Borrower understands and agrees that **MERS holds only legal title to the interests granted by Borrower in this Security Instrument**. . . . (emphasis added)

In Edelstein v. Bank of New York Mellon, 128 Nev. 505, 286 P.3d 249, 259 (2012), this court stated:

> Although we conclude that MERS is the proper beneficiary pursuant to the deed of trust, **that designation does not make MERS the holder of the note**. Designating MERS as the beneficiary does, as Edelstein suggests, effectively "split" the note and the deed of trust at inception because, as the parties agreed, an entity separate from the original note holder (New American Funding) is listed as the beneficiary (MERS). *See generally* In re Agard, 444 B.R. 231, 247 (Bankr.E.D.N.Y.2011). And **a beneficiary is entitled to a distinctly different set of rights than that of a note holder**.

(emphasis added)

In Landmark National Bank v. Kesler, 216 P.3d 158 (Kan. 2009), the lender named in a first mortgage filed a petition to judicially foreclose its mortgage, but did not name MERS as a party even though MERS was identified as the beneficiary in a second mortgage recorded against the property. After the lender named in the first mortgage obtained a default judgment and the property was sold at a sheriff's sale, the unrecorded assignee of the second mortgage (i.e. Sovereign Bank) filed a motion to set aside the court's confirmation of the sale because "MERS was a K.S.A. 60-219(a) contingently necessary party and, because Landmark failed to name MERS as a defendant, Sovereign did not receive notice of the proceedings." Id. at 162.

MERS also joined Sovereign's motion. Id.

The Kansas Supreme Court examined language in the mortgage that matches the language used at pages 1 and 2 of the deed of trust and language that matches language used in paragraphs 6, 7 and 13 of the deed of trust in the present case.

In particular, the court noted that paragraph 12 of the mortgage stated that "any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein." Id. at 165.

In the present case, paragraph 15 of the deed of trust, on page 11, states in part:

> 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. (emphasis added)

The Kansas Supreme Court also discussed the role of MERS as a nominee:

> The relationship that MERS has to Sovereign is more akin to that of a straw man than to a party possessing all the rights given a buyer. . . . Although MERS asserts that, under some situations, the mortgage document purports to give it the same rights as the lender, the document consistently refers only to rights of the lender, including rights to receive notice of litigation, to collect payments, and to enforce the debt obligation. The document consistently limits MERS to acting "solely" as the nominee of the lender.

Id. at 166.

In Culhane v. Aurora Loan Services of Nebraska, 708 F.3d 282, 287 (5th Cir. 2013), the court stated:

> **MERS's mortgagee status is narrowly circumscribed: it acts solely as "nominee" for the owner or servicer of the mortgage**, including the owner's or servicer's successors and assigns. There is one condition: the party for whom MERS serves as nominee must be a member of MERS. The upshot of this arrangement is that MERS holds the legal title to the mortgage as mortgagee of record, but **it does not have any beneficial interest in the loan.**

(emphasis added)

Because MERS does not hold "any beneficial interest" in a loan, MERS is not a "person with an interest" as defined in NRS 107.090(1).

In the present case, Red Rock timely mailed copies of both the notice of default and the notice of foreclosure sale to the entities and persons listed in the trustee's sale guarantee attached as Exhibit 10 to defendant's motion. Although paragraph 8 in Schedule B identified MERS as the "Beneficiary" of the deed of trust, paragraph 3 in Schedule C did not include MERS in the list of persons "to whom notice is required

by Section 107.090 of the Nevada Revised Statutes." To further this point, during her deposition, Ms. Trevino, the witness who appeared on behalf of Red Rock, answered a question regarding why Red Rock did not mail the notices to MERS:

> Q. Do you know why Red Rock would not have mailed a copy of the NOS to MERS?
>
> A. They were listed on the deed of trust with the contact information for Indy Bank, so Indy bank is where the notification would have gone to. That was the contact information provided by title on the ten-day for the deed of trust that listed MERS as a beneficiary.
>
> Q. So just to be clear, the NOS was not -- a copy of the NOS was not mailed to MERS, but mailed to Indy Bank because Indy Bank was listed as the contact info for MERS?
>
> A. It was listed on the deed of trust that listed MERS as a beneficiary.
>
> Q. Indy Bank's information?
>
> A. Yes, information for Indy Bank.

See Exhibit 9 to defendant's motion for summary judgment, page 68:25-15. So because the trustee's sale guarantee listed an address for IndyBank, and because the Ten Day Letter (see the last page of Exhibit 8 hereto) listed IndyMac Bank as requiring notice, and because MERS does not appear on any of those documents as an interested party, Red Rock did not mail the notices to MERS. Essentially, MERS is not an interested party; it is simply an agent for IndyBank, the true interested party.

As discussed above, the foreclosure agent timely mailed copies of the notice of default and the notice of foreclosure sale to IndyMac Bank and Wells Fargo at their addresses stated in the public record.

The "person with an interest" entitled to notice was the Lender, IndyMac Bank, and not MERS.

Although it also would have been appropriate for the foreclosure agent to mail the notices to the Lender's agent, MERS, defendant did not cite any authority that requires a separate notice to be served on a "nominee" for the "person with an interest" when notice has already been provided directly to the "person with an interest."

At page 19, defendant argues "MERS was prejudiced by not receiving the foreclosure notices." However, defendant does not explain how MERS was prejudiced. Defendant has not provided any proof that

MERS had any sort of policy that it would either make a tender or otherwise stop an HOA from foreclosing. Defendant has not provided any proof that MERS would make a tender of the super-priority amount to an HOA, and undersigned counsel, in several hundred cases, has never seen a tender from or on behalf of MERS. Defendant also does not provide an affidavit or declaration from MERS stating that MERS was in any prejudiced by not receiving foreclosure notices. Defendant simply argues MERS was prejudiced without any support for that statement.

7. Defendant has not alleged fraud, oppression, or unfairness that caused or brought about a low purchase price, and thus defendant is not entitled to relief based on the sales price.

At page 20 of its motion for summary judgment, defendant argues the HOA sale was tainted by "fraud, oppression, or unfairness," which, combined with an allegedly inadequate purchase price, is sufficient to justify granting defendant relief from the legal effects of the HOA foreclosure.

In Nationstar Mortgage v Saticoy Bay LLC Series 2227 Shadow Canyon , 133 Nev. Adv. Op. 91, 405 P.3d 641 (2017), the Supreme Court clarified that HOA foreclosure sales are not evaluated under the commercially reasonableness standard under Article 9 of the UCC. The court stated:

> Because we conclude that HOA real property foreclosure sales are not evaluated under Article 9's commercial reasonableness standard, Nationstar's argument that the HOA did not take extra-statutory efforts to garner the highest possible sales price has no bearing on our review of the district court's summary judgment. *See Wood,* 121 Nev. at 731, 121 P.3d at 1031 ("The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant."). And because HOA real property foreclosures are not subject to Article 9's commercial reasonableness standard, it follows that they are governed by this court's longstanding framework for evaluating any other real property foreclosure sale: whether the sale was affected by some element of fraud, unfairness, or oppression. *Shadow Wood*, 132 Nev., Adv. Op. 5, 366 P.3d at 1111-12 (reaffirming the applicability of this framework after examining case law from this court and other courts); *Long v. Towne,* 98 Nev. 11, 13, 639 P.2d 528, 530 (1982) (applying same framework); *Turner v. Dewco Servs., Inc.,* 87 Nev. 14, 18, 479 P.2d 462, 465 (1971) (same); *Brunzell v. Woodbury,* 85 Nev. 29, 31-32, 449 P.2d 158, 159 (1969) (same); *Golden,* 79 Nev. at 514-15, 387 P.2d at 994-95 (same)....
>
> The law in Nevada is clear that price alone will not justify setting aside a foreclosure sale.

In Shadow Wood, there are three instances before reference to the Restatement in the case, in which the Court reiterates, without contradiction or criticism, the standard that a foreclosure sale will not be set aside absent fraud, oppression or unfairness which results in an inadequate sales price.

Shadow Wood cites to the case of Golden v. Tomiyasu, 79 Nev. 503, 387 P.2d 989 (1963). The Golden case and the Shadow Wood case both cite to the case of Oller v. Sonoma County Land Title Company, 137 Cal. App 2d 633, 290 P.2d 880 (1955). Both the Golden case and the Oller case cite to the case of Schroeder v. Young, 161 U.S. 334, 16 S. Ct. 512, 40.L .Ed 721 (1896) in which the U.S. Supreme Court cited examples of irregularities which may affect the sale. The court stated:

> 'While mere inadequacy of price has rarely been held sufficient in itself to justify setting aside a judicial sale of property, courts are not slow to seize upon other circumstances impeaching the fairness of the transaction as a cause for vacating it, especially if the inadequacy be so gross as to shock the conscience. If the sale has been attended by any irregularity, as if several lots have been sold in bulk where they should have been sold separately, or sold in such manner that their full value could not be realized; if bidders have been kept away; if any undue advantage has been taken to the prejudice of the owner of the property, or he has been lulled into a false security; or if the sale has been collusively or in any other manner conducted for the benefit of the purchaser, and the property has been sold at a greatly inadequate price,-the sale may be set aside, and the owner may be permitted to redeem.'

The requirements for relief from a foreclosure sale when the property has been purchased by a third party in the Restatement, as well as Shadow Wood and Golden is inadequacy of the price, and fraud, oppression and unfairness causing the inadequacy of price. At no time in the Shadow Wood opinion did the court use any language to question the validity of the standards or overturn the court's prior rulings.

Defendant's first allegation of fraud, oppression, or unfairness is that the HOA's governing documents contained a mortgage protection clause. However, the Nevada Supreme Court invalidated mortgage protection clauses in the HOA foreclosure context **more than five years ago**.

In SFR, the Nevada Supreme Court discussed the mortgage savings clause or mortgage protection clause, and held that it did not affect the foreclosure sale. The court stated:

> U.S. Bank last argues that, even if NRS 116.3116(2) allows nonjudicial foreclosure of a superpriority lien, the mortgage savings clause in the Southern Highlands CC & Rs subordinated SSHOA's superpriority lien to the first deed of trust. The mortgage savings clause states that "no lien created under this Article 9 [governing nonpayment of assessments], nor the enforcement of any provision of this Declaration shall defeat or render invalid the rights of the beneficiary under any Recorded first deed of trust encumbering a Unit, made in good faith and for value." It also states that "[t]he lien of the assessments, including interest and costs, shall be subordinate to the lien of any first Mortgage upon the Unit."
>
> **NRS 116.1104 defeats this argument. It states that Chapter 116's "provisions may not be varied by agreement, and rights conferred by it may not be waived ... [e]xcept as *expressly* provided in"** Chapter 116. (Emphasis added.) "Nothing in [NRS] 116.3116 expressly provides for a waiver of the HOA's right to a priority position for the HOA's super priority lien." *See 7912 Limbwood Court Trust,*: The mortgage savings clause thus does not

> affect NRS 116.3116(2)'s application in this case. *See Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters., LLC,* 125 Nev. 397, 407, 215 P.3d 27, 34 (2009) (holding that a CC & Rs clause that created a statutorily prohibited voting class was void and unenforceable).

[Emphasis added].

Because of NRS 116.1104 and the Nevada Supreme Court's finding that the mortgage protection clause does not prevent extinguishment of a first deed of trust, the mortgage savings or mortgage protection clause cannot be used to defeat the sale or to prevent extinguishment of defendant's deed of trust.

Defendant's second allegation of fraud, oppression, or unfairness is that the super-priority lien was paid off by Nardizzi's payments. However, as discussed above, defendant has failed to meet its burden to prove Nardizzi's payments were applied to the super-priority portion of the HOA's lien. Thus, Nardizzi's payments cannot constitute fraud, oppression, or unfairness.

Defendant's third allegation of fraud, oppression, or unfairness is that Red Rock did not mail the notice of default or notice of sale to MERS. However, as discussed above, MERS was simply a nominee on behalf of IndyBank, and NRS 107.090 does not require notices to be mailed to a nominee. Thus, MERS was not entitled to statutory notice and the lack of notice to MERS has no impact on the sale.

8. The HOA and its foreclosure agent did not represent to any person that the HOA foreclosure sale would not extinguish the subordinate deed of trust.

At pages 21 and 22 of its motion, defendant also makes passing reference to the "HOA Trustee Letters" and argues that based on ZYZZX2 v. Dizon, No. 2:13-cv-1307, 2016 WL 1181666, at *5 (D. Nev. Mar. 25, 2016), the letters from Red Rock to IndyBank are proof of fraud, oppression, or unfairness.

Although the fourth paragraph in each letter stated that "[t]he Association's Lien for Delinquent Assessments is Junior only to the Senior Lender Mortgage Holder," neither letter stated that the HOA's superpriority lien was junior to the deed of trust. In addition, the very next sentence in each letter stated: "This Lien may affect your position."

Defendant has not proven that any person relied on or interpreted the language used in the letter as a statement that the HOA was not foreclosing its entire assessment lien, including the superpriority portion of the lien. In addition, because defendant did not prove that any person made this letter known to the persons

who attended the HOA foreclosure auction, the letter could not "account for" or have "brought about" the high bid made by plaintiff.

Further, ZYZZX2 is distinguishable from the instant matter. The court in ZYZZX2 v. Dizon stated:

> In this case, the homeowner's association represented to both the general public as well as Wells Fargo that the association's foreclosure would not extinguish the first deed of trust. (Doc. #52, Exhs. 2, 4). **The association sent a letter to Wells Fargo and other interested parties stating that its foreclosure would not affect the senior lender/mortgage holder's lien. (Doc. #52, Exh. 2).** Wells Fargo, consequently, had no notice from the association that its interest was at risk and that it should pay off the HOA loan.

2016 WL 1181666 at *5.[Emphasis added].

No such letter exists in the present case. In the present case, both of the letters clearly stated: "This Lien may affect your position." Accordingly, because the letter in this case states the HOA lien may affect the deed of trust beneficiary's position; because defendant has presented no proof it or its predecessor-in-interest relied on the letter from Red Rock; and because defendant has presented no proof that the letter brought about or accounted for the purchase price or otherwise chilled bidding, the Red Rock letter cannot save defendant's first deed of trust from extinguishment.

Certainly, by December 3, 2013, when the HOA foreclosed in this matter, banks and other deed of trust beneficiaries were on notice that their deeds of trust were in danger of extinguishment from HOA foreclosures. Indeed, SFR Investments Pool 1, LLC v. U.S. Bank N.A. 130 Nev. 742, 334 P.3d 408 (2014), which held HOA foreclosures could extinguish a first deed of trust had been partially briefed by December 3, 2013; the opening and answering briefs had both been filed, so by December 2013, this issue was already being hotly contested. Defendant cannot legitimately argue it or its predecessor was instead relying on a four year old letter from Red Rock when the issue was already under serious consideration with the Nevada Supreme Court. Finally, even if defendant could prove defendant's predecessor received and relied on the Red Rock letter, the Nevada Supreme Court has explicitly found in the mortgage protection clause context that parties are presumed to know the law:

> [W]e have previously held that mortgage savings clauses protecting the first deed of trust were void and unenforceable under NRS 116.1104. Id. at 757-758, 334 P.3d at 418-19. Moreover, we must presume that any such bidders were aware of NRS 116.1104, such that they were not misled or chilled from bidding.4 See Smith v. State, 38 Nev. 477, 481, 151 P. 512, 513 (1915) ("Every one is presumed to know the law and this presumption is not even rebuttable.").

Nationstar Mortg., LLC v. BDJ Investments, LLC, No. 75480, 2019 WL 6208548, at *2 (Nev. Nov. 20, 2019). Likewise, in December 2013 when this foreclosure took place, defendant's predecessor-in-interest was presumed to know that a properly conducted HOA foreclosure could extinguish a first deed of trust. Accordingly, defendant cannot rely on the Red Rock letter to protect its first deed of trust.

CONCLUSION

Based on the foregoing, plaintiff respectfully requests this court deny defendant's motion for summary judgment.

DATED this 4th day of December, 2019.

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

By: / s / *Adam R. Trippiedi, Esq.*
Michael F. Bohn, Esq.
Adam R. Trippiedi, Esq.
2260 Corporate Circle, Suite 480
Henderson, Nevada 89074
Attorneys for Plaintiff/Counterdefendant
Saticoy Bay LLC Series 8149 Palace Monaco

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law Offices of Michael F. Bohn., Esq., Ltd, and on the 4th day of December, 2019, an electronic copy the above **SATICOY BAY LLC SERIES 8149 PALACE MONACO'S OPPOSITION TO WELLS FARGO'S MOTION FOR SUMMARY JUDGMENT** was served via the Court's electronic service system upon the following counsel of record::

R. Samuel Ehlers, Esq.
Aaron D. Lancaster, Esq.
Wright, Finlay & Zak, LLP
7785 W. Sahara Ave., Ste. 200
Las Vegas, NV 89117
Attorneys for Defendant Wells Fargo Bank, National Association

Douglas M. Cohen, Esq.
Gregory P. Kerr, Esq.
Jordan Butler, Esq.
Wolf, Rifkin, Shapiro,
Schulman & Rabkin, LLP
3556 E. Russell Rd., Second Floor
Las Vegas, NV 89120
Attorneys for Defendant Monaco Landscape Maintenance Association, Inc.

/s/ Marc Sameroff/
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD

EXHIBIT 1

EXHIBIT 1

Inst #: 201312270002296
Fees: $18.00 N/C Fee: $0.00
RPTT: $701.25 Ex: #
12/27/2013 01:52:32 PM
Receipt #: 1884823
Requestor:
RESOURCES GROUP
Recorded By: MSH Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

Mail and Return Tax statement to:
Saticoy Bay LLC Series 8149 Palace Monaco
900 S. Las Vegas Blvd, #810
Las Vegas, NV 89101

APN # 163-09-817-050

FORECLOSURE DEED

The undersigned declares:

Red Rock Financial Services, herein called agent for (Monaco Landscape Maintenance Association, Inc), was the duly appointed agent under that certain Lien for Delinquent Assessments, recorded 05/20/2009 as instrument number 0002871 Book 20090520, in Clark County. The previous owner as reflected on said lien is ROBERT NARDIZZI. Red Rock Financial Services as agent for Monaco Landscape Maintenance Association, Inc does hereby grant and convey, but without warranty expressed or implied to: **Saticoy Bay LLC Series 8149 Palace Monaco** (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: MONACO #12 PLAT BOOK 89 PAGE 81 LOT 230 BLOCK J which is commonly known as **8149 Palace Monaco Avenue Las Vegas, NV 89117.**

AGENT STATES THAT:
This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Monaco Landscape Maintenance Association, Inc governing documents (CC&R's) and that certain Lien for Delinquent Assessments, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 07/07/2009 as instrument number 0001621 Book 20090707 which was recorded in the office of the recorder of said county. Red Rock Financial Services has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Lien for Delinquent Assessments and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Monaco Landscape Maintenance Association, Inc at public auction on **12/3/2013**, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale became the purchaser of said property and paid therefore to said agent the amount bid **$17,400.00** in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Lien for Delinquent Assessment.

Dated: December 6, 2013

Kimberlee Sibley

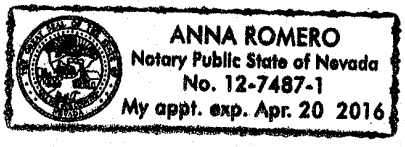
By: Kimberlee Sibley, employee of Red Rock Financial Services, agent for Monaco Landscape Maintenance Association, Inc

STATE OF NEVADA)
COUNTY OF CLARK)

On December 6, 2013, before me, personally appeared Kimberlee Sibley, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

When Recorded Mail To: Saticoy Bay LLC Series 8149 Palace Monaco
900 S. Las Vegas Blvd, #810
Las Vegas, NV 89101



STATE OF NEVADA
DECLARATION OF VALUE

1. **Assessor Parcel Number (s)**
   a) 163-09-817-050
   b) _____
   c) _____
   d) _____

2. **Type of Property:**

a) ☐	Vacant Land	b) ☑	Single Fam Res.	FOR RECORDERS OPTIONAL USE ONLY	
c) ☐	Condo/Twnhse	d) ☐	2-4 Plex	Notes:	
e) ☐	Apt. Bldg.	f) ☐	Comm'l/Ind'l		
g) ☐	Agricultural	h) ☐	Mobile Home		
i) ☐	Other				

3. **Total Value/Sales Price of Property:** $ 17,400.00
   Deed in Lieu of Foreclosure Only (value of property) $ _____
   Transfer Tax Value: $ 137,037.00
   Real Property Transfer Tax Due: $ 701.25

4. If Exemption Claimed:
   a. Transfer Tax Exemption, per NRS 375.090, Section: _____
   b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

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

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

Signature Kimberlee Hubley **Capacity** AGENT
Signature _____ **Capacity** _____

SELLER (GRANTOR) INFORMATION (REQUIRED)		BUYER (GRANTEE) INFORMATION (REQUIRED)	
Print Name:	Red Rock Financial Services	**Print Name:**	Saticoy Bay LLC Series 8149 Palace Monaco
Address:	4775 West Teco Ave #140	**Address:**	900 S Las Vegas Blvd #810
City:	Las Vegas	**City:**	Las Vegas
State:	NV **Zip:** 89118	**State:**	NV **Zip:** 89101

COMPANY/PERSON REQUESTING RECORDING
(REQUIRED IF NOT THE SELLER OR BUYER)

Print Name: SATICOY BAY LLC SERIES 8149 **Escrow #** _____
Address: 900 S LAS Vegas BLVD - PALACO MONACO
City: LV #810 **State:** NV **Zip:** 89101

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

EXHIBIT 2

EXHIBIT 2

22

22

20050315-0004331

Fee: $35.00
N/C Fee: $0.00

03/15/2005 14:27:45
T20050047074
Requestor:
TICOR TITLE OF NEVADA INC

Frances Deane OSA
Clark County Recorder Pgs: 22

Assessor's Parcel No.: 16309817050

After recording please return to:
IndyMac Bank, F.S.B. c/o Document Management

[Company Name]

[Name of Natural Person]
3465 E. Foothill Blvd.

[Street Address]
Pasadena, CA 91107

[City, State Zip Code]

Until a change is requested, all tax statements shall be sent to the following address:
IndyMac Bank, F.S.B.

[Name]
P.O. Box 78826

[Street Address]
Phoenix, AZ 85062-8826

[City, State Zip Code]

[Space Above This Line For Recording Data] [redacted]

DEED OF TRUST

MIN 100055401209419094

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 March 7, 2005, together with all Riders to this document.

(B) "Borrower" is Robert Nardizzi, a married man, as his sole and separate property

Borrower is the trustor under this Security Instrument.

(C) "Lender" is IndyMac Bank, F.S.B., a federally chartered savings bank.
Lender is a Federal Savings Bank organized and existing under the laws of United States of America
Lender's address is 155 North Lake Avenue, Pasadena, CA 91101.

Loan No: [redacted]

(D) "Trustee" is Ticor Title Insurance Co

(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 March 7, 2005. The Note states that Borrower owes Lender one hundred eighty five thousand seven hundred and NO/100ths Dollars (U.S. $ 185,700.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than April 1, 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]*:

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☒ Planned Unit Development Rider	☐ Biweekly Payment Rider
☐ 1-4 Family Rider	☐ Revocable Trust Rider	

☒ Other(s) *[specify]* Fixed/Adjustable Rate Interest Only LIBOR Rider

(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.

(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.

Loan No: [redacted]

(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. §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 irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of Clark :
[Type of Recording Jurisdiction] *[Name of Recording Jurisdiction]*

Legal description attached hereto and made a part hereof.

which currently has the address of 8149 Palace Monaco Avenue
[Street]
Las Vegas , Nevada 89117 ("Property Address"):
[City] *[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.

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.
Loan No: [redacted]

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 for 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 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 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 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 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.

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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.

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.

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, 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).

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. $100 where no credit checks are required, the greater of $400 or 1%of unpaid principal balance of the mortgage - up to a maximum of $900 - if the change of ownership requires credit approval of the new mortgagor; or any maximum prescibed by Applicable Law.

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.

Loan No: 1[redacted]

Witnesses:

_____

_____ (Seal)
Robert Nardizzi
-Borrower
[Printed Name]

Printed Name: *{Please Complete}*

_____ (Seal)
-Borrower
[Printed Name]

_____ _____ (Seal)
-Borrower
[Printed Name]

Printed Name: *{Please Complete}*

_____ (Seal)
-Borrower
[Printed Name]

[Acknowledgment on Following Page]

State of Nevada §
§
County of Clark §

Before me the undersigned authority, on this day personally appeared Robert Nardizzi known to me (or proved to me through an identity card or other document) to be the person(s) whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal on this 9th day of March 2005.

(Seal)

Notary Public Pamela Baumeister [Printed Name]
My Commission Expires: Oct 1 2006

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
PAMELA BAUMEISTER
Appt. No. 02-78247-1
My Appt. Expires Oct. 1, 2006

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 7th day of March, 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 (the "Borrower") to secure Borrower's Note to IndyMac Bank, F.S.B., a federally chartered savings bank (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

8149 Palace Monaco Avenue, Las Vegas, NV 89117

[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 Declaration of Covenants, Conditions, and Restrictions (the "Declaration"). The Property is a part of a planned unit development known as:

Monaco

[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.

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.

[Signatures on Following Page]

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

Robert Nardizzi (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

[Sign Original Only]

Loan No: [redacted]

FIXED/ADJUSTABLE RATE RIDER
INTEREST ONLY FIXED PERIOD
(LIBOR 6 Month Index (As Published In *The Wall Street Journal*)- Rate Caps)

Loan # [redacted] MIN: 100055401209419094

THIS FIXED/ADJUSTABLE RATE RIDER is made this 7th day of March, 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 Fixed/Adjustable Rate Note (the "Note") to IndyMac Bank, F.S.B., a federally chartered savings bank

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

8149 Palace Monaco Avenue, Las Vegas, NV 89117
[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of 5.750 %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of April 2010, and the adjustable interest rate I will pay may change on that day every 6th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

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

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding two and 750/1000ths percentage points (2.750 %) 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%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.750 % or less than 2.750 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than 1.00 percentage points from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 11.750 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

(G) Date of First Principal and Interest Payment

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment due after the first Change Date.

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

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall 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.

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.

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be 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 also may 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 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 Fixed/Adjustable Rate Rider.

Robert Nardizzi _____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower _____ (Seal) -Borrower

_____ (Seal) -Borrower _____ (Seal) -Borrower

_____ (Seal) -Borrower _____ (Seal) -Borrower

Loan No: [redacted]
8480396 (0208)

Form 5008
8/2002

EXHIBIT A

Lot Two Hundred Thirty (230) in Block "J" of MONACO NO. 12, as shown by map thereof on file in Book 89 of Plats, Page 81, in the Office of the County Recorder of Clark County, Nevada.

EXHIBIT 3

EXHIBIT 3

Inst #: 201402240000507
Fees: $18.00
N/C Fee: $25.00
02/24/2014 08:02:59 AM
Receipt #: 1940730
Requestor:
PREMIUM TITLE TSG
Recorded By: STN Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN #: 16309817050
Prepared by: Fred Jeune
When Recorded Mail To:
Ocwen Loan Servicing,LLC
5720 Premier Park Dr,
West Palm Beach, FL 33407
Phone Number: 561-682-8835
MERS Ph.#: (888) 679 – 6377

ASSIGNMENT OF DEED OF TRUST
NEVADA

This **ASSIGNMENT OF DEED OF TRUST** from **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS)** as nominee for INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK, A FEDERAL SAVINGS BANK its successors and assigns, whose address is PO Box 2026 Flint, MI 48501-2026 ("Assignor) to **AURORA COMMERCIAL CORP. AS SUCCESSOR ENTITY TO AURORA BANK, FSB F/K/A LEHMAN BROTHERS BANK, FSB**, whose address is c/o Ocwen Loan Servicing,LLC, 5720 Premier Park Dr, West Palm Beach, FL 33407, (Assignee) all its rights, title and interest in and to a certain mortgage duly recorded in the Office of the County Recorder of **CLARK** County, State of **NEVADA**, as follows;

Trustor: **ROBERT NARDIZZI**
Trustee: **TICOR TITLE INSURANCE CO**
Beneficiary: **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ACTING SOLELY AS NOMINEE FOR INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK, A FEDERAL SAVINGS BANK**
Document Date: **MARCH 07, 2005**
Amount: **$185,700.00**
Date Recorded: **MARCH 15, 2005**
Document/Instrument/Entry Number: **0004331** **BOOK: 20050047074**
Property Address: **8149 PALACE MONACO AVENUE, LAS VEGAS, NV 89117**

Property more particularly described in the above referenced recorded Deed of Trust

APN #: 16309817050
Prepared by: Fred Jeune
When Recorded Mail To:
Ocwen Loan Servicing,LLC
5720 Premier Park Dr,
West Palm Beach, FL 33407
Phone Number: 561-682-8835
MERS Ph.#: (888) 679 – 6377

This Assignment is made without recourse, representation or warranty.

DATED: FEBRUARY 12, 2014

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
ACTING SOLELY AS NOMINEE FOR INDYMAC BANK, F.S.B.,
A FEDERALLY CHARTERED SAVINGS BANK, A FEDERAL SAVINGS BANK
ITS SUCCESSORS AND ASSIGNS

BY: .....
NAME: Joel Pires
TITLE: Assistant Secretary

STATE OF FLORIDA)
)SS.
COUNTY OF PALM BEACH)

On FEBRUARY 12, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared Joel Pires, the Assistant Secretary at MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ACTING SOLELY AS NOMINEE FOR INDYMAC BANK, F.S.B., A FEDERALLY CHARTERED SAVINGS BANK, A FEDERAL SAVINGS BANK its successors and assigns, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Notary Signature – Ivelka Angeles

IVELKA ANGELES
Notary Public - State of Florida
My Comm. Expires Jul 23, 2016
Commission # EE 218470
Bonded Through National Notary Assn.

EXHIBIT 4

EXHIBIT 4

Assessor's/Tax ID No. 16309817050

Recording Requested By:
OCWEN LOAN SERVICING, LLC

When Recorded Return To:
OCWEN LOAN SERVICING, LLC
240 TECHNOLOGY DRIVE
IDAHO FALLS, ID 83401

CORPORATE ASSIGNMENT OF DEED OF TRUST

Clark, Nevada
SELLER'S SERVICING #: [redacted] "NARDIZZI"
SELLER'S LENDER ID#: [redacted]
OLD SERVICING #: [redacted]

MIN #: 100055401209419094 SIS #: 1-888-679-6377

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THIS DOCUMENT SUBMITTED FOR RECORDING DOES NOT CONTAIN PERSONAL INFORMATION ABOUT ANY PERSON.

Date of Assignment: December 30th, 2016
Assignor: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), SOLELY AS NOMINEE FOR INDYMAC BANK, FSB, A FEDERALLY CHARTERED SAVINGS BANK, its successors and/or assigns at PO BOX 2026 FLINT MI 48501, 1901 E VOORHEES ST, STE C, DANVILLE, IL 61834
Assignee: WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE STRUCTURED ADJUSTABLE RATE MORTGAGE LOAN TRUST, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-11 at C/O OCWEN LOAN SERVICING, LLC., 1661 WORTHINGTON ROAD, STE 100, WEST PALM BEACH, FL 33409

Executed By: ROBERT NARDIZZI, A MARRIED MAN, AS HIS SOLE AND SEPARATE PROPERTY To: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), SOLELY AS NOMINEE FOR INDYMAC BANK, F.S.B. A FEDERALLY CHARTERED SAVINGS BANK, ITS SUCCESSORS AND/OR ASSIGNS
Date of Deed of Trust: 03/07/2005 Recorded: 03/15/2005 in Book: 20050315 as Instrument No.: 0004331 In the County of Clark, State of Nevada.

Assessor's/Tax ID No. 16309817050

Property Address: 8149 PALACE MONACO AVENUE, LAS VEGAS, NV 89117

Legal: NA

*RRM*RR2GMAC*12/30/2016 11:08:50 AM* GMAC40GMACA000000000[redacted]
NVCLARK[redacted] NVCLARK_TRUST_ASSIGN_ASSN * RP*RP1GMAC*

THE PURPOSE OF THIS CORRECTIVE ASSIGNMENT OF DEED OF TRUST IS TO CORRECT THE ASSIGNEE ON THE ASSIGNMENT RECORDED ON 02/24/2014, IN BOOK NUMBER 20140224, AS INSTRUMENT NUMBER 0000507.

KNOW ALL MEN BY THESE PRESENTS, that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the said Assignor hereby assigns unto the above-named Assignee, the said Deed of Trust having an original principal sum of $185,700.00 with interest, secured thereby, and the full benefit of all the powers and of all the covenants and provisos therein contained, and the said Assignor hereby grants and conveys unto the said Assignee, the Assignor's interest under the Deed of Trust.

TO HAVE AND TO HOLD the said Deed of Trust, and the said property unto the said Assignee forever, subject to the terms contained in said Deed of Trust. IN WITNESS WHEREOF, the assignor has executed these presents the day and year first above written:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), SOLELY AS NOMINEE FOR INDYMAC BANK, FSB, A FEDERALLY CHARTERED SAVINGS BANK, its successors and/or assigns
On JAN 0 5 2017

By: _____
RENE A PONZIO, Assistant Secretary

*RRM*RR2GMAC*12/30/2016 11:08:50 AM* GMAC40GMACA00000000000[redacted]
NVCLARK* [redacted] NVCLARK_TRUST_ASSIGN_ASSN * RP*RP1GMAC*

STATE OF FLORIDA
COUNTY OF PALM BEACH

On JAN 0 5 2017, before me, Joe Simmons, a Notary Public in and for PALM BEACH in the State of FLORIDA, personally appeared RENE A PONZIO, Assistant Secretary, personally known to me (or 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, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal,

Joe Simmons
Notary Expires: 10/16/2017

Notary Public State of Florida
Joe Simmons
My Commission FF 063552
Expires 10/16/2017

(This area for notarial seal)

Mail Tax Statements To: ROBERT NARDIZZI, 8149 PALACE MONACO AVENUE, LAS VEGAS, NV 89117

*RRM*RR2GMAC*12/30/2016 11:08:50 AM* GMAC40GMACA0000000000[redacted]
NVCLARK*[redacted] NVCLARK_TRUST_ASSIGN_ASSN * RP*RP1GMAC*

EXHIBIT 5

EXHIBIT 5

RED ROCK FINANCIAL SERVICES

File Number: R 30907

MAILING AFFIDAVIT

STATE OF NEVADA)
) Ss.
COUNTY OF CLARK)

The declarant, whose signature appears below, and who is an employee of Red Rock Financial Services, states that he/she is now and at all times herein mentioned was, a citizen of the United States and over the age of eighteen (18) years; on the date as set forth below, he/she personally mailed the Notice, of which the annexed is a true copy, upon the addressee attached hereto, by depositing in the United States Mail in the County set forth above, an envelope, certified and first class with postage prepaid thereon, containing a copy of such Notice, addressed to the attached named person(s) at the address herein attached stated.

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

Dated: April 9, 2009

Signature _____

See Attached 1 Pages

RED ROCK FINANCIAL SERVICES

April 9, 2009

VIA CERTIFIED AND FIRST CLASS MAIL

Robert Nardizzi
8149 Palace Monaco Avenue
Las Vegas, NV 89117

Re: 8149 Palace Monaco Avenue, Las Vegas, NV 89117
Monaco Landscape Maintenance Association, Inc. / R30907

Dear Robert Nardizzi,

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Monaco Landscape Maintenance Association, Inc. (herein also called the Association) has given permission under our agency agreement to Red Rock Financial Services to collect past due homeowner's association assessments. All accounting information obtained from the association or its managing agent will not be accurate as additional collection fees and costs have been added to the above account.

The current balance due on the above account is $258.00. If you choose to reinstate the account, payment in full must be received in the Red Rock Financial Services office within 30 days from the date of this letter. Payment must be in the form of a **cashier's check** or **money order**, made payable to Red Rock Financial Services and mailed to the address indicated below. If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above.

If you choose not to pay your account in full within 30 days from the date of this letter, in accordance with Nevada Revised Statutes, Red Rock Financial Services will prepare and record a Lien for Delinquent Assessments on behalf of Monaco Landscape Maintenance Association, Inc.. Costs estimated in the amount of $340.00 plus mailing fees will be added to the above account in the case the Lien for Delinquent Assessments being prepared and/or recorded. Please note these are estimated costs.

A "30 Day Period" has been established for disputing the validity of the debt. Federal Law does not require Red Rock Financial Services to wait the "30 Day Period" to prepare and/or record the Lien for Delinquent Assessments. The "30 Day Period", according to Federal Law, begins from the date this letter is received by you.

All disputes regarding the validity of the debt must be submitted in written form to Red Rock Financial Services. When the dispute is received, Red Rock Financial Services will provide verification of the debt and a copy of such verification will be mailed to you. In addition, Red Rock Financial Services will provide you with the original creditor(s) and address(es) if different from the current. Collection efforts on the part of Red Rock Financial Services will cease, in the process of research, to provide to you via mail the information outlined above in written form. In the case Red Rock Financial Services does not receive in written form, a dispute of the debt, Red Rock Financial Services will assume the debt is valid.

Please contact the office of Red Rock Financial Services with any questions you may have at 702-932-6887.

Sincerely,

Stacy Dominguez

Stacy Dominguez
Red Rock Financial Services
cc: Monaco Landscape Maintenance Association, Inc.

EXHIBIT 6

EXHIBIT 6

RED ROCK FINANCIAL SERVICES

File Number: R 30907

MAILING AFFIDAVIT

STATE OF NEVADA)
) Ss.
COUNTY OF CLARK)

The declarant, whose signature appears below, and who is an employee of Red Rock Financial Services, states that he/she is now and at all times herein mentioned was, a citizen of the United States and over the age of eighteen (18) years; on the date as set forth below, he/she personally mailed the Notice, of which the annexed is a true copy, upon the addressee attached hereto, by depositing in the United States Mail in the County set forth above, an envelope, certified and first class with postage prepaid thereon, containing a copy of such Notice, addressed to the attached named person(s) at the address herein attached stated.

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

Dated: May 22, 2009

Signature _____

See Attached 1 Pages

THE WALZ CERTIFIED MAILER™

FROM **WALZ** ™

U.S. PAT. NO. 5,501,393

7160 3901 9848 3280 4900

TO:

Robert Nardizzi
8149 Palace Monaco Avenue
Las Vegas, NV 89117

Label #1

Robert Nardizzi
8149 Palace Monaco Avenue
Las Vegas, NV 89117
R30907

Label #2

Robert Nardizzi
8149 Palace Monaco Avenue
Las Vegas, NV 89117
R30907

Label #3

Robert Nardizzi
8149 Palace Monaco Avenue
Las Vegas, NV 89117
R30907

TEAR ALONG THIS LINE

SENDER:

REFERENCE: R30907

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

Mailed on 5/22/09 by
Red Rock Financial Services
See Firm Book

FOLD AND TEAR THIS WAY → OPTIONAL

Certified Article Number 7160 3901 9848 3280 4900

SENDERS RECORD

Label #5

Robert Nardizzi
8149 Palace Monaco Avenue
Las Vegas, NV 89117
R30907

Charge Amount:

Charge To:

FOLD AND TEAR THIS WAY →

Label #6

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL

7160 3901 9848 3280 4900

Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED
USPS MAIL CARRIER
DETACH ALONG PERFORATION

2. Article Number

7160 3901 9848 3280 4900

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

Robert Nardizzi
8149 Palace Monaco Avenue
Las Vegas, NV 89117
R30907 Monaco Landscape Maintenance Association, Inc.

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) | B. Date of Delivery

C. Signature

X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

APP000798

PS Form 3811, January 2005 Domestic Return Receipt

Thank you for using Return Receipt Service

WFZ000352

RED ROCK FINANCIAL SERVICES

May 22, 2009

VIA CERTIFIED AND FIRST CLASS MAIL

Robert Nardizzi
8149 Palace Monaco Avenue
Las Vegas, NV 89117

Re: 8149 Palace Monaco Avenue Las Vegas, NV 89117
Monaco Landscape Maintenance Association, Inc. / R30907

Dear Robert Nardizzi:

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

Red Rock Financial Services initial correspondence to you stated failure to reinstate the above account would result in the Lien for Delinquent Assessments being prepared and recorded on the above referenced property. Noted in the initial correspondence, additional fees and costs have been added to the account balance. As of the date of this letter, the account balance is $606.71.

Enclosed, please find a copy of the Lien for Delinquent Assessments. The amount noted on this letter and the Lien for Delinquent Assessments may differ. The "Amount Due" on the Lien for Delinquent Assessments is accurate as of the date of preparation. These variations may be due to additional assessments, late fees, interest, fines and collection fees and costs being assessed to the account. Please contact Red Rock Financial Services to obtain an "up to date" account balance or to discuss alternative payment arrangements. **All Payments must be in the form of a cashier's check or money order.** If we receive partial payments, they will be credited to your account, however, we will continue with the collection process on the balance owed as described above.

As of the date of this letter, the "30 Day Period" is still in effect. In the case Red Rock Financial Services does not receive in written form a dispute of the debt, Red Rock Financial Services will assume the debt is valid. All disputes of the validity of the debt must be submitted in written form to Red Rock Financial Services. When the dispute is received, Red Rock Financial Services will provide verification of the debt and a copy of such verification will be mailed to you. Upon receipt of a written dispute, collection efforts on the part of Red Rock Financial Services will cease, in the process of research, to provide to you via mail information in written form.

Allowed by Nevada Revised Statutes, Red Rock Financial Services may record a Notice of Default and Election to Sell no sooner then the 31st day from the mailing of the Lien for Delinquent Assessments. As a courtesy to you, an Intent to Notice of Default courtesy letter will be sent to you via first class mail at an additional charge.

Please contact the Red Rock Financial Services office with any questions you may have at 702-932-6887.

Sincerely,

Christie Marling
Red Rock Financial Services
cc: Monaco Landscape Maintenance Association, Inc.
enclosure(s)

Assessor Parcel Number: 163-09-817-050
File Number: R30907

Receipt/Conformed Copy
Requestor:
NORTH AMERICAN TITLE COMPANY
05/20/2009 10:56:07 T20090176765
Book/Instr: 20090520-0002871
Lien Page Count: 1
Fees: $14.00 N/C Fee: $0.00

Debbie Conway
Clark County Recorder

LIEN FOR DELINQUENT ASSESSMENTS

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

NOTICE IS HERBY GIVEN: Red Rock Financial Services, a division of RMI Management LLC, officially assigned as agent by the Monaco Landscape Maintenance Association, Inc., herein also called the Association, in accordance with Nevada Revised Statues and outlined in the Association Covenants, Conditions, and Restrictions, herein also called CC&R's, recorded on 11/13/1998, in Book Number 981113, as Instrument Number 02435 and including any and all Amendments and Annexations et. seq., of Official Records of Clark County, Nevada. Which have been supplied to and agreed upon by said owner.

Said Association imposes a Lien for Delinquent Assessments on the commonly known property:
8149 Palace Monaco Avenue, Las Vegas, NV 89117
MONACO #12 PLAT BOOK 89 PAGE 81 LOT 230 BLOCK J, in the County of Clark
Current Owner(s) of Record:
ROBERT NARDIZZI
The amount owing as of the date of preparation of this lien is **$606.71.
This amount includes assessments, late fees, interest, fines/violations and collection fees and costs.
**The said amount will increase as assessments, late fees, interest, fines/violations, collection fees and costs and/or decrease as partial payments are applied to the account.

Dated: May 13, 2009

Prepared By Kim Whipple, Red Rock Financial Services, on behalf of Monaco Landscape Maintenance Association, Inc.

STATE OF NEVADA)
COUNTY OF CLARK)
On May 13, 2009, before me, personally appeared Kim Whipple, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

JULIA THOMPSON
Notary Public State of Nevada
No. 08-7932-1
My appt. exp. Sept. 4, 2012

When Recorded Mail To: Red Rock Financial Services
6830 West Oquendo Road, Suite 201
Las Vegas, Nevada 89118
702-932-6887

EXHIBIT 7

EXHIBIT 7

Assessor Parcel Number: 163-09-817-050
File Number: R30907
Property Address: 8149 Palace Monaco Avenue
Las Vegas, NV 89117
Title Order Number: 17233

Receipt/Conformed Copy
Requestor:
NORTH AMERICAN TITLE COMPANY
07/07/2009 10:20:46 T20090234582
Book/Instr: 20090707-0001621
Default Page Count: 1
Fees: $14.00 N/C Fee: $0.00

Debbie Conway
Clark County Recorder

NOTICE OF DEFAULT AND ELECTION TO SELL PURSUANT TO THE LIEN FOR DELINQUENT ASSESSMENTS

◆ IMPORTANT NOTICE ◆

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

NOTICE IS HEREBY GIVEN: Red Rock Financial Services officially assigned as agent by the Monaco Landscape Maintenance Association, Inc., under the Lien for Delinquent Assessments, recorded on 5/20/2009, in Book Number 20090520, as Instrument Number 0002871, reflecting ROBERT NARDIZZI as the owner(s) of record on said lien, land legally described as MONACO #12 PLAT BOOK 89 PAGE 81 LOT 230 BLOCK J, of the Official Records in the Office of the Recorder of Clark County, Nevada, makes known the obligation under the Covenants, Conditions and Restrictions recorded 11/13/1998, in Book Number 981113, as Instrument Number 02435, has been breached. As of 1/1/2009 forward, all assessments, whether monthly or otherwise, late fees, interest, Association charges, legal fees and collection fees and costs, less any credits, have gone unpaid.

Above stated, the Association has equipped Red Rock Financial Services with verification of the obligation according to the Covenants, Conditions and Restriction in addition to documents proving the debt, therefore declaring any and all amounts secured as well as due and payable, electing the property to be sold to satisfy the obligation. In accordance with Nevada Revised Statutes, no sale date may be set until the ninety-first (91) day after the recorded date or the mailing date of the Notice of Default and Election to Sell. As of July 2, 2009, the amount owed is $1,740.42. This amount will continue to increase until paid in full.

Marsha Beason Dated: July 2, 2009

Prepared By Marsha Beason, Red Rock Financial Services, on behalf of Monaco Landscape Maintenance Association, Inc.

STATE OF NEVADA)
COUNTY OF CLARK)

On July 2, 2009, before me, personally appeared Marsha Beason, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Meryl Sibley

MERYL SIBLEY
Notary Public State of Nevada
No. 08-7934-1
My appt. exp. Sept. 4, 2012

When Recorded Mail To: Red Rock Financial Services
6830 West Oquendo Road, Suite 201
Las Vegas, Nevada 89118 • 702-932-6887

EXHIBIT 8

EXHIBIT 8

RED ROCK FINANCIAL SERVICES

File Number: R 30907

MAILING AFFIDAVIT

STATE OF NEVADA)
) Ss.
COUNTY OF CLARK)

The declarant, whose signature appears below, and who is an employee of Red Rock Financial Services, states that he/she is now and at all times herein mentioned was, a citizen of the United States and over the age of eighteen (18) years; on the date as set forth below, he/she personally mailed the Notice, of which the annexed is a true copy, upon the addressee attached hereto, by depositing in the United States Mail in the County set forth above, an envelope, certified and first class with postage prepaid thereon, containing a copy of such Notice, addressed to the attached named person(s) at the address herein attached stated.

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

Dated: July 17, 2009

Signature [signature]

See Attached 1 Pages

THE WALZ CERTIFIED MAILER™

FROM WALZ

Label #1
Robert Nardizzi
7418 Parnell Avenue
Las Vegas, NV 89147
R30907

Label #2
Robert Nardizzi
7418 Parnell Avenue
Las Vegas, NV 89147
R30907

Label #3
Robert Nardizzi
7418 Parnell Avenue
Las Vegas, NV 89147
R30907

FOLD AND TEAR THIS WAY → OPTIONAL

7160 3901 9848 4741 3425

TO: Robert Nardizzi
7418 Parnell Avenue
Las Vegas, NV 89147

SENDER:

REFERENCE: R30907

← TEAR ALONG THIS LINE

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE
Mailed on 7/17/09 by
Red Rock Financial Services
See Firm Book

Label #5

Certified Article Number
7160 3901 9848 4741 3425

SENDERS RECORD

Robert Nardizzi
7418 Parnell Avenue
Las Vegas, NV 89147
R30907

Charge Amount:

Charge To:

FOLD AND TEAR THIS WAY →

Label #6

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL

7160 3901 9848 4741 3425

Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED
USPS MAIL CARRIER
DETACH ALONG PERFORATION

2. Article Number
7160 3901 9848 4741 3425

3. Service Type CERTIFIED MAIL

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

Robert Nardizzi
7418 Parnell Avenue
Las Vegas, NV 89147
R30907 Monaco Landscape Maintenance Association, Inc.

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) | B. Date of Delivery

C. Signature
X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

PS Form 3811, January 2005 Domestic Return Receipt

Thank you for using Return Receipt Service

APP000805

WFZ000338

Assessor Parcel Number: 163-09-817-050
File Number: R30907
Property Address: 8149 Palace Monaco Avenue
Las Vegas, NV 89117
Title Order Number: 17233

Receipt/Conformed Copy
Requestor:
NORTH AMERICAN TITLE COMPANY
07/07/2009 10:20:46 T20090234582
Book/Instr: 20090707-0001621
Default Page Count: 1
Fees: $14.00 N/C Fee: $0.00

Debbie Conway
Clark County Recorder

NOTICE OF DEFAULT AND ELECTION TO SELL PURSUANT TO THE LIEN FOR DELINQUENT ASSESSMENTS

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NOTICE IS HEREBY GIVEN: Red Rock Financial Services officially assigned as agent by the Monaco Landscape Maintenance Association, Inc., under the Lien for Delinquent Assessments, recorded on 5/20/2009, in Book Number 20090520, as Instrument Number 0002871, reflecting ROBERT NARDIZZI as the owner(s) of record on said lien, land legally described as MONACO #12 PLAT BOOK 89 PAGE 81 LOT 230 BLOCK J, of the Official Records in the Office of the Recorder of Clark County, Nevada, makes known the obligation under the Covenants, Conditions and Restrictions recorded 11/13/1998, in Book Number 981113, as Instrument Number 02435, has been breached. As of 1/1/2009 forward, all assessments, whether monthly or otherwise, late fees, interest, Association charges, legal fees and collection fees and costs, less any credits, have gone unpaid.

Above stated, the Association has equipped Red Rock Financial Services with verification of the obligation according to the Covenants, Conditions and Restriction in addition to documents proving the debt, therefore declaring any and all amounts secured as well as due and payable, electing the property to be sold to satisfy the obligation. In accordance with Nevada Revised Statutes, no sale date may be set until the ninety-first (91) day after the recorded date or the mailing date of the Notice of Default and Election to Sell. As of July 2, 2009, the amount owed is $1,740.42. This amount will continue to increase until paid in full.

Marsha Beason Dated: July 2, 2009

Prepared By Marsha Beason, Red Rock Financial Services, on behalf of Monaco Landscape Maintenance Association, Inc.

STATE OF NEVADA)
COUNTY OF CLARK)

On July 2, 2009, before me, personally appeared Marsha Beason, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Meryl Sibley

MERYL SIBLEY
Notary Public State of Nevada
No. 08-7934-1
My appt. exp. Sept. 4, 2012

When Recorded Mail To: Red Rock Financial Services
6830 West Oquendo Road, Suite 201
Las Vegas, Nevada 89118 • 702-932-6887

RED ROCK FINANCIAL SERVICES

MAILING AFFIDAVIT

File Number: R 30907

STATE OF NEVADA)
) Ss
COUNTY OF CLARK)

The declarant, whose signature appears below, and who is an employee of Red Rock Financial Services, states that he/she is now and at all times herein mentioned was, a citizen of the United States and over the age of eighteen (18) years; on the date as set forth below, he/she personally mailed the Notice, of which the annexed is a true copy, upon the addressee attached hereto, by depositing in the United States Mail in the County set forth above, an envelope, certified and first class with postage prepaid thereon, containing a copy of such Notice, addressed to the attached named person(s) at the address herein attached stated.

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

Dated: 7-15-2009

Signature: Amilan Jmg

See Attached 4 Pages

FROM

WALZ CERTIFIED MAILER™

INDYMAC BANK, F.S.B.
155 NORTH LAKE AVE.
PASADENA, CA 91101
MIN 100055401209419094
R30907

Label #1

INDYMAC BANK, F.S.B.
155 NORTH LAKE AVE.
PASADENA, CA 91101
MIN 100055401209419094
R30907

Label #2

INDYMAC BANK, F.S.B.
155 NORTH LAKE AVE.
PASADENA, CA 91101
MIN 100055401209419094
R30907

Label #3

FOLD AND TEAR THIS WAY → OPTIONAL

7160 3901 9848 4741 4835

TO: INDYMAC BANK, F.S.B.
155 NORTH LAKE AVE.
PASADENA, CA 91101 MIN 100055401209419094

SENDER:

REFERENCE: R30907

← TEAR ALONG THIS LINE

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

Mailed on 7/15/09 b
Red Rock Financial Service
See Firm Boo

Certified Article Number 7160 3901 9848 4741 4835

SENDERS RECORD

Label #5

INDYMAC BANK, F.S.B.
155 NORTH LAKE AVE.
PASADENA, CA 91101
MIN 100055401209419094
R30907

Charge Amount:

Charge To:

FOLD AND TEAR THIS WAY →

Label #6

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL

7160 3901 9848 4741 4835

Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED
USPS MAIL CARRIER
DETACH ALONG PERFORATION

2. Article Number

7160 3901 9848 4741 4835

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

INDYMAC BANK, F.S.B.
155 NORTH LAKE AVE.
PASADENA, CA 91101
MIN 100055401209419094
R30907 Monaco Landscape Maintenance Association, Inc.

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) | B. Date of Delivery

C. Signature

X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Thank you for using Return Receipt Service

PS Form 3811, January 2005 Domestic Return Receipt

APP000808

WFZ000341

WALZ CERTIFIED MAILER™

Label #1
WELLS FARGO BANK, N.A.
P.O. BOX 31557
BILLINGS, MT 59107
LN #200606773000742
R30907

Label #2
WELLS FARGO BANK, N.A.
P.O. BOX 31557
BILLINGS, MT 59107
LN #200606773000742
R30907

Label #3
WELLS FARGO BANK, N.A.
P.O. BOX 31557
BILLINGS, MT 59107
LN #200606773000742
R30907

FOLD AND TEAR THIS WAY → OPTIONAL

TO: WELLS FARGO BANK, N.A.
P.O. BOX 31557
BILLINGS, MT 59107 LN #200606773000742

SENDER:

REFERENCE: R30907

← TEAR ALONG THIS LINE

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE
Mailed on 7/15/09
Red Rock Financial Servic
See Firm Boo

Label #5

Certified Article Number 7160 3901 9848 4741 4828

SENDERS RECORD

WELLS FARGO BANK, N.A.
P.O. BOX 31557
BILLINGS, MT 59107
LN #200606773000742
R30907

Charge Amount:

Charge To:

FOLD AND TEAR THIS WAY →

Label #6

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL

7160 3901 9848 4741 4828

Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED
USPS MAIL CARRIER
DETACH ALONG PERFORATION

2. Article Number
7160 3901 9848 4741 4828

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

WELLS FARGO BANK, N.A.
P.O. BOX 31557
BILLINGS, MT 59107
LN #200606773000742
R30907 Monaco Landscape Maintenance Association, Inc.

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) | B. Date of Delivery

C. Signature
X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Thank you for using Return Receipt Service

APP000809

PS Form 3811, January 2005 Domestic Return Receipt

WFZ000342

WALZ
CERTIFIED
MAILER™

U.S. PAT. NO. 5,501,393

7160 3901 9848 4741 4804

Label #1
ROBERT NARDIZZI
8149 PALACE MONACO AVE.
LAS VEGAS, NV 89117-2569
R30907

Label #2
ROBERT NARDIZZI
8149 PALACE MONACO AVE.
LAS VEGAS, NV 89117-2569
R30907

Label #3
ROBERT NARDIZZI
8149 PALACE MONACO AVE.
LAS VEGAS, NV 89117-2569
R30907

FOLD AND TEAR THIS WAY → OPTIONAL

TEAR ALONG THIS LINE

TO: ROBERT NARDIZZI
8149 PALACE MONACO AVE.
LAS VEGAS, NV 89117-2569

SENDER:

REFERENCE: R30907

PS Form 3800, January 2005

RETURN RECEIPT SERVICE		
	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE
Mailed on 7/15/09 by
Red Rock Financial Service
See Firm Book

Certified Article Number
7160 3901 9848 4741 4804

SENDERS RECORD

Label #5
ROBERT NARDIZZI
8149 PALACE MONACO AVE.
LAS VEGAS, NV 89117-2569
R30907

Charge Amount:

Charge To:

FOLD AND TEAR THIS WAY →

Label #6

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL

7160 3901 9848 4741 4804

Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED
USPS MAIL CARRIER
DETACH ALONG PERFORATION

2. Article Number
7160 3901 9848 4741 4804

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

ROBERT NARDIZZI
8149 PALACE MONACO AVE.
LAS VEGAS, NV 89117-2569
R30907 Monaco Landscape Maintenance Association, Inc.

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) | B. Date of Delivery

C. Signature
X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

Thank you for using Return Receipt Service

APP000810

PS Form 3811, January 2005 Domestic Return Receipt

WEZ000343

Assessor Parcel Number: 163-09-817-050
File Number: R30907
Property Address: 8149 Palace Monaco Avenue
Las Vegas, NV 89117
Title Order Number: 17233

Receipt/Conformed Copy
Requestor:
NORTH AMERICAN TITLE COMPANY
07/07/2009 10:20:46 T20090234582
Book/Instr: 20090707-0001621
Default Page Count: 1
Fees: $14.00 N/C Fee: $0.00

Debbie Conway
Clark County Recorder

NOTICE OF DEFAULT AND ELECTION TO SELL PURSUANT TO THE LIEN FOR DELINQUENT ASSESSMENTS

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Marsha Beason Dated: July 2, 2009

Prepared By Marsha Beason, Red Rock Financial Services, on behalf of Monaco Landscape Maintenance Association, Inc.

STATE OF NEVADA)
COUNTY OF CLARK)

On July 2, 2009, before me, personally appeared Marsha Beason, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Meryl Sibley

MERYL SIBLEY
Notary Public State of Nevada
No. 08-7934-1
My appt. exp. Sept. 4, 2012

When Recorded Mail To: Red Rock Financial Services
6830 West Oquendo Road, Suite 201
Las Vegas, Nevada 89118 • 702-932-6887

Assessor Parcel Number: 163-09-817-050
File Number: R30907
Property Address: 8149 Palace Monaco Avenue
Las Vegas, NV 89117
Title Order Number:

NOTICE OF DEFAULT AND ELECTION TO SELL PURSUANT TO THE LIEN FOR DELINQUENT ASSESSMENTS

◆ IMPORTANT NOTICE ◆

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

NOTICE IS HEREBY GIVEN: Red Rock Financial Services officially assigned as agent by the Monaco Landscape Maintenance Association, Inc., under the Lien for Delinquent Assessments, recorded on 5/20/2009, in Book Number 20090520, as Instrument Number 0002871, reflecting ROBERT NARDIZZI as the owner(s) of record on said lien, land legally described as MONACO #12 PLAT BOOK 89 PAGE 81 LOT 230 BLOCK J, of the Official Records in the Office of the Recorder of Clark County, Nevada, makes known the obligation under the Covenants, Conditions and Restrictions recorded 11/13/1998, in Book Number 981113, as Instrument Number 02435, has been breached. As of 1/1/2009 forward, all assessments, whether monthly or otherwise, late fees, interest, Association charges, legal fees and collection fees and costs, less any credits, have gone unpaid.

Above stated, the Association has equipped Red Rock Financial Services with verification of the obligation according to the Covenants, Conditions and Restriction in addition to documents proving the debt, therefore declaring any and all amounts secured as well as due and payable, electing the property to be sold to satisfy the obligation. In accordance with Nevada Revised Statutes, no sale date may be set until the ninety-first (91) day after the recorded date or the mailing date of the Notice of Default and Election to Sell. As of July 2, 2009, the amount owed is $1,740.42. This amount will continue to increase until paid in full.

Marsha Beason Dated: July 2, 2009

Prepared By Marsha Beason, Red Rock Financial Services, on behalf of Monaco Landscape Maintenance Association, Inc.

STATE OF NEVADA)
COUNTY OF CLARK)

On July 2, 2009, before me, personally appeared Marsha Beason, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Meryl Sibley

MERYL SIBLEY
Notary Public State of Nevada
No. 08-7934-1
My appt. exp. Sept. 4, 2012

When Recorded Mail To: Red Rock Financial Services
6830 West Oquendo Road, Suite 201
Las Vegas, Nevada 89118 • 702-932-6887

NORTH AMERICAN TITLE COMPANY

TEN DAY LETTER FOR HOMEOWNERS

CLIENT REF: R30907

NOD RECORDED: 07/07/2009 IN BOOK 20090707 AS DOC NO.: 0001621

COMPANY REF. 45010-09-17233

OWNER:

ROBERT NARDIZZI
8149 PALACE MONACO AVE.
LAS VEGAS, NV 89117-2569

10 DAY MAILINGS

INDYMAC BANK, F.S.B.
155 NORTH LAKE AVE.
PASADENA, CA 91101
MIN 100055401209419094

WELLS FARGO BANK, N.A.
P.O. BOX 31557
BILLINGS, MT 59107
LN #200606773000742

PROPERTY:
8149 PALACE MONACO AVE.
LAS VEGAS, NV 89117-2569

TOTAL LIABILITY OF THE COMPANY UNDER SAID GUARANTEE AND UNDER THIS LETTER THERETO SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT STATED IN SAID GUARANTEE.

EXHIBIT 9

EXHIBIT 9

Inst #: 201304080002068
Fees: $18.00
N/C Fee: $0.00
04/08/2013 01:19:36 PM
Receipt #: 1566007
Requestor:
NORTH AMERICAN TITLE SUNSET
Recorded By: GILKS Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

Assessor Parcel Number: 163-09-817-050
File Number: R 30907
Property Address: 8149 Palace Monaco Avenue
Las Vegas, NV 89117

Accommodation

NOTICE OF FORECLOSURE SALE

UNDER THE LIEN FOR DELINQUENT ASSESSMENTS

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL RED ROCK FINANCIAL SERVICES AT (702) 932-6887 or (702) 215-8130. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION AT (877) 829-9907 IMMEDIATELY.

Red Rock Financial Services officially assigned as agent by the Monaco Landscape Maintenance Association, Inc under the Lien for Delinquent Assessments. **YOU ARE IN DEFAULT UNDER THE LIEN FOR DELINQUENT ASSESSMENTS**, recorded on 05/20/2009 in Book Number 20090520 as Instrument Number 0002871 reflecting ROBERT NARDIZZI as the owner(s) of record on said lien. **UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT PUBLIC SALE.** If you need an explanation of the nature of the proceedings against you, you should contact an attorney.

The Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments was recorded on 07/07/2009 in Book Number 20090707 as Instrument Number 0002871 of the Official Records in the Office of the Recorder.

NOTICE IS HEREBY GIVEN: That on ***05/02/2013***, at ***10:00 a.m.*** at the front entrance of the Nevada Legal News located at 930 South Fourth Street, Las Vegas, Nevada 89101, that the property commonly known as 8149 Palace Monaco Avenue, Las Vegas, NV 89117, and land legally described as MONACO #12 PLAT BOOK 89 PAGE 81 LOT 230 BLOCK J of the Official Records in the Office of the County Recorder of Clark County, Nevada, will sell at public auction to the highest bidder, for

Assessor Parcel Number: 163-09-817-050
File Number: R 30907
Property Address: 8149 Palace Monaco Avenue
Las Vegas, NV 89117

cash payable at the time of sale in lawful money of the United States, by cash, a cashier's check drawn by a state or national bank, a cashier's check drawn by a state or federal credit union, state or federal savings and loan association or savings association authorized to do business in the State of Nevada, in the amount of $3,876.82 as of 04/05/2013, which includes the total amount of the unpaid balance and reasonably estimated costs, expenses and advances at the time of the initial publication of this notice. Any subsequent Association assessments, late fees interest, expenses or advancements, if any, of the Association or its Agent, under the terms of the Lien for Delinquent Assessments shall continue to accrue until the date of the sale. The property heretofore described is being sold "as is".

The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, encumbrances, obligations to satisfy any secured or unsecured liens or against all right, title and interest of the owner, without equity or right of redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the Declaration of Covenants, Conditions and Restrictions, recorded on 11/13/1998, in Book Number 981113, as Instrument Number 02435 of the Official Records in the Office of the Recorder and any subsequent amendments or updates that may have been recorded.

Dated: April 5, 2013

Prepared By Christie Marling, Red Rock Financial Services, on behalf of Monaco Landscape Maintenance Association, Inc

STATE OF NEVADA)
COUNTY OF CLARK)

On April 5, 2013, before me, personally appeared Christie Marling, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Reinstatement Information: (702) 215-8130 or **Sale Information**: (714) 573-1965

When Recorded Mail To:
Red Rock Financial Services
4775 W. Teco Avenue, Suite 140
Las Vegas, Nevada 89118
(702) 215-8130 or (702) 932-6887

MERYL R. FISHER
Notary Public State of Nevada
No. 12-7488-1
My appt. exp. Apr. 20, 2016

EXHIBIT 10

EXHIBIT 10

RED ROCK FINANCIAL SERVICES

MAILING AFFIDAVIT

File Number: R30907

STATE OF NEVADA)
) Ss.
COUNTY OF CLARK)

The declarant, whose signature appears below, and who is an employee of Red Rock Financial Services, states that he/she is now and at all times herein mentioned was, a citizen of the United States and over the age of eighteen (18) years; on the date as set forth below, he/she personally mailed the Notice, of which the annexed is a true copy, upon the addressee attached hereto, by depositing in the United States Mail in the County set forth above, an envelope, certified and first class with postage prepaid thereon, containing a copy of such Notice, addressed to the attached named person(s) at the address herein attached stated.

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

Dated: 4/9/13

Signature Haley Nye

See Attached 8 Pages

THE WALZ CERTIFIED MAILER™ FROM **WALZ** ™

U.S. PAT. NO. 5,501,393

7196 9008 9111 8992 2062

TO:

ROBERT NARDIZZI
8149 PALACE MONACO AVE.
LAS VEGAS,, NV 89117-2569

SENDER:

REFERENCE:

R30907

Label #1
ROBERT NARDIZZI
8149 PALACE MONACO AVE.
LAS VEGAS,, NV 89117-2569
R30907

Label #2
ROBERT NARDIZZI
8149 PALACE MONACO AVE.
LAS VEGAS,, NV 89117-2569
R30907

Label #3
ROBERT NARDIZZI
8149 PALACE MONACO AVE.
LAS VEGAS,, NV 89117-2569
R30907

TEAR ALONG THIS LINE

PS Form 3800, January 2005

RETURN RECEIPT SERVICE		
	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

USPS®
Receipt for Certified Mail™ Red
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

Mailed on 4/9/13 by
Rock Financial Services
See Firm Book

FOLD AND TEAR THIS WAY→ OPTIONAL

Certified Article Number
7196 9008 9111 8992 2062
SENDERS RECORD

Label #5

ROBERT NARDIZZI
8149 PALACE MONACO AVE.
LAS VEGAS,, NV 89117-2569
R30907

Charge Amount:

Charge To:

Label #6

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL™

7196 9008 9111 8992 2062

FOLD AND TEAR THIS WAY →

Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED
USPS® MAIL CARRIER
DETACH ALONG PERFORATION

2. Article Number

7196 9008 9111 8992 2062

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

ROBERT NARDIZZI
8149 PALACE MONACO AVE.
LAS VEGAS,, NV 89117-2569
R30907 Monaco Landscape Maintenance Association, Inc

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) | B. Date of Delivery

C. Signature

X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Thank you for using Return Receipt Service

APP000819

PS Form 3811, January 2005 Domestic Return Receipt

WFZ000577

THE WALZ CERTIFIED MAILER™ FROM **WALZ™**

FORM #3800S VERSION: 05/12
U.S. PAT. NO. 5,501,393

7196 9008 9111 8992 2055

TO:

Robert Nardizzi
7418 Parnell Avenue
Las Vegas,, NV 89147

SENDER:

REFERENCE:

R30907

Label #1
Robert Nardizzi
7418 Parnell Avenue
Las Vegas,, NV 89147
R30907

Label #2
Robert Nardizzi
7418 Parnell Avenue
Las Vegas,, NV 89147
R30907

Label #3
Robert Nardizzi
7418 Parnell Avenue
Las Vegas,, NV 89147
R30907

TEAR ALONG THIS LINE

PS Form 3800, January 2005

RETURN RECEIPT SERVICE		
	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

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No Insurance Coverage Provided
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POSTMARK OR DATE

Mailed on 4/9/13 by
Rock Financial Services
See Firm Book

FOLD AND TEAR THIS WAY→ OPTIONAL

Certified Article Number
7196 9008 9111 8992 2055
SENDERS RECORD

Label #5

Robert Nardizzi
7418 Parnell Avenue
Las Vegas,, NV 89147
R30907

Charge Amount:

Charge To:

FOLD AND TEAR THIS WAY →

Label #6

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL™

7196 9008 9111 8992 2055

Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED
USPS® MAIL CARRIER
DETACH ALONG PERFORATION

2. Article Number

7196 9008 9111 8992 2055

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

Robert Nardizzi
7418 Parnell Avenue
Las Vegas,, NV 89147
R30907 Monaco Landscape Maintenance Association, Inc

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) | B. Date of Delivery

C. Signature

X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Thank you for using Return Receipt Service

APP000820

PS Form 3811, January 2005 Domestic Return Receipt

WFZ000578

THE WALZ CERTIFIED MAILER™ FROM **WALZ™**

FORM #3800S VERSION: 09/12
U.S. PAT. NO. 5,501,393

7196 9008 9111 8992 2048

TO:

WELLS FARGO BANK, N.A.
LN #200606773000742
P.O. BOX 31557
BILLINGS,, MT 59107

SENDER:

REFERENCE:

R30907

Label #1
WELLS FARGO BANK, N.A.
LN #200606773000742
P.O. BOX 31557
BILLINGS,, MT 59107
R30907

Label #2
WELLS FARGO BANK, N.A.
LN #200606773000742
P.O. BOX 31557
BILLINGS,, MT 59107
R30907

Label #3
WELLS FARGO BANK, N.A.
LN #200606773000742
P.O. BOX 31557
BILLINGS,, MT 59107
R30907

TEAR ALONG THIS LINE

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

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No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

Mailed on 4/9/13 by
Rock Financial Services
See Firm Book

FOLD AND TEAR THIS WAY→ OPTIONAL

Label #5
WELLS FARGO BANK, N.A.
LN #200606773000742
P.O. BOX 31557
BILLINGS,, MT 59107
R30907

Certified Article Number
7196 9008 9111 8992 2048
SENDERS RECORD

Charge Amount:

Charge To:

FOLD AND TEAR THIS WAY →

Label #6

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL™

7196 9008 9111 8992 2048

Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED
USPS® MAIL CARRIER
DETACH ALONG PERFORATION

2. Article Number
7196 9008 9111 8992 2048

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

WELLS FARGO BANK, N.A.
LN #200606773000742
P.O. BOX 31557
BILLINGS,, MT 59107
R30907 Monaco Landscape Maintenance Association, Inc

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) | B. Date of Delivery

C. Signature
X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Thank you for using Return Receipt Service

APP000821

PS Form 3811, January 2005 Domestic Return Receipt

WFZ000579

THE WALZ CERTIFIED MAILER™ FROM **WALZ™**

FORM #33000 VERSION: 09/12
U.S. PAT. NO. 5,501,393

7196 7008 7111 8772 2031

TO:

INDYMAC BANK, F.S.B.
MIN 100055401209419094
155 NORTH LAKE AVE.
PASADENA,, CA 91101

SENDER:

REFERENCE:

R30907

Label #1
INDYMAC BANK, F.S.B.
MIN 100055401209419094
155 NORTH LAKE AVE.
PASADENA,, CA 91101
R30907

Label #2
INDYMAC BANK, F.S.B.
MIN 100055401209419094
155 NORTH LAKE AVE.
PASADENA,, CA 91101
R30907

Label #3
INDYMAC BANK, F.S.B.
MIN 100055401209419094
155 NORTH LAKE AVE.
PASADENA,, CA 91101
R30907

TEAR ALONG THIS LINE

PS Form 3800, January 2005

RETURN RECEIPT SERVICE		
	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

USPS®
Receipt for Certified Mail™ Red Rock Financial Services
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

Mailed on 4/9/13 by
See Firm Book

FOLD AND TEAR THIS WAY→ OPTIONAL

Label #5

INDYMAC BANK, F.S.B.
MIN 100055401209419094
155 NORTH LAKE AVE.
PASADENA,, CA 91101
R30907

Certified Article Number
7196 9008 9111 8992 2031
SENDERS RECORD

Charge Amount:

Charge To:

Label #6

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL™

7196 9008 9111 8992 2031

FOLD AND TEAR THIS WAY →

RETURN RECEIPT REQUESTED
USPS® MAIL CARRIER
DETACH ALONG PERFORATION

2. Article Number

7196 9008 9111 8992 2031

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

INDYMAC BANK, F.S.B.
MIN 100055401209419094
155 NORTH LAKE AVE.
PASADENA,, CA 91101
R30907 Monaco Landscape Maintenance Association, Inc

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X

☐ Agent
☐ Addressee

D. Is delivery address different from Item 1?
If YES, enter delivery address below:

☐ Yes
☐ No

Thank you for using Return Receipt Service

Thank you for using Return Receipt Service

APP000822

PS Form 3811, January 2005 Domestic Return Receipt

WFZ000580

THE WALZ CERTIFIED MAILER™ FROM **WALZ™**

U.S. PAT. NO. 5,501,393

Label #1
Robert Nardizzi
8149 Palace Monaco Ave
Las Vegas,, NV 89117
R30907

Label #2
Robert Nardizzi
8149 Palace Monaco Ave
Las Vegas,, NV 89117
R30907

Label #3
Robert Nardizzi
8149 Palace Monaco Ave
Las Vegas,, NV 89117
R30907

TEAR ALONG THIS LINE

TO:

Robert Nardizzi
8149 Palace Monaco Ave
Las Vegas,, NV 89117

SENDER:

REFERENCE:

R30907

PS Form 3800, January 2005

RETURN RECEIPT SERVICE		
	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

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POSTMARK OR DATE

Mailed on 4/9/13 by
Rock Financial Services
See Firm Book

FOLD AND TEAR THIS WAY→ OPTIONAL

Certified Article Number
7196 9008 9111 8992 2024
SENDERS RECORD

Label #5

Robert Nardizzi
8149 Palace Monaco Ave
Las Vegas,, NV 89117
R30907

Charge Amount:

Charge To:

FOLD AND TEAR THIS WAY →

Label #6

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL™

7196 9008 9111 8992 2024

Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED
USPS® MAIL CARRIER
DETACH ALONG PERFORATION

2. Article Number

7196 9008 9111 8992 2024

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

Robert Nardizzi
8149 Palace Monaco Ave
Las Vegas,, NV 89117
R30907 Monaco Landscape Maintenance Association, Inc

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) | B. Date of Delivery

C. Signature

X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

APP000823

PS Form 3811, January 2005 Domestic Return Receipt

Thank you for using Return Receipt Service

WFZ000581

THE WALZ CERTIFIED MAILER™

FROM **WALZ™**

U.S. PAT. NO. 5,501,393

Label #1
Robert Nardizzi
7418 Parnell Avenue
Las Vegas,, NV 89147-5145
R30907

Label #2
Robert Nardizzi
7418 Parnell Avenue
Las Vegas,, NV 89147-5145
R30907

Label #3
Robert Nardizzi
7418 Parnell Avenue
Las Vegas,, NV 89147-5145
R30907

TEAR ALONG THIS LINE

TO:

Robert Nardizzi
7418 Parnell Avenue
Las Vegas,, NV 89147-5145

SENDER:

REFERENCE:

R30907

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

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POSTMARK OR DATE

Mailed on 4/9/13 by
Rock Financial Services
See Firm Book

FOLD AND TEAR THIS WAY→ OPTIONAL

Certified Article Number
7196 9008 9111 8992 2017
SENDERS RECORD

Label #5

Robert Nardizzi
7418 Parnell Avenue
Las Vegas,, NV 89147-5145
R30907

Charge Amount:

Charge To:

Label #6

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL™

7196 9008 9111 8992 2017

FOLD AND TEAR THIS WAY →

Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED
USPS® MAIL CARRIER
DETACH ALONG PERFORATION

2. Article Number

7196 9008 9111 8992 2017

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

Robert Nardizzi
7418 Parnell Avenue
Las Vegas,, NV 89147-5145
R30907 Monaco Landscape Maintenance Association, Inc

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) | B. Date of Delivery

C. Signature

X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Thank you for using Return Receipt Service

APP000824

PS Form 3811, January 2005 Domestic Return Receipt

WFZ000582

THE WALZ CERTIFIED MAILER™

FROM **WALZ™**

U.S. PAT. NO. 5,501,393

7196 9008 9111 8992 2000

TO:

Robert Nardizzi
902 Central Avenue
Ship Bottom,, NJ 08008-6327

SENDER:

REFERENCE:

R30907

Label #1
Robert Nardizzi
902 Central Avenue
Ship Bottom,, NJ 08008-6327
R30907

Label #2
Robert Nardizzi
902 Central Avenue
Ship Bottom,, NJ 08008-6327
R30907

Label #3
Robert Nardizzi
902 Central Avenue
Ship Bottom,, NJ 08008-6327
R30907

TEAR ALONG THIS LINE

PS Form 3800, January 2005

RETURN RECEIPT SERVICE		
	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

USPS®
Receipt for Certified Mail™ Rec
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

Mailed on 4/9/13 by
Rock Financial Services
See Firm Book

FOLD AND TEAR THIS WAY→ OPTIONAL

Certified Article Number
7196 9008 9111 8992 2000
SENDERS RECORD

Label #5
Robert Nardizzi
902 Central Avenue
Ship Bottom,, NJ 08008-6327
R30907

Charge Amount:

Charge To:

Label #6

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL™

7196 9008 9111 8992 2000

FOLD AND TEAR THIS WAY →

Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED
USPS® MAIL CARRIER
DETACH ALONG PERFORATION

2. Article Number

7196 9008 9111 8992 2000

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

Robert Nardizzi
902 Central Avenue
Ship Bottom,, NJ 08008-6327
R30907 Monaco Landscape Maintenance Association, Inc

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) | B. Date of Delivery

C. Signature
X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Thank you for using Return Receipt Service

APP000825

PS Form 3811, January 2005 Domestic Return Receipt

WFZ000583

THE WALZ CERTIFIED MAILER™

FROM **WALZ™**

FORM #3800 VERSION: 04/12
U.S. PAT. NO. 5,501,393

7196 9008 9111 8992 1997

TO:

State of Nevada Ombudsman for Common-Interest Communities
Attention: Lindsay Waite
2501 East Sahara Avenue, Suite 202
Las Vegas,, NV 89104-4137

SENDER:

REFERENCE:

R30907

Label #1

State of Nevada Ombudsman for Common-Interest Communities
Attention: Lindsay Waite
2501 East Sahara Avenue, Suite 202
Las Vegas,, NV 89104-4137
R30907

Label #2

State of Nevada Ombudsman for Common-Interest Communities
Attention: Lindsay Waite
2501 East Sahara Avenue, Suite 202
Las Vegas,, NV 89104-4137
R30907

Label #3

State of Nevada Ombudsman for Common-Interest Communities
Attention: Lindsay Waite
2501 East Sahara Avenue, Suite 202
Las Vegas,, NV 89104-4137
R30907

TEAR ALONG THIS LINE

PS Form 3800, January 2005

RETURN RECEIPT SERVICE		
	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

USPS®
Receipt for Certified Mail™ Rec
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

Mailed on 4/9/13 by
Rock Financial Services
See Firm Book

FOLD AND TEAR THIS WAY→ OPTIONAL

Certified Article Number
7196 9008 9111 8992 1997
SENDERS RECORD

Label #5

State of Nevada Ombudsman for Common-Interest Communities
Attention: Lindsay Waite
2501 East Sahara Avenue, Suite 202
Las Vegas,, NV 89104-4137
R30907

Charge Amount:

Charge To:

Label #6

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL™

7196 9008 9111 8992 1997

FOLD AND TEAR THIS WAY →

Thank you for using Return Receipt Service

RETURN RECEIPT REQUESTED
USPS® MAIL CARRIER
DETACH ALONG PERFORATION

2. Article Number

7196 9008 9111 8992 1997

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

1. Article Addressed to:

State of Nevada Ombudsman for Common-Interest Communities
Attention: Lindsay Waite
2501 East Sahara Avenue, Suite 202
Las Vegas,, NV 89104-4137
R30907 Monaco Landscape Maintenance Association, Inc

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) | B. Date of Delivery

C. Signature

X ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Thank you for using Return Receipt Service

APP000826

PS Form 3811, January 2005 Domestic Return Receipt

WFZ000584

Inst #: 201304080002068
Fees: $18.00
N/C Fee: $0.00
04/08/2013 01:19:36 PM
Receipt #: 1566007
Requestor:
NORTH AMERICAN TITLE SUNSET
Recorded By: GILKS Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

Assessor Parcel Number: 163-09-817-050
File Number: R 30907
Property Address: 8149 Palace Monaco Avenue
Las Vegas, NV 89117

Accommodation

NOTICE OF FORECLOSURE SALE

UNDER THE LIEN FOR DELINQUENT ASSESSMENTS

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL RED ROCK FINANCIAL SERVICES AT (702) 932-6887 or (702) 215-8130. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION AT (877) 829-9907 IMMEDIATELY.

Red Rock Financial Services officially assigned as agent by the Monaco Landscape Maintenance Association, Inc under the Lien for Delinquent Assessments. **YOU ARE IN DEFAULT UNDER THE LIEN FOR DELINQUENT ASSESSMENTS**, recorded on 05/20/2009 in Book Number 20090520 as Instrument Number 0002871 reflecting ROBERT NARDIZZI as the owner(s) of record on said lien. **UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT PUBLIC SALE.** If you need an explanation of the nature of the proceedings against you, you should contact an attorney.

The Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments was recorded on 07/07/2009 in Book Number 20090707 as Instrument Number 0002871 of the Official Records in the Office of the Recorder.

NOTICE IS HEREBY GIVEN: That on ***05/02/2013***, at ***10:00 a.m.*** at the front entrance of the Nevada Legal News located at 930 South Fourth Street, Las Vegas, Nevada 89101, that the property commonly known as 8149 Palace Monaco Avenue, Las Vegas, NV 89117, and land legally described as MONACO #12 PLAT BOOK 89 PAGE 81 LOT 230 BLOCK J of the Official Records in the Office of the County Recorder of Clark County, Nevada, will sell at public auction to the highest bidder, for

Assessor Parcel Number: 163-09-817-050
File Number: R 30907
Property Address: 8149 Palace Monaco Avenue
Las Vegas, NV 89117

cash payable at the time of sale in lawful money of the United States, by cash, a cashier's check drawn by a state or national bank, a cashier's check drawn by a state or federal credit union, state or federal savings and loan association or savings association authorized to do business in the State of Nevada, in the amount of $3,876.82 as of 04/05/2013, which includes the total amount of the unpaid balance and reasonably estimated costs, expenses and advances at the time of the initial publication of this notice. Any subsequent Association assessments, late fees interest, expenses or advancements, if any, of the Association or its Agent, under the terms of the Lien for Delinquent Assessments shall continue to accrue until the date of the sale. The property heretofore described is being sold "as is".

The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, encumbrances, obligations to satisfy any secured or unsecured liens or against all right, title and interest of the owner, without equity or right of redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the Declaration of Covenants, Conditions and Restrictions, recorded on 11/13/1998, in Book Number 981113, as Instrument Number 02435 of the Official Records in the Office of the Recorder and any subsequent amendments or updates that may have been recorded.

Dated: April 5, 2013

Prepared By Christie Marling, Red Rock Financial Services, on behalf of Monaco Landscape Maintenance Association, Inc

STATE OF NEVADA)
COUNTY OF CLARK)

On April 5, 2013, before me, personally appeared Christie Marling, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Reinstatement Information: (702) 215-8130 or **Sale Information**: (714) 573-1965

When Recorded Mail To:
Red Rock Financial Services
4775 W. Teco Avenue, Suite 140
Las Vegas, Nevada 89118
(702) 215-8130 or (702) 932-6887

MERYL R. FISHER
Notary Public State of Nevada
No. 12-7488-1
My appt. exp. Apr. 20, 2016

EXHIBIT 11

EXHIBIT 11

Rel Rolc

Priority Posting & Publishing
Order # P1032093
TS # R30907

AFFIDAVIT OF SERVICE

State of Nevada)
County of Clark)

I, Ryan Kronbetter, state:

That at all times herein I have been a citizen of the United States, over 18 years of age, and am not a party to, or interested in, the proceeding in which this affidavit is made.

I served **Robert Nardizzi** with a copy of the Notice of Sale, on 4/8/2013 at approximately 4:16 PM, by:

Attempting to personally serve the person(s) residing at the property, however no one answered the door. I thereafter posted a copy of the Notice of Sale on the property in the manner prescribed pursuant to NRS 116.311635, in a conspicuous place on the property, which is located at:

8149 Palace Monaco Avenue
Las Vegas NV 89117

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

Dated 4/8/2013

Nevada Legal Support Services LLC

Ryan Kronbetter, 2520342
930 S. 4th Street, Suite 200
Las Vegas, NV 89101
(702) 382-2747
NV License #1711

NVLSS ID# 441095 58
COUNTY OF SERVICE: CLARK
SERVER: Ryan Kronbetter

Priority Posting & Publishing
Order # P1032093
TS # R30907

AFFIDAVIT OF POSTING NOTICE OF SALE

State of Nevada)
County of Clark)

I, Jessica Pruett, state:

That at all times herein I have been a citizen of the United States, over 18 years of age, and am not a party to, or interested in, the proceeding in which this affidavit is made.

On 4/11/2013, I posted a copy of the Notice of Sale pursuant to NRS 116.311635, concerning Sale R30907, in a public place in the county where the property is situated, to wit:

NEVADA LEGAL NEWS, 930 S FOURTH ST, LAS VEGAS
CLARK COUNTY COURTHOUSE, 200 LEWIS ST, LAS VEGAS
CLARK COUNTY BUILDING, 309 S THIRD ST, LAS VEGAS

The purported owner and address of the property contained in the Notice of Sale being:

Robert Nardizzi, 8149 Palace Monaco Avenue, Las Vegas NV 89117.

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

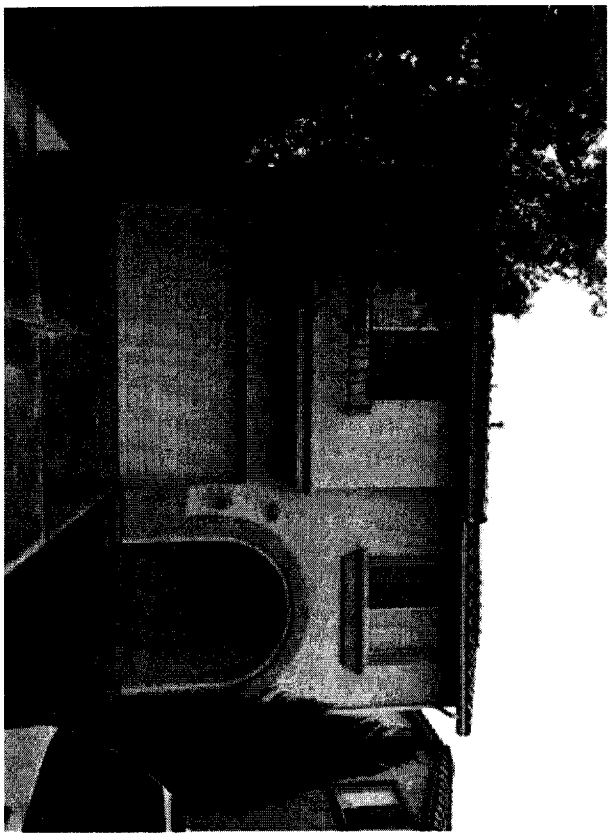
Dated 4/11/2013

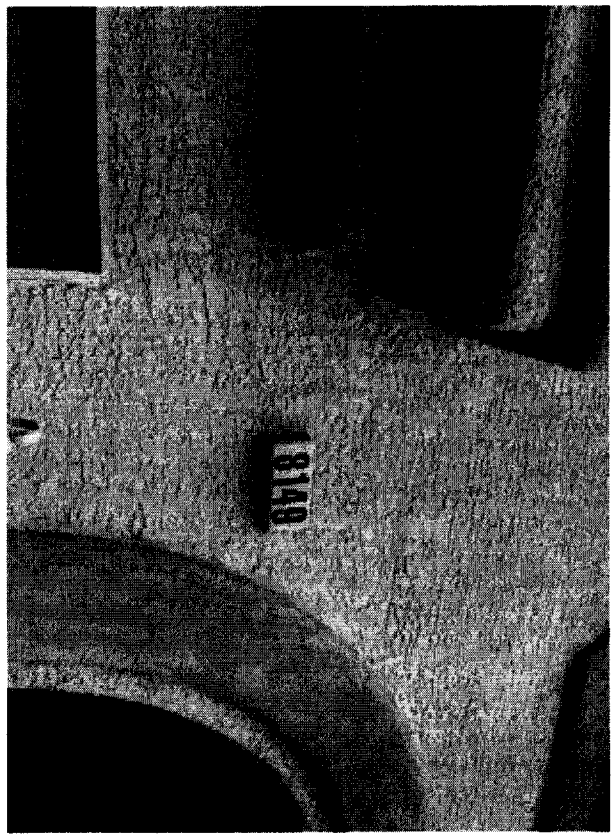
Nevada Legal Support Services LLC

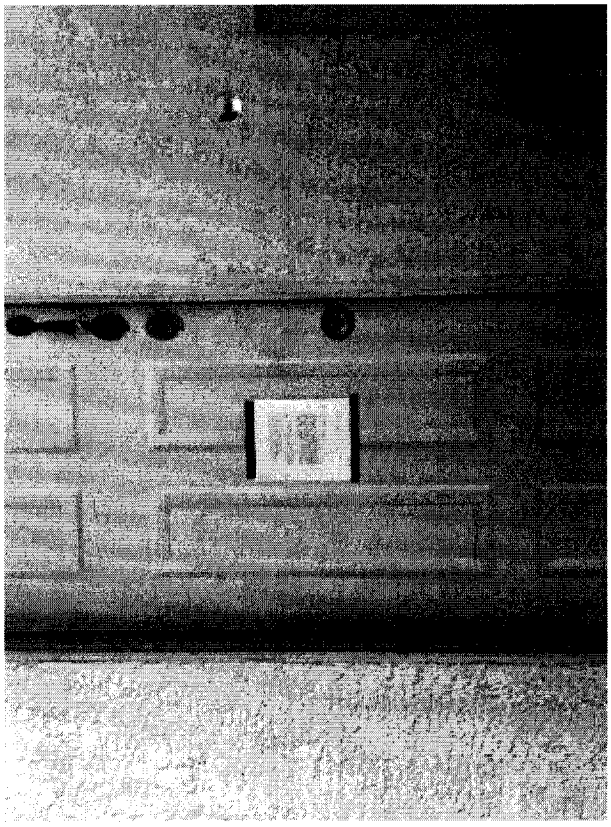
Jessica Pruett

Jessica Pruett
930 S. 4th Street, Suite 200
Las Vegas, NV 89101
(702) 382-2747
NV License #1711

NVLSS ID# 441095 58
COUNTY OF SERVICE: CLARK
SERVER: Jessica Pruett
RED ROCK FINANCIAL SERVICES







Photos taken by: Ryan Kronbetter County: CLARK 36
Photo Date: 4/8/2013 Time: 4:16 PM NLN ID# 441095 Page 1 of 1
Primary Borrower: Robert Nardizzi
Property Address: 8149 Palace Monaco Avenue, Las Vegas NV 89117

Nevada Legal Support Services LLC
930 S. 4th Street, Suite 200
Las Vegas, NV 89101
(702) 382-2747 NV. Lic. #1711

Priority Posting & Publishing Order # P1032093 TS#R30907

EXHIBIT 12

EXHIBIT 12

AFFP
P1032093

Affidavit of Publication

STATE OF NEVADA }
COUNTY OF CLARK } SS

I, Rosalie Qualls state:

That I am Assistant Operations Manager of the Nevada Legal News, a daily newspaper of general circulation, printed and published in Las Vegas, Clark County, Nevada; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:
Apr 11, 2013
Apr 18, 2013
Apr 25, 2013

That said newspaper was regularly issued and circulated on those dates. I declare under penalty of perjury that the foregoing is true and correct.

DATED: Apr 25, 2013

Rosalie Qualls

Assessor Parcel Number: 163-09-817-050 File Number: R30907 Property Address: 8149 Palace Monaco Avenue , Las Vegas, NV 89117 NOTICE OF FORECLOSURE SALE UNDER THE LIEN FOR DELINQUENT ASSESSMENTS Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose. WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL RED ROCK FINANCIAL SERVICES AT (702) 932-6887 or (702) 215-8130. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION AT (877) 829-9907 IMMEDIATELY. Red Rock Financial Services officially assigned as agent by the Monaco Landscape Maintenance Association, Inc under the Lien for Delinquent Assessments. YOU ARE IN DEFAULT UNDER THE LIEN FOR DELINQUENT ASSESSMENTS, recorded on May 20, 2009 in Book Number 20090520 as Instrument Number 0002871 reflecting Robert Nardizzi as the owner(s) of record on said lien. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. If you need an explanation of the nature of the proceedings against you, you should contact an attorney. The Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments was recorded on 7/7/2009 in Book Number 20090707 as Instrument Number 0002871 of the Official Records in the Office of the Recorder. NOTICE IS HEREBY GIVEN: That on 5/2/2013, at 10:00 AM The front entrance to The Nevada Legal News located at 930 South Fourth Street, Las Vegas, NV 89101, that the property commonly known as 8149 Palace Monaco Avenue , Las Vegas, NV 89117 and land legally described as MONACO #12 PLAT BOOK 89 PAGE 81 LOT 230 BLOCK J of the Official Records in the Office of the County Recorder of Clark County, Nevada will sell at public auction to the highest bidder, for cash payable at the time of sale in lawful money of the United States, by cash, a cashier's check drawn by a state or national bank, a cashier's check drawn by a state or federal credit union, state or federal savings and loan association or savings association authorized to do business in the State of Nevada, in the amount of $3,876.82 as of 4/5/2013, which includes the total amount of the unpaid balance and reasonably estimated costs, expenses and advances at the time of the initial publication of this notice. Any subsequent Association assessments, late fees interest, expenses or advancements, if any, of the Association or its Agent, under the terms of the Lien for Delinquent Assessments shall continue to accrue until the date of the sale. The property heretofore described is being sold "as is". The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, encumbrances, obligations to satisfy any secured or unsecured liens or against all right, title and interest of the owner, without equity or right of redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the Declaration of Covenants, Conditions and Restrictions, recorded on 11/13/1998, in Book Number 981113, as Instrument Number 02435 of the Official Records in the Office of the Recorder and any subsequent amendments or updates that may have been recorded. Dated: 4/5/2013 Prepared By Christie Marling, Red Rock Financial Services, on behalf of Monaco Landscape Maintenance Association, Inc Reinstatement Information: (702) 215-8130 or Sale Information: (714) 573-1965 When Recorded Mail To: Red Rock Financial Services 4775 W. Teco Avenue, Suite 140 Las Vegas, Nevada 89118 (702) 215-8130 or (702) 932-6887 P1032093 4/11, 4/18, 04/25/2013

04107370 00348003

PRIORITY POSTING & PUBLISHING-2013
17501 IRVINE BLVD. SUITE 1
TUSTIN, CA 92780

EXHIBIT 13

EXHIBIT 13

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-A8, Plaintiff, vs. SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Defendants.	Case No. A-16-739867-C Dept. No. XXXI **FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT**
SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company, Counter/Cross Claimant, vs. U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST, MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2005-A8, Counter/Cross Defendants.	

This matter came before the Court for trial on April 16, 17, 18, 23, 24, 2019, and May 20, 2019. Karen L. Hanks, Esq. and Jason G. Martinez, Esq. appeared on behalf of SFR Investments Pool 1, LLC ("SFR"). Natalie Lehman, Esq. and Dana Nitz, Esq. appeared on behalf of U.S. Bank National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 ("U.S. Bank"). Having reviewed and

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

considered the facts, testimony of witnesses and arguments of counsel, for the reasons stated on the record, and good cause appearing, the Court makes the following Findings of Fact and Conclusions of Law:[1]

I. FINDINGS OF FACT

Some of the following facts were stipulated to by the parties by way of their Amended Joint Pre-Trial Memorandum. Where such facts were stipulated, the Court takes such facts and unrefuted and undisputed:

1. In 1991, Nevada adopted the Uniform Common Interest Ownership Act as NRS 116, including NRS 116.3116(2).

2. On June 23, 2004, the Antelope Homeowners Association ("Association") perfected and gave notice of its lien by recording its Declaration of Covenants, Conditions, and Restrictions ("CC&Rs") in the Official Records of the Clark County Recorder as Instrument No. 200406230002013. (Ex. 1).[2] Thereafter the Association recorded a Second Amendment to CC&Rs as Instrument No. 200609140003739. (Ex. 2.)

3. On May 23, 2005, a Grant, Bargain Sale Deed transferring the real property commonly known as 7868 Marbledoe Street, Las Vegas, Nevada 89149; Parcel No. 125-18-112-069 ("Property") Henry and Freddie Ivy ("Ivies") was recorded in the Official Records of the Clark County Recorder as Instrument No. 200610030004304. (Ex. 3.)

4. On May 23, 2005, a Deed of Trust identifying Mortgage Electronic Registrations Systems, Inc. ("MERS") as nominee beneficiary for the originating

---

[1] Pursuant to the agreement of the parties, the proposed Findings were filed and submitted by June 4, 2019. Any Findings of Fact that are more appropriately Conclusions of Law shall be so deemed. Any Conclusions of Law that are more appropriately Findings of Fact shall be so deemed.

[2] The Parties stipulated to this fact.

lender, Universal American Mortgage Company, LLC ("Universal"), as Instrument No. 200505230004228 ("Deed of Trust"). (Ex. 5.)[3]

5. On November 12, 2009, the Association, through its agent, Alessi & Koenig, LLC ("Alessi"), recorded a Notice of Delinquent Assessment Lien ("NODAL") in the Official Records of the Clark County Recorder as Instrument No. 200911120004474. (Ex. 9.)[4]

6. On February 17, 2011, Alessi recorded a Notice of Default and Election to Sell Under Homeowners Association Lien ("NOD") in the Official Records of the Clark County Recorder as Instrument No. 201102170001289. (Ex. 11.)[5]

7. On April 11, 2011, Alessi recorded a Notice of Sale ("NOS #1") in the Official Records of the Clark County Recorder as Instrument No. 201108110003087. (Ex. 12.)[6]

8. On April 16, 2012, Alessi recorded a Notice of Sale ("NOS #2") in the Official Records of the Clark County Recorder as Instrument No. 201204160000922. (Ex. 13.)[7]

9. On July 2, 2012, Alessi recorded a Notice of Sale ("NOS #3") in the Official Records of the Clark County Recorder as Instrument No. 201207020001432. (Ex. 14.)[8]

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[3] The parties stipulated to this fact.

[4] The parties stipulated to this fact.

[5] The parties stipulated to this fact.

[6] The parties stipulated to this fact.

[7] The parties stipulated to this fact.

[8] The parties stipulated to this fact.

10. Alessi, on behalf of the Association, mailed the NOD, NOS #1, NOS#2 and NOS#3 to U.S. Bank's predecessor in interest, Universal and/or its agent(s).[9]

11. Universal, the then recorded beneficiary of the Deed of Trust, and/or its agent(s), received the NOD, NOS #1, NOS#2 and NOS#3.[10]

12. The Association foreclosure sale occurred on July 25, 2012 ("Sale").[11]

13. On August 3, 2012, a Trustee's Deed Upon Sale ("Trustee's Deed") was recorded in the Official Records of the Clark County Recorder, conveying the Property to SFR Investments Pool 1, LLC ("SFR"). (Ex. 15.)[12]

14. SFR paid Alessi $5,950.00 in exchange for the Trustee's Deed.

15. At the time of the Association Sale, Universal was the owner of the Ivy Note and beneficiary of record of the Deed of Trust.[13]

16. On June 1, 2018, a Corporate Assignment of Deed of Trust was recorded in which all beneficial interest in the Deed of Trust was purportedly assigned to GreenPoint Mortgage Funding, Inc. (Ex. 34.)[14]

17. On July 2, 2018, a Corporate Assignment of Deed of Trust was recorded in which all beneficial interest in the Deed of Trust was purportedly assigned to U.S. Bank National Association, as trustee, successor in interest to Wachovia Bank, National Association, as trustee for Merrill Lynch Mortgage

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[9] The parties stipulated to this fact.

[10] The parties stipulated to this fact.

[11] The parties stipulated to this fact.

[12] The parties stipulated to this fact.

[13] The parties stipulated to this fact.

[14] The parties stipulated to this fact.

Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8 ("U.S. Bank"). (Ex. 42.)[15]

18. On July 12, 2016, U.S. Bank filed a complaint against SFR. Nowhere in the complaint does U.S. Bank plead tender or any facts related to tender.

19. On May 8, 2018, U.S. Bank filed an amended complaint. This is the first pleading where U.S. Bank pleads tender.

II. CONCLUSIONS OF LAW

A. Evidentiary Rulings Re Witnesses Made During Trial

1. U.S. Bank attempted to call a witness from Universal American Mortgage Company, LLC. The Court granted SFR's objection to the same for the following reasons: U.S. Bank never identified a witness by name for Universal in violation of NRCP 16.1. There was no good cause presented for the failure to name the witness. SFR raised timely objection(s). SFR also established that it would be prejudiced if the Court allowed the unnamed witness to testify as they had no opportunity to depose or have knowledge of what the witness would state. After a full opportunity for oral argument by the parties the Court found the Bank's conduct to be a per se violation of the Rule and under Rule 16.1(e)(3) combined with the prejudice meant that the witness was precluded from testifying at trial.

2. U.S. Bank attempted to call a witness from the Nevada Real Estate Division ("NRED") by the name of Teralyn Thompson. The Court granted SFR's objection to the same after a full hearing on the merits. The Court's reasoning

[15] The parties stipulated to this fact.

included *inter alia*: Neither NRED, nor Ms. Thompson were disclosed under NRCP 16.1 as required. There was no good cause cited for the failure to name her. Likewise, the documents for which the witness was expected to testify were never disclosed as required by Rule 16.1. The first time these documents were asserted to have been mentioned was the day before trial, via email to counsel for SFR. The Court finds this to be a per se violation. Both the witness and the documents were readily available during the discovery period, and the Bank was aware of NRED's involvement by virtue of the NRED mediation; notice of completion of which was filed on January 9, 2018. The Court further found that the Bank had not shown good cause why the Bank failed to disclose the witness and documents or sought relief from the Court to extend discovery. SFR raised timely objection(s). The Court further found that SFR was prejudiced by the failure to disclose as it could not depose the witness; did not prepare to have the documents taken into account in the case; and thus, it would not be proper to allow the witness to testify or have the documents introduced for the first time at trial.

3. U.S. Bank attempted to call Harrison Whitaker, an employee of Ocwen Financial Corporation, as both a witness on behalf of U.S. Bank and as custodian of records. After a full hearing on the merits, the Court granted SFR's objection to the same for the following reasons: Neither Mr. Whittaker nor Ocwen were disclosed as a witness in this case as required by NRCP 16.1 and the Court finds this is a per se violation. SFR raised timely objection(s). The Bank knew at the time it was hired by Ocwen, that Ocwen was acting as the loan servicer; and, therefore, if they intended to call Ocwen as a witness at trial, the Bank could have disclosed an Ocwen witness. The Court acknowledges the Bank produced Katherine Ortwerth as its 30(b)(6) witness during discovery and took the fact that she left Ocwen into account. Given she left Ocwen's employ in

or around February 2019, and the trial was several months later, the Court found that the Bank never named another witness for Ocwen or disclosed Ocwen overall as a potential witnes despite having time to do so. The Bank also chose not to file a pre-trial motion to handle this issue despite knowing that SFR had timely objected. The Court also found that SFR established it would be prejudiced and thus in light of the totality of the circumstances, the Court found it proper to sustain SFR's objection.

B. Rule 52(c) Motions

4. At the close of U.S. Bank's case in chief, SFR brought several Rule 52(c) motions based on the issues of law identified by U.S. Bank in the joint pre-trial memorandum.

5. As to the Motion Re: Issue #5, whether the HOA's foreclosure sale was wrongful and/or complied with the provisions of NRS Chapter 116, to the extent tender is alleged, the Court denied the Motion without prejudice.

6. As to the Motion re: Issue #6, whether the HOA's foreclosure sale should be set aside, and within that inquiry: (a) whether the price paid at the foreclosure sale was inadequate; and (b) whether there were elements of fraud, unfairness, and/or oppression in the HOA foreclosure process and resulting sale, the Court granted this Motion. The only evidence U.S. Bank proffered for value was the Assessor's taxable value for 2008 and 2010. There being no value from 2012 for the Court to compare to the price paid by SFR at the 2012 sale, the Court cannot determine whether the price paid was grossly inadequate. But even if the Court could compare the price paid to the proffered values, price alone is not enough. There must be additional evidence of fraud, unfairness, and oppression that accounted for or brought about the price paid, and the Court finds no such evidence. *See Nationstar Mortgage, LLC v. Saticoy Bay, LLC Series 2227 Shadow Canyon*, 405 P.3d 641, 647 citing *Golden v. Tomiyasu*, 79

Nev. 503, 514, 387 P.2d 989, 995 (1963) (internal citations omitted) (emphasis added).

7. As to the Motion Re: Issue #7, whether the mortgage protection clause(s) in the CC&Rs was applicable to subordinate the HOA assessment lien to the Deed of Trust or preclude extinguishment of the Deed of Trust by a foreclosure sale under NRS 116.31162 through NRS 116.31168, the Court granted this Motion. No CC&Rs were admitted into evidence, so the Court cannot determine whether a mortgage protection clause even existed in the Association's CC&Rs.

8. As to the Motion Re: Issue #8, whether the recitals in the Foreclosure Deed are conclusive proof of any matter contained therein, the Court granted this Motion in part. The Motion is granted with respect to those recitals contained in the Foreclosure Deed. As to the equity portion, the Motion is denied without prejudice.

9. As to the Motion Re: Issue #9, whether the HOA lien and Notices of Default and Sale included items and amounts not permitted by the CC&Rs and NRS Chapter 116, the Court grants the Motion in part. It is granted as to the CC&Rs as these were never admitted, so there is no proof the notices included amounts not permitted by the CC&Rs. The Motion is also granted as to NRS 116. There is no evidence the Notices included amounts not permitted by NRS 116. The Court denies, without prejudice, as to the superpriority amount.

10. As to the Motion Re: Issue #10, whether SFR was a bona fide purchaser of the Property as a matter of Nevada law, the Court denied this Motion without prejudice.

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

C. Subject Matter Jurisdiction

11. At the time U.S. Bank filed its Complaint (July 12, 2016), U.S. Bank was not the real party in interest and lacked standing; and therefore, under NRCP 12(h)(3), dismissal of U.S. Bank's action is mandated.

12. Under NRCP 17(a), "[a]n action must be prosecuted in the name of the real party in interest."

13. "A real party in interest is one who possesses the right to enforce the claim and has a significant interest in the litigation." *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206, 208 (2011) (internal quotations omitted).

14. In short, the determination is whether the plaintiff is the correct party to bring the suit. *See Elley v. Stephens*, 104 Nev. 413, 416-17, 760 P.2d 768, 771 (1988) ("appellants are asserting someone else's potential legal problem; they are not the proper party to assert [this claim]"); *see also Hammes v. Brumley*, 659 N.E.2d 1021, 1030 (Ind. 1995) (citing *Bowen v. Metro Bd. Of Zoning Appeals*, 317 N.E.2d 193 (Ind. App. 1974)) (a real party in interest is the person who is the true owner of the right sought to be enforced).

15. Here, the parties stipulated that at the time of the Association sale, Universal was owner of the Ivy Note and beneficiary of record of the Deed of Trust.

16. Also, at the time U.S. Bank filed its Complaint (July 12, 2016), Universal was still the recorded beneficiary of the Deed of Trust. (Ex. 5.) This is another stipulated fact by the parties.

17. As such, Universal was the real party in interest on July 12, 2016, not U.S. Bank.

18. "The inquiry into whether a party is a real party in interest overlaps

with the question of standing." *Arguello*, 252 P.3d at 208. The question of standing "focuses on the party seeking adjudication rather than on the issues sought to be adjudicated." *Szilagyi v. Testa*, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983). In other to have standing, the party must also have suffered a legally redressable harm and the suit must be "ripe" and not "moot" (at least as to the particular plaintiff) at the time of the lawsuit. *See Schwartz v. Lopez*, 382 P.3d 886, 894 (Nev. 2016) (to establish standing, a party must show the occurrence of an injury that **is personal to him** and not merely a generalized grievance.) (emphasis added.)

19. Whether a party has standing is a question that goes to the court's jurisdiction. *Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 964-65, 194 P.3d 96, 105 (2008); *Vaile v. Eighth Jud. Dist. Ct.*, 118 Nev. 262, 276, 44 P.3d 506, 515–16 (2002).

20. A court lacks the power to grant relief when (1) an indispensable party is absent; or (2) the dispute is moot or not yet ripe, or a party does not have the legal right to seek or receive the requested relief. *See State Indus. Ins. Sys. v. Sleeper,* 100 Nev. 267, 269, 679 P.2d 1273, 1274 (1984) ("There can be no dispute that lack of subject matter jurisdiction renders a judgment void"). *See generally* John G. Roberts, Jr., *Article III Limits on Statutory Standing,* 42 Duke L.J. 1219, 1230 (1993); Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers,* 17 Suffolk U.L.Rev. 881, 881 (1983).

21. "Nevada has a long history of requiring an actual justiciable controversy as a predicate to judicial relief" i.e. standing. *In re Amerco Derivative Litig.*, 127 Nev. 196, 213, 252 P.3d 681, 694 (2011) (internal quotations omitted) (citing Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986)).

22. Further, "a justiciable controversy [is] a preliminary hurdle to an award of declaratory relief." Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444

citing *Southern Pacific Co. v. Dickerson*, 80 Nev. 572, 576, 397 P.3d 187, 190 (1964)). What constitutes a justiciable controversy is defined in *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948) as:

> (1) there must exist a justiciable controversy; that is to say, a controversy in which a claim of right is asserted against one who has an interest in contesting it; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy, that is to say, a legally protectable interest; and (4) the issue involved in the controversy must be ripe for judicial determination.

23. Here, U.S. Bank falls short of these requirements. First, U.S. Bank had no claim of right at the time of filing the Complaint because it did not become the recorded beneficiary until July 2, 2018, nearly two years after the filing of the Complaint. Thus, U.S. Bank had no interest in the Deed of Trust at the time the Complaint filed. Second, in order for U.S. Bank's interest to be adverse to SFR's, U.S. Bank would actually have to have an interest in the first place. But at the time of filing the Complaint, U.S. Bank had no interest in the Deed of Trust. Third, because U.S. Bank had no interest at the time it sued SFR, it follows that U.S. Bank did not have a legally protectable interest at the time of filing. Finally, because U.S. Bank had no interest at the time it sued SFR, all claims U.S. Bank asserted against SFR were not ripe for judicial determination.

24. Based on the above, U.S. Bank has failed to show a justiciable controversy and failed to show any injury. As such, U.S. Bank lacked standing at the time the claims were filed against SFR.

25. Nor can the later assignment to U.S Bank in July 2018, while this case was pending, cure the lack of subject matter jurisdiction at the outset. This

is so because subject matter jurisdiction "cannot be conferred by the parties." *Swan v. Swan*, 106 Nev. 464, 469, 796 P.2d 221, 224 (1990).

26. Under NRCP 12(h)(3), "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."

27. Because the Court finds that U.S. Bank was neither the real party in interest, nor did it have standing at the time it filed its Complaint, the Court finds it lacked subject matter jurisdiction from the outset. As such, under NRCP 12(h)(3), this Court dismisses U.S. Bank's action.

D. Statute of Limitations

28. U.S. Bank alleges "quiet title" against SFR. In Nevada, "quiet title" is just a slang term to identify any action where one party claims an interest in real property adverse to another. Thus, the title of U.S. Bank's claim does nothing to assist the Court in determining which statute of limitations applies. In order to determine this, the Court must look at the nature of the grievance to determine the character of the action, rather than the labels in the pleadings. *Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716, 723 (2008).

29. Here, when the nature of U.S. Bank's grievance is analyzed, tender, i.e. the Association lacked authority to foreclose because the default of the superpriority portion was cured, it becomes readily apparent that a three-year statute of limitations applies under NRS 11.190(3)(a).

30. As the Nevada Supreme Court noted in *Torrealba*, "[t]he phrase 'liability created by statute' means a liability which would not exist but for the statute." *Torreabla*, 178 P.3d at 722. The Court further noted, "[w]here a duty exists only by virtue of a statute ... the obligation is one created by statute."" *Id.* quoting *Gonzalez v. Pacific Fruit Express Co.*, 99 F.Supp. 1012, 1015 (D.Nev.1951) (quoting *Abram v. San Joaquin Cotton Oil Co.*, 46 F.Supp. 969, 976 (D.Cal.1942)) (internal citations and quotations omitted).

31. Here, the "character" of U.S. Bank's tender claim is simple: the Association had a duty to accept BANA's tender, and it unjustifiably refused it. U.S. Bank even pled as much: "[t]he HOA trustee refused to accept [BANA's] tender." By virtue of this "rejection" U.S. Bank claims the "liability" is a void sale resulting in SFR taking subject to the deed of trust. This duty to accept tender arises implicitly from NRS 116 because as the Nevada Supreme Court noted, it is the statute, i.e. NRS 116.3116 that governs liens against units for HOA assessments and details the portion of the lien that has superpriority status." *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 427 P.3d 113, 116 (Nev. 2018) ("*SFR III*").

32. In other words, but for the statute, there would be no superpriority portion and, in turn, no duty on the part of the Association to accept payment of this portion from a bank, like BANA. Moreover, but for the Association's rejection, there would be no liability on the part of SFR by way of taking, subject to the Deed of Trust. All told, the Association's lien is created by statute; the superpriority mechanism of that lien is created by statute; the superpriority portion is fixed by statute; and the Association's implicit duty to accept payment of the superpriority portion is created by statute. *See Torrealba*, 178 P.3d at 723.

33. Based on this, U.S. Bank's tender claim is subject to the three-year statute of limitations prescribed by NRS 11.190(3)(a). Here, the sale occurred on July 25, 2012. Thus, the date by which U.S. Bank had to file its tender claim was July 25, 2015. Having not alleged its tender claim until May 5, 2018, U.S. Bank's tender claim is time-barred.

34. The Court rejects U.S. Bank's argument that a five-year statute of limitations under NRS 11.070 and NRS 11.080 applies. Neither of these statutes are time-bar statutes; they are standing statutes. Regardless, neither statute could ever apply to U.S. Bank as it never possessed the subject property, which

both statutes require. But even if a five-year statute of limitations did apply, U.S. Bank would still be time-barred as it did not plead tender until nearly six years after the sale.

35. The Court rejects U.S. Bank's argument that its Amended Complaint (filed May 5, 2018) relates-back to its original Complaint (filed July 12, 2016). For one, because a three-year statute of limitations applies, relation-back does not save the bank as the original Complaint is time-barred. But even if the Court applied a longer statute of limitations, relation-back would not apply.

36. NRCP 15(c) states "[w]henever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading." However, "where the original pleading does not give a defendant 'fair notice of what the plaintiff's [amended] claim is and the grounds upon which it rests,' the purpose of the statute of limitations has not been satisfied and it is 'not an original pleading that [can] be rehabilitated by invoking Rule 15(c).'" *Baldwin County Welcome Center v. Brown*, 466 U.S. 147, 149 n. 3, 104 S.Ct. 1723 (internal marks and citation omitted). *See also, Glover v. F.D.I.C.*, 698 F.3d 139, 146 (3d Cir. 2012).

37. In other words, the analysis under NRCP 15(c) is "whether the original complaint adequately notified the defendants of the basis for liability the plaintiffs would later advance in the amended complaint." *Meijer, Inc. v. Biovail Corp.*, 533 F.3d 857, 866 (D.C. Cir. 2008) (emphasis added). Similarly, Nevada law will not allow a new claim based upon a new theory of liability asserted in an amended pleading to relate-back under NRCP 15(c) after the statute of limitations has run. *Nelson v. City of Las Vegas*, 99 Nev. 548, 556–57, 665 P.2d 1141, 1146 (1983).

38. Here, U.S. Bank's original complaint, filed on July 12, 2016, never pled tender or any allegations related to tender. It made no allegations whatsoever that the super-priority portion was cured. Simply put, anyone reading the original Complaint would have no idea U.S. Bank would later claim it tendered the superpriority portion of the lien. Compare this to U.S. Bank's Amended Complaint, U.S. Bank completely changed the basis for which it was challenging the sale i.e. tender. Because of this there is no relation-back. *See Nutton v. Sunset Station, Inc.*, 357 P.3d 966 (Nev. 2015). This provides an independent basis for U. S. Bank's claims to fail.

E. U.S. Bank Failed to Prove a Deliver of a Valid Tender

39. In Nevada, "[v]alid tender requires payment in full." *SFR III*, 427 P.3d 113 at 117.

40. Under NRS 116.31162(b), the superpriority portion of the Association's lien is comprised of (1) nine-months of common assessments; and (2) charges incurred for nuisance-abatement and maintenance under NRS 116.310312.

41. In Nevada, "[t]he burden of demonstrating that the delinquency was cured presale, rendering the sale void, [is] on the party challenging the foreclosure..." *Resources Group, LLC v. Nevada Association Services, Inc.*, 437 P.3d 154, 156 (Nev. 2019).

42. Thus, under Nevada law U.S. Bank bears the burden of proving what the superpriority amount was at the time of the sale, and that it delivered a full payment of this amount prior to the sale.

43. At trial, U.S. Bank offered a letter with a check written from Miles Bauer's Trust Account in the amount of $405.00, dated December 16, 2011, (Ex. 24), but there was no evidence the check was in fact delivered to Alessi. Mr. Jung only testified about general practices of the firm in terms of delivering

similar checks like the one at Ex. 24, but had no personal knowledge about Ex. 24; and therefore, offered no specific testimony about Ex. 24. (Testimony of R. Jung, Day 1, at 6:5-15; 25:16-20; 25:24-25-26:1-4.)

45. Mr. Jung was asked if he recalled sending a tender check in this case, and his answer was, "[i]dependently, I don't." (*Id.* at 26:17-19.)

44. U.S. Bank offered no run slip or testimony from any runner that Ex. 24 was in fact delivered to Alessi prior to the sale. This is compelling to the Court in light of Mr. Jung's testimony that the practice of Miles Bauer was to deliver said letters via runner. (*Id.* at 26:6-8.) This also comports with Mr. Alessi's testimony. (Testimony of D. Alessi, Day 3, at 86:16-23.)

55. U.S. Bank offered no receipt of copy to show delivery. This is compelling to the Court in light of Mr. Alessi's testimony that delivery of said letters were accompanied by an ROC that Alessi signed when it accepted the letter. (*Id.* at 86:1-18.)

56. Further, Mr. Alessi testified that it was the practice of Alessi to maintain a copy of letters like Ex. 24 in the file and/or notate its status report of receipt of such letter. (*Id.* at 85:7-10; 14-19; 87:2-7.) The letter was absent from Alessi's file and the status report does not notate receipt of Ex. 24. (*Id.* at 84:16-19; *see also*, Ex. 30.)

57. NRS 51.145 provides that "[e]vidence that a matter is not included in the records in any form, of a regularly conducted activity, can be used to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which was regularly made and preserved."

58. What is included in the status report, in addition to what is not, also convinces the Court that Ex. 24 was not delivered. Specifically, on June 8, 2012, and July 3, 2012, nearly a year after Ex. 24 was dated, Alessi received two payoff requests from Miles Bauer. Had Miles Bauer delivered Ex. 24, these

payoff requests make little sense. (Ex. 30 at 616-617.) Additionally, Ocwen, the servicer of the loan, inquired of Alessi about excess proceeds on September 24, 2014. (*Id.*) Had the Bank believed it tendered the superpriority amount, its servicer would not have sought out excess proceeds as these monies are only available to junior, extinguished lienholders. *See* NRS 116.31164.

59. All told, U.S. Bank failed to prove by a preponderance of the evidence that Ex. 24 was delivered. But even more damaging to U.S. Bank's claim is it never proved the superpriority amount. At trial, no ledgers were admitted into evidence that could prove this amount. Likewise, the Court strikes Mr. Alessi's testimony about the amount of the monthly assessments in 2009 as this testimony constituted inadmissible hearsay to which SFR timely objected.

60. Having failed to prove the superpriority amount, even if this Court could find Ex. 24 was delivered prior to the sale (which it cannot), the amount is meaningless as the Court cannot determine from the evidence whether it was a payment in full.

61. Having failed to prove its tender claim, the Court concludes the sale extinguished the Deed of Trust.

ORDER

1. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED U.S. Bank's action against SFR is DISMISSED on the basis the Court lacked subject matter jurisdiction at the time U.S. Bank filed its action.

2. IT IS HEREBY ORDERED, ADJUDGED AND DECREED U.S. Bank's claim against SFR, which is grounded in tender, is time-barred.

3. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED the Deed of Trust recorded against real property located at 7868 Marbledoe Street, Las Vegas, Nevada 89149; Parcel No. 125-18-112-069, recorded in the Official

Records of the Clark County Recorder as Instrument No. 200505230004228, was extinguished by the July 25, 2012 Association sale.

2. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED U.S. Bank its predecessors in interest and successors and assigns, principals, or anyone else claiming an interest in the Deed of Trust, have no further right, title or interest in real property located at 7868 Marbledoe Street, Las Vegas, Nevada 89149; Parcel No. 125-18-112-069 and are hereby permanently enjoined from taking any further action to enforce the now extinguished Deed of Trust, including but not limited to, clouding title, initiating or continuing to initiate foreclosure proceedings, or taking any other actions to sell or transfer the Property.

3. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED title to real property located at 7868 Marbledoe Street, Las Vegas, Nevada 89149; Parcel No. 125-18-112-069 is hereby quieted in favor of SFR.

4. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED the lis pendens recorded in the Official Records of the Clark County Recorder as Instrument No. 20160713-0002695 is expunged.

IT IS SO ORDERED.

DATED this 14th day of June, 2019.

HON. JOANNA S. KISHNER
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

DANA J. NITZ, ESQ.
NATALIE C. LEHMAN, ESQ.
WRIGHT, FINLAY & ZAK, LLP.

KAREN HANKS, ESQ.
JASON G. MARTINEZ, ESQ.
KIM GILBERT EBRON

TRACY L. CORDOBA-WHEELER
Judicial Executive Assistant

EXHIBIT 14

EXHIBIT 14

ORDR

MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
NIKOLL NIKCI, ESQ.
Nevada Bar No. 10699
nnikci@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
2260 Corporate Circle, Ste. 480
Henderson, Nevada 89074
(702) 642-3113/ (702) 642-9766 FAX
Attorneys for plaintiff 5333 Spicebush St Trust

DISTRICT COURT

CLARK COUNTY, NEVADA

5333 SPICEBUSH ST TRUST,

Plaintiff,

vs.

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE UNDER THE POOLING AND SERVICING AGREEMENT RELATING TO IMP AC SECURED ASSETS CORP., MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-4; LAUREL CANYON HOMEOWNERS ASSOCIATION; and MARILYN P. DEMOTTA

Defendants.

DEUTSCHE BANK NATIONAL TRUST COMPANY,

Counter-Claimant,

vs.

5333 SPICEBUSH ST TRUST,

Counter-Defendant.

CASE NO.: A-18-771055-C
DEPT NO.: X

ORDER GRANTING MOTION TO DISMISS

Hearing Date: June 26, 2018
Hearing Time: 9:30 AM

DEUTSCHE BANK NATIONAL TRUST COMPANY,

Cross-Claimant,

vs.

LAUREL CANYON HOMEOWNERS ASSOCIATION

Cross-Defendants,

Plaintiff 5333 Spicebush St Trust's motion to dismiss counterclaim and defendant Laurel Canyon Homeowners Association's (the "HOA") joinder to the motion and motion to dismiss the cross-claims of defendant Deutsche Bank, came for a hearing before the court on June 26, 2018, Nikoll Nikci, Esq. appearing on behalf of the plaintiff, Daniel M. Hansen, Esq. appearing on behalf of defendant Laurel Canyon Homeowners Association, Donna Wittig, Esq. appearing on behalf of defendant Deutsche Bank National Trust Company ("Deutsche Bank"), and Janice E. Jacovino for defendant Marilyn P. Demotta, and the court, having reviewed briefing, and having considered the arguments of counsel, and good cause appearing:

1. Defendant Deutsche Bank National Trust Company filed its Answer, Counterclaims, and Cross-Claims on May 7, 2018, and the Court accepts everything alleged therein as true.

2. The Answer alleges, on January 30, 2013, the HOA, through its agent, conducted the foreclosure sale on the property located at 5333 Spicebush St, North Las Vegas in order to recover delinquent assessments owed to the HOA, including the superpriority amount. The Property was sold to 5333 Spicebush St Trust at the foreclosure sale, and a foreclosure deed recorded February 19, 2013, as instrument number 201302190003805 evidences the conveyance of the property to the plaintiff.

3. Deutsche Bank was the beneficiary of the deed of trust on the Property prior to the foreclosure sale, and, in its Counterclaim against plaintiff, Deutsche Bank seeks an order from the court declaring that the foreclosure sale did not extinguish the deed of trust on the Property.

4. Deutsche Bank alleged it made an offer to tender the superpriority amount of the HOA's assessment lien prior to the foreclosure sale.

5. In its Counterclaim against plaintiff, Deutsche Bank brought causes of action for (1) quiet title pursuant to NRS 40.010, and (2) injunctive relief.

6. As part of its Cross-Claim, Deutsche Bank brought causes of action against the HOA for (1) wrongful foreclosure and (2) breach of NRS 116.1113. Deutsche Bank brought these claims in the alternative should the court find that the foreclosure on the property extinguished the deed of trust on the Property.

7. Under the allegations of the Counterclaim and Cross-Claim, the last relevant action the HOA took in regards to the Property and Deutsche Bank's claims against them was to conduct the foreclosure sale on January 30, 2013. Moreover, if the foreclosure on the Property did extinguish the deed of trust on the Property, the latest date Deutsche Bank could claim to have known its deed was extinguished was on the date the trustee's deed upon sale was recorded, February 19, 2013. Therefore, Deutsche Bank could have brought all of its claims against Plaintiff and/or the HOA after February 19, 2013, and that is the date of accrual for any cause of action by Deutsche Bank against either Plaintiff or the HOA concerning any aspect of the foreclosure on the Property.

8. In Nevada, the state's courts have adopted the discovery rule, and thus time limits generally "do not commence and the cause of action does not 'accrue' until the aggrieved party knew, or reasonably should have known, of the facts giving rise to the damage or injury." G & H Assocs. V. Ernest W. Hahn, Inc., 934 P.2d 229, 233 (Nev. 1997).

9. Although the date that certain statutes of limitations begin to run may be tolled until the time when "the plaintiff knew or in the exercise of proper diligence should have known of the facts constituting the elements of his cause of action ...." Nevada State Bank v. Jamison Family P'ship, 801 P.2d 1377, 1382 (Nev. 1990), the statutes of limitations on Deutsche Bank's claims against Plaintiff and the HOA were not tolled.

10. Deutsche Bank was aware of all the facts surrounding the foreclosure by the date of the trustee's deed upon sale was recorded, because the foreclosure deed on the Property became part of the public record, thereby providing, at a minimum, record notice to Deutsche Bank. See Job's Peak Ranch Cmty. Ass'n Inc. v. Douglas Cty., No. 55572, 2015 WL 5056232, at *3 (Nev. Aug. 25, 2015) ("If the

facts giving rise to the cause of action are matters of public record then '[t]he public record gave notice sufficient to start the statute of limitations running.'" Deutsche Bank had sufficient notice of the facts constituting the causes of action at the time of the foreclosure, i.e., Deutsche Bank had the ability and wherewithal to bring a lawsuit at that time.

11. This Court does not find it persuasive that later clarification by the Nevada Supreme Court somehow tolled the statute of limitations given that Deutsche Bank had, at a minimum, record notice of the facts constituting the elements of the causes of action pled in this action. Deutsche Bank failed to identify any element in any cause of action that it did not know or could not have known at the time of the foreclosure.

12. The Court does not find it persuasive that banks are not injured unless a court finds its deed of trust is extinguished. The Nevada Supreme Court explained that "NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of which will extinguish a first deed of trust." SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 419 (Nev. 2014). The injury does not occur years later, it occurs at the moment of foreclosure.

13. Deutsche Bank's allegation that it attempted to tender the superpriority amount of the HOA's assessment lien prior to the foreclosure sale also demonstrates its awareness of the existence of NRS 116.3116 and its effect on their lien.

14. Therefore, the statutes of limitations on Deutsche Bank's claim for quiet title against plaintiff, and claim for wrongful foreclosure against the HOA began to run on February 19, 2013, at the latest.

15. NRS 11.190(3)(a) provides a three-year statute of limitations for "an action upon a liability created by statute, other than a penalty or forfeiture." The Nevada Supreme Court determined "[t]he phrase 'liability created by statute' means a liability which would not exist but for the statute." Torrealba v. Kesmitis, 124 Nev. 95, 178 P.3d 716, 722 (2008).

16. Deutsche Bank's claim for quiet title is based on NRS 40.010.

17. Since Deutsche Bank filed its Counterclaims against plaintiff on May 7, 2018, more than three years after its claim for quiet title accrued, that claim against plaintiff is now time-barred.

18. Deutsche Bank's claim against the HOA for wrongful foreclosure is partially based on breach

of NRS 116.1113.

19. Since Deutsche Bank filed its Cross-claims against the HOA on May 7, 2018, more than three years after the foreclosure sale was recorded and its claims against the HOA accrued, that claim is now time-barred.

20. NRS 11.220 provides a four-year statute of limitations for "an action for relief, not hereinbefore provided for, must be commenced within 4 years after the action shall have accrued." NRS 11.220 is often described as the "catch-all" because it applies to actions which do not fall under the other statutes of limitation found in NRS 11. There is no statute of limitations mentioned in NRS Chapter 11 for claims of wrongful foreclosure.

21. To the extent any of Deutsche Bank's claims against the HOA for wrongful foreclosure are based on common law, the four-year statute of limitations applies to those claims.

22. Since Deutsche Bank filed its Cross-Claim on May 7, 2018, more than four years after its claims for wrongful foreclosure accrued, those claims against the HOA are now time-barred.

NOW THEREFORE, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED that plaintiff 5333 Spicebush St Trust's motion to dismiss counterclaim and defendant Laurel Canyon Homeowners Association's joinder to motion and motion to dismiss cross-claims are GRANTED as the claims for quiet title, injunctive relief, wrongful foreclosure, and breach of NRS 116.1113 are time-barred by the relevant statutes of limitations.

DATED this 22 day of ~~July~~ August, 2018.

DISTRICT COURT JUDGE

SW

Reviewed by:

LONARDO & JACOVINO, LLC

By: _____
Janice Jacovino
7881 West Charleston Blvd., Ste. 160
Las Vegas, Nevada 89117
Attorneys for defendant Marilyn P. Demotta

Reviewed by:

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

By: _____
Daniel M. Hansen, Esq.
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144-0596
Attorneys for defendant Laurel Canyon
Homeowners Association

Reviewed by:

AKERMAN LLP

By: _____
Donna Wittig, Esq.
1635 Village Center Circle, Ste. 200
Las Vegas, Nevada 89134
Attorney for defendant Deutsche Bank
National Trust Company

Respectfully Submitted by:

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

By: _____
Michael F. Bohn, Esq.
Nikoll Nikci, Esq.
2260 Corporate Circle, Ste. 480
Henderson, Nevada 89074
Attorneys for plaintiff 5333 Spicebush St Trust

Reviewed by:

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

By: _____
Daniel M. Hansen, Esq.
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144-0596
Attorneys for defendant Laurel Canyon
Homeowners Association

Reviewed by:

AKERMAN LLP

By: _____
Donna Wittig, Esq.
1635 Village Center Circle, Ste. 200
Las Vegas, Nevada 89134
Attorney for defendant Deutsche Bank
National Trust Company

Respectfully Submitted by:

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

By: _____
Michael F. Bohn, Esq.
Nikoll Nikci, Esq.
2260 Corporate Circle, Ste. 480
Henderson, Nevada 89074
Attorneys for plaintiff 5333 Spicebush St Trust

EXHIBIT 15

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Jeffrey Willis, Esq.
Nevada Bar No. 4797
Kiah D. Beverly-Graham, Esq.
Nevada Bar No. 11916
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Telephone: (702) 784-5200
Facsimile: (702) 784-5252
jwillis@swlaw.com
kbeverly@swlaw.com

Attorneys for Defendant
JPMorgan Chase Bank, N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 10013 ALEGRIA Plaintiff, v. JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, THE SUCCESSOR IN INTEREST FROM THE FDIC AS RECEIVER OF WASHINGTON MUTUAL BANK; NATIONAL DEFAULT SERVICING CORPORATION; AND PHILIPPE RISPOLI, Defendants.	Case No.: A-13-690930-C Dept. No.: XXIV **~~[PROPOSED]~~ ORDER GRANTING MOTION TO DISMISS COUNTERCLAIMS**

The motion of plaintiff Saticoy Bay, LLC Series 10013 Alegria to dismiss the defendant's counterclaim came on for hearing before the court on September 20, 2018, Michael F. Bohn, Esq. appearing on behalf of the plaintiff, and Kiah Beverly-Graham, Esq. appearing on behalf of defendant JPMorgan Chase Bank, N.A. as Acquirer of Certain Assets and Liabilities of Washington Mutual Bank, FA From the FDIC Acting as Receiver (hereinafter referred to as "Chase"), and the court, having reviewed the motion and opposition thereto, and having heard the arguments of counsel, and good cause appearing, the court finds as follows.

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1. Defendant Chase filed its answer to the plaintiff's complaint on January 22, 2015. The answer did not include a counterclaim.

2. Defendant Chase Bank filed its Amended Answer to Complaint and Counterclaims on July 10, 2018, and the Court accepts everything alleged in the counterclaims as true.

3. The Counterclaims allege claims based on unconstitutionality of the foreclosure statutes, quiet title, wrongful foreclosure and unjust enrichment.

4. Under the allegations of the counterclaims, any claims would have arose on the date the foreclosure deed upon sale was recorded, September 26, 2013 which is the date of accrual for any cause of action by Chase against plaintiff concerning any aspect of the foreclosure on the Property.

5. NRS 11.190(3)(a) provides a three-year statute of limitations for "an action upon a liability created by statute, other than a penalty or forfeiture." The Nevada Supreme Court determined "[t]he phrase 'liability created by statute' means a liability which would not exist but for the statute." Torrealba v. Kesmitis, 124 Nev. 95, 178 P.3d 716, 722 (2008).

6. The Counterclaims, notwithstanding how they are denominated, are properly characterized as arising from the violation of the statutes contained in NRS Chapter 116.

7. Since Chase filed its counterclaims against plaintiff on July 10, 2018, more than three years after each of its claims accrued, the claims against plaintiff are now time-barred.

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Snell & Wilmer
L.L.P.
LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200

NOW THEREFORE, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED that plaintiff Saticoy Bay, LLC Series 10013 Alegria's motion to dismiss counterclaim is GRANTED as the claims for quiet title, injunctive relief, wrongful foreclosure, and breach of NRS 116.1113 are time-barred by the relevant statutes of limitations.

Dated this 13 day of ~~October~~ November, 2018

DISTRICT COURT JUDGE

Respectfully Submitted by:

By: (NV 13064)
Jeffrey Willis, Esq.
(NV Bar No. 4797)
Kiah D. Beverly-Graham, Esq.
(NV Bar No. 11916)
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169

Attorneys for Defendant JP Morgan Chase Bank, N.A.

Snell & Wilmer L.L.P.
LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200

EXHIBIT 16

EXHIBIT 16

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

HSBC Bank USA, National Association, as Trustee for Ace Securities Corp. Home Equity Loan Trust, Series 2006-OP2, Plaintiff v. 3645 Julia Waldene St. Trust, et al., Defendants	Case No. 2:17-cv-01565-JAD-VCF **Order Granting Summary Judgment for the Defendants Based on Untimeliness of Claims** [ECF Nos. 22, 30, 31, 38]

This is one of the hundreds of equitable quiet-title actions in this district in which a bank seeks a declaration that the non-judicial foreclosure sale of a home did not extinguish the bank's deed of trust securing a mortgage on that home despite the Nevada Supreme Court's 2014 holding in *SFR Investments Pool 1 v. US Bank* that a properly conducted foreclosure sale to enforce a homeowners' association's superpriority lien extinguishes the first deed of trust.[1] This case pits HSBC Bank—the purported beneficiary of the deed of trust—against the Ahey Estates Homeowners Association (the HOA), foreclosure-sale purchaser 3645 Julia Waldene St. Trust, and its assignee, and all parties now move for summary judgment, asserting a host of arguments. One argument prevails over all others, however: the Bank's claims are time-barred because they were filed nearly a year after the statutes of limitation on them expired. So I grant summary judgment in favor of the purchasers and the HOA, and I dismiss this action as time-barred.

[1] *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408, 419 (Nev. 2014).

Background

Stevie Laperaze Pearrie purchased the home at 3645 Julia Waldene Court in Las Vegas, Nevada, in 2006, with a mortgage from Option One Mortgage Corporation, secured by a deed of trust.[2] Option One assigned the deed of trust to HSBC Bank in 2010.[3] The home is located in the Ahey Estates common-interest community[4] and subject to its constituent documents, which require the owners of units within this development to pay certain assessments. When Pearrie fell behind on his assessments, the HOA commenced nonjudicial foreclosure proceedings on the home under Chapter 116 of the Nevada Revised Statutes.[5] The 3645 Julia Waldene St. Trust bought it at the foreclosure sale on July 11, 2012,[6] and then transferred the property via grant, bargain, sale deed to the Teal Petals St. Trust just weeks later.[7]

The Nevada Legislature gave homeowners associations a superpriorty lien against residential property for certain delinquent assessments.[8] As the Nevada Supreme Court held in *SFR Investments Pool 1 v. U.S. Bank* in 2014, because NRS 116.3116(2) gives an HOA "a true superpriority lien, proper foreclosure of" that lien under the non-judicial foreclosure process created by NRS Chapters 107 and 116 "will extinguish a first deed of trust."[9] The Purchasers

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[2] ECF No. 30-4 (deed of trust).

[3] ECF No. 30-5 (assignment).

[4] ECF No. 30-4 at 11 (planned-unit rider).

[5] ECF Nos. 30-6–30-13.

[6] ECF No. 30-3 (trustee's deed upon sale).

[7] ECF No. 30-2. Both trusts are collectively referred to herein as "the Purchasers."

[8] Nev. Rev. Stat. § 116.3116; *SFR*, 334 P.3d at 409.

[9] *SFR*, 334 P.3d at 419.

contend that the HOA's foreclosure sale wiped out the Bank's deed of trust by operation of NRS Chapter 116.[10]

Four years and eleven months after the foreclosure sale, the Bank filed this action against the Purchasers and the HOA.[11] The Bank pleads five causes of action: two captioned as quiet-title claims, one entitled "Declaratory Relief," one entitled "Permanent and Preliminary Injunction, and a final unjust-enrichment claim against the purchasers alone.[12] All parties move for summary judgment.[13] The first-filed summary-judgment motion belongs to the Purchasers. They argue that the Bank's claims are time-barred by a three- or four-year statute of limitation and, regardless, they fail as a matter of law.[14] The HOA attacks the Bank's claims with similar arguments.[15] The Bank contends that its claims are timely because they are all quiet-title actions governed by a five-year statute of limitations, and it seeks summary judgment in its favor based on a myriad of additional arguments.[16] There is no dispute that this action was filed more than four years after the foreclosure sale. Because I find that the Bank's claims are time-barred as a matter of law, I grant the Purchasers' and HOA's motions for summary judgment in part, deny the Bank's as moot, and do not reach the parties' remaining arguments.

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[10] ECF No. 30.

[11] ECF No. 1.

[12] *Id*.

[13] The Purchasers also have a pending motion to dismiss. ECF No. 22.

[14] ECF No. 30 (Purchasers' motion).

[15] ECF No. 38 (HOA's motion).

[16] ECF Nos. 31, 34, 47.

Analysis

A. Sorting the Bank's claims

To evaluate claims, "we must look at the substance of the claims, not just the labels used."[17] The Bank's first and third causes of action are labeled "quiet title" and their general purpose is to challenge the impact of the foreclosure sale on the deed of trust. This requested equitable relief makes the Bank's claims the type of quiet-title claim recognized by the Nevada Supreme Court in *Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp*—an action "seek[ing] to quiet title by invoking the court's inherent equitable jurisdiction to settle title disputes."[18] The resolution of such a claim is part of "[t]he long-standing and broad inherent power of a court to sit in equity and quiet title, including setting aside a foreclosure sale if the circumstances support" it.[19]

The Bank's second cause of action is labeled "declaratory relief," but it, too, is an equitable quiet-title claim. Like the first and third causes of action, this one seeks a determination that the HOA's foreclosure sale "did not extinguish the Deed of Trust, which continued as a valid encumbrance against the Property."[20] The Bank's fourth cause of action is captioned as a claim for "permanent and preliminary injunction."[21] But injunctive relief is not a claim; it's a remedy that rises and falls with the underlying claim it asserts. The claim that underlies this fourth cause of action is the same as its predecessors—an equitable quiet-title

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[17] *Nevada Power Co. v. Eighth Judicial Dist. Court of Nevada ex rel. Cty. of Clark*, 102 P.3d 578, 586 (Nev. 2004).

[18] *Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp*, 366 P.3d 1105, 1110–1111 (Nev. 2016).

[19] *Id*. at 1112.

[20] ECF No. 1 at 12.

[21] *Id*. at 14.

claim. The Bank's final claim is one for unjust enrichment. It seeks reimbursement for such things as the "taxes, insurance[,] or homeowner's association assessments" that the Bank has paid "since the time of the HOA Sale."[22] So, the Bank's first four claims are equitable quiet-title claims despite their labels, and its fifth claim is a claim for unjust enrichment.

B. The Bank's quiet-title claims were time barred four years after the foreclosure sale.

I first consider the timeliness of the bulk of the Bank's complaint: its quiet-title claims. The bank takes the sweeping position that quiet-title actions in Nevada are governed by the five-year statute of limitation in NRS 11.080, making its claims timely.[23] Though some quiet-title claims in Nevada are governed by this statutory provision, not all of them are. NRS 11.080 provides a five-year deadline for claims for "the recovery of real property, or for the recovery of the possession thereof other than mining claims . . . ."[24] But the Bank's is not an action for the recovery of property or possession of property. If the Bank wins, it gets only a declaration that its lien remains on the property. So NRS 11.080 has no application to the Bank's quiet-title claims.

Nevada's other five-year statute of limitations for some quiet-title claims is found in NRS 11.070. The Bank doesn't specifically mention this statutory provision, but this statute provides a five-year statute of limitations for actions or defenses "founded upon the title to real property or to rents or to services out of the same."[25] The Bank's claims do not fall under NRS 11.070 either, because they are not founded upon title, rents, or services, but rather upon lien rights created by a deed of trust. And although these claims impact or may impact title, they

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[22] *Id.* at 15.

[23] ECF No. 34 at 15–16.

[24] Nev. Rev. Stat. § 11.080.

[25] Nev. Rev. Stat. § 11.070.

themselves are not founded upon title as NRS 11.070 requires. So the Bank cannot reap the benefits of the liberal five-year limitation period in NRS 11.070 either.

The Bank cites a handful of cases in which other judges in this district have applied these five-year limitation periods to a wide swath of HOA-foreclosure-related claims.[26] With limited exceptions that do not apply here, trial-court opinions are not binding on other trial judges within this district,[27] and I do not find those orders persuasive. They contain no analysis of the language in these statutes or how it relates to an equitable quiet-title claim brought by a deed-of-trust beneficiary. At most, they reference other cases in which a court has offered the same unreasoned conclusion, primarily the Ninth Circuit's opinion in *Weeping Hollow Avenue Trust v. Spencer*[28] and its unpublished disposition in *Scott v. Mortgage Elec. Reg. Sys.*,[29] or the Nevada Supreme Court's holding in *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JP Morgan Chase Bank.*[30] But even those underlying cases are materially distinguishable from this case because the claim that the court was analyzing in each was brought by a titleholder, not a lienholder like the Bank. So, unlike the Bank's claims, those were founded on title or sought to recover

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[26] *See* ECF No. 34 at 16–17 (collecting cases); *but see, e.g.*, *Nationstar Mortg. LLC v. Safari Homeowners Ass'n*, No. 2:16-cv-02542-RFB-CWH, 2019 WL 121960, at *2 (D. Nev. Jan. 6, 2019) (concluding that "Plaintiff's equitable quiet title claim carries a four-year statute of limitations[under] the catch-all provision at NRS 11.220."); *Bank of Am., N.A. v. Country Garden Owners Ass'n*, No. 2:17-cv-01850-APG-CWH, 2018 WL 1336721, at *2 (D. Nev. Mar. 14, 2018) (holding that the four-year catchall limitation period in NRS 11.220 applies to quiet-title claims by a lienholder seeking to determine whether an HOA sale extinguished its deed of trust).

[27] L.R. IA 7-3(f) ("A decision by one judge in this district is not binding on any other district judge . . . and does not constitute the rule of law in this district.").

[28] *Weeping Hollow Ave. Tr. v. Spencer*, 831 F.3d 1110 (9th Cir. 2016).

[29] *Scott v. Mortgage Elec. Reg. Sys.*, 2015 WL 657874 (9th Cir. Feb. 17, 2015) (unpublished).

[30] *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JP Morgan Chase Bank*, 388 P.3d 226 (Nev. 2017).

property, so they were properly governed by the five-year statutes of limitation in NRS 11.070 and 11.080.

But I also cannot agree with the Purchasers and the HOA that the Bank's equitable quiet-title claims are subject to the three-year statute of limitations in NRS 11.090(3)(a).[31] That statute governs actions "upon a liability created by statute, other than a penalty or forfeiture."[32] But the Bank's claims are not actions upon a liability created by statute; they are equitable actions to determine adverse interests in real property, as codified in NRS 40.010.[33] Section 40.010 does not create liability, and a party cannot impose liability upon another through that statute. Rather, the statute allows for a proceeding to determine adverse claims to property. Even if I interpret the bank's quiet-title actions as claims under NRS 116.3116, they still do not seek to impose liability under that statute. So NRS 11.090(3)(a) does not apply.[34]

With no squarely applicable limitation statute for the Bank's equitable quiet-title claims, I am left with the catch-all four-year deadline in NRS 11.220, which states that "[a]n action for relief, not hereinbefore provided for, must be commenced within 4 years after the cause of action

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[31] *See* ECF Nos. 30 at 4, 38 at 8.

[32] Nev. Rev. Stat. § 11.190(3)(a).

[33] *See supra* at p. 4; *Shadow Wood HOA*, 366 P.3d at 1111 (recounting that "NRS 40.010 essentially codified the court's existing equity jurisprudence" (comma omitted)).

[34] To the extent that the Purchasers and the HOA argue that I held in *Bank of New York Mellon v. Tierra De Las Palmas Owners Association*, 2:17-cv-02112-JAD-CWH (May 18, 2019), that equitable quiet-title claims are governed by NRS 11.090(3)(a), they grossly misread that order. Because the quiet-title claims in that case were filed more than five years after the foreclosure sale, I did not need to—so I did not—determine which statute applied. *See id*. at 4. I have repeatedly held that equitable quiet-title claims like the Bank's are governed by NRS 11.220's four-year deadline. *See, e.g.*, *Bank of New York Mellon v. The Springs at Centennial Ranch HOA*, No. 2:17-cv-01673-JAD-GWF, 2019 WL 1532859, at *4 (D. Nev. Apr. 8, 2019); *U.S. Bank v. SFR Investments Pool 1, LLC*, No. 2:17-cv-01500-JAD-PAL, 2019 WL 1383265, at *4 (D. Nev. Mar. 27, 2019); *Ocwen Loan Servicing, LLC v. SFR Investments Pool 1, LLC*, No. 2:17-cv-01757-JAD-VCF, 2018 WL 2292807, at *5 (D. Nev. May 18, 2018).

shall have accrued."[35] Because the foreclosure sale recorded on July 18, 2012,[36] and this action was filed more than four years later on June 2, 2017, the Bank's quiet-title claims are time barred.

C. The Bank's unjust-enrichment claim is also time-barred.

As its final claim, the bank alleges that the Purchasers were unjustly enriched by the foreclosure purchase.[37] Nevada's "statute of limitation for an unjust enrichment claim is four years."[38] The Bank missed that window by more than ten months, so its unjust-enrichment claim against the Purchasers is time-barred, too.

Conclusion

Because all of the Bank's claims were time-barred when they were filed, I grant summary judgment in favor of the defendants and against the Bank on all of the Bank's claims, and I do not reach the parties' remaining arguments.

IT IS THEREFORE ORDERED that:

- The Purchasers' and the HOA's motions for summary judgment **[ECF Nos. 30, 38] are GRANTED in part and denied in part. This action is DISMISSED as time-barred,** and I do not reach the remaining arguments in those motions;
- The Bank's motion for summary judgment **[ECF No. 31] is DENIED** as moot; and
- The Purchasers' renewed motion to dismiss **[ECF No. 22] is also DENIED** as moot.

. . .

[35] Nev. Rev. Stat. §11.220.

[36] ECF No. 30-3 at 2.

[37] *Id*. at 12.

[38] *In re Amerco Derivative Litig*., 252 P.3d 681, 703 (Nev. 2011) (citing NRS 11.190(2)(c)).

IT IS FURTHER ORDERED that the Clerk of Court is directed to ENTER FINAL JUDGMENT in favor of the defendants and CLOSE THIS CASE.

Dated: April 11, 2019

U.S. District Judge Jennifer A. Dorsey

EXHIBIT 17

EXHIBIT 17

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

U.S. Bank National Association, as Trustee for Banc of America Funding 2006-G Trust, Plaintiff v. SFR Investments Pool 1, LLC, a Nevada limited-liability company; Torrey Pines Ranch Estates Homeowners Association, a Nevada non-profit corporation; Nevada Association Services, Inc., a Nevada corporation, Defendants	Case No.: 2:17-cv-01500-JAD-PAL **Order re: Summary Judgment** [ECF Nos. 29, 30, 32]

In *SFR Investments Pool 1 v. US Bank*, the Nevada Supreme Court held that a properly conducted nonjudicial foreclosure sale by a homeowners' association to enforce a superpriority lien extinguishes a first deed of trust.[1] U.S. Bank National Association, as Trustee for Bank of America Funding 2006-G Trust, brings this diversity action to determine the effect of the 2013 foreclosure sale of a home on which the bank claims a deed of trust securing a mortgage on the property. U.S. Bank sues SFR Investments Pool 1, LLC, who purchased the property at the foreclosure sale; and the Torrey Pines Ranch Estates Homeowners Association (HOA), who caused the sale to occur, seeking a determination that the deed of trust survived the foreclosure.[2] SFR counterclaims for the opposite conclusion.[3]

[1] *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408, 419 (Nev. 2014).

[2] ECF No. 1.

[3] ECF No. 15.

SFR[4] and the HOA[5] move for summary judgment on the bank's claims, arguing that they are time-barred by the applicable statutes of limitations and, regardless, they fail as a matter of law. The bank moves for summary judgment in its favor on all of its claims.[6] I find that the bank's claims are governed by three- and four-year statutes of limitations, and because the bank filed this action more than four years after the foreclosure sale, they are all time-barred. I also find that SFR is entitled to summary judgment on its quiet-title counterclaim. So I grant the HOA's and SFR's motions in part and deny the bank's as moot.

Background

Peter Nguyen purchased the home at 6209 Rodman Ridge Court in Las Vegas, Nevada, in 2006, with a mortgage from Wells Fargo Bank, secured by a deed of trust.[7] Wells Fargo assigned the deed of trust to U.S. Bank in 2010.[8] The home is located in the Torrey Pines Ranch Estates common-interest community[9] and subject to its constituent documents, which require the owners of units within this development to pay certain assessments. When Nguyen fell behind on his assessments, the HOA commenced nonjudicial foreclosure proceedings on the home under Chapter 116 of the Nevada Revised Statutes.[10] SFR bought it at the foreclosure sale on January 25, 2013.[11]

[4] ECF No. 32.

[5] ECF No. 29.

[6] ECF No. 30.

[7] ECF Nos. 30-1 (promissory note), 31-1 (deed of trust).

[8] ECF No. 31-2 (assignment).

[9] ECF No. 31-1 at 18.

[10] ECF Nos. 31-3, 31-4, 31-10.

[11] ECF No. 31-11.

The Nevada Legislature gave HOAs a superpriorty lien against residential property for certain delinquent assessments.[12] As the Nevada Supreme Court held in *SFR Investments Pool 1 v. U.S. Bank* in 2014, because NRS 116.3116(2) gives an HOA "a true superpriority lien, proper foreclosure of" that lien under the non-judicial foreclosure process created by NRS Chapters 107 and 116 "will extinguish a first deed of trust."[13] SFR claims that the 2013 HOA foreclosure sale caused both Nguyen and the bank to lose any interest they had in the property.

Four years and four months after the foreclosure sale, U.S. Bank filed this action against SFR and the HOA.[14] The bank pleads six causes of action: three quiet-title claims, all seeking a declaration that the deed of trust continues to encumber the property; a claim for "wrongful foreclosure"; one for violating NRS 116.1113; and an unjust-enrichment claim against SFR alone.[15] SFR asserts a quiet-title counterclaim against the bank and "crossclaim" against Nguyen,[16] asking for a declaration that the foreclosure sale extinguished any interest claimed by the bank or Nguyen.[17]

Nguyen has not appeared or participated in this case,[18] but all other parties move for summary judgment in their favor. The first-filed motion belongs to the HOA. It argues that all of the bank's claims are time-barred by a three- or four-year statute of limitation and, regardless,

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[12] Nev. Rev. Stat. § 116.3116; *SFR*, 334 P.3d at 409.

[13] *SFR*, 334 P.3d at 419.

[14] U.S. Bank also sued Nevada Association Services, Inc. (NAS), the entity that conducted the sale on behalf of the HOA, *see* ECF No. 1, but NAS has not appeared. The dismissal of the bank's claims as untimely includes its claims against NAS.

[15] *Id*.

[16] This claim is more properly construed as a third-party claim because Nguyen is not a co-defendant on the bank's claims.

[17] ECF No. 15.

[18] The Clerk entered default against Nguyen on SFR's motion. *See* ECF No. 33.

they fail as a matter of law.[19] SFR attacks the bank's claims with similar arguments and also asks for summary judgment in its favor on its quiet-title counterclaim.[20] U.S. Bank contends that its claims are timely because they are all quiet-title actions governed by a five-year statute of limitations, and it seeks summary judgment in its favor on all claims.[21] I first evaluate the timeliness of the bank's claims, and then I consider whether SFR is entitled to summary judgment on its counterclaim.

Analysis

A. SFR's and the HOA's motions for summary judgment on U.S. Bank's claims [ECF Nos. 29, 32]

U.S. Bank waited four years and four months after the foreclosure sale to file this action. The parties generally characterize all claims in this case as quiet-title claims. Both SFR and the HOA argue that these claims are statute-based claims subject to a three-year statute of limitations under NRS 11.190(3)(a)[22] or, at best, the court must apply the catch-all four-year deadline in NRS 11.220; either way, the bank's action is time barred.[23] U.S. Bank contends that its quiet-title claims enjoy a more generous five-year statutory period under NRS 11.070 or 11.080, making them timely.[24]

[19] ECF No. 29 (HOA's motion).

[20] ECF No. 32.

[21] ECF Nos. 30, 34, 35, 46.

[22] ECF Nos. 29 at 6 (HOA), 32 at 10–12 (SFR).

[23] ECF Nos. 29 at 6–7 (HOA), 32 at 12–13 (SFR).

[24] ECF Nos. 34, 35.

1. Sorting the bank's claims

To evaluate claims, "we must look at the substance of the claims, not just the labels used."[25] The bank's first, second, and fifth causes of action are labeled "quiet title" and their general purpose is to challenge the impact of the foreclosure sale on the deed of trust. This requested equitable relief makes U.S. Bank's claims the type of quiet-title claim recognized by the Nevada Supreme Court in *Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp*—an action "seek[ing] to quiet title by invoking the court's inherent equitable jurisdiction to settle title disputes."[26] The resolution of such a claim is part of "[t]he long-standing and broad inherent power of a court to sit in equity and quiet title, including setting aside a foreclosure sale if the circumstances support" it.[27]

The bank's third cause of action is labeled "wrongful foreclosure," but this is a misnomer. The central purpose of this claim is the very same as those bearing a quiet-title label: challenging the legal underpinnings of the foreclosure and asking that the sale be declared invalid so that it does not extinguish the deed of trust.[28] So the parties are right to characterize this claim as another quiet-title claim.[29]

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[25] *Nevada Power Co. v. Eighth Judicial Dist. Court of Nevada ex rel. Cty. of Clark*, 102 P.3d 578, 586 (Nev. 2004).

[26] *Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp*, 366 P.3d 1105, 1110–1111 (Nev. 2016).

[27] *Id*. at 1112.

[28] ECF No. 1 at 9–10

[29] Even if I were to characterize this claim as one for wrongful foreclosure, it enjoys at best a four-year statutory period. *See Bank of New York for Certificateholders of CWALT, Inc. v. S. Highlands Cmty. Ass'n*, 329 F. Supp. 3d 1208, 1219 (D. Nev. 2018).

The bank's fourth cause of action is entitled "Violation of NRS 116.1113 et seq."[30] In this claim, the bank alleges that the HOA breached its "duty of good faith to US Bank" in the foreclosure documents and process. Assuming without deciding that NRS Chapter 116 provides a private right of action for a violation of NRS 116.1113, this claim is one founded on a liability created by statute, other than a penalty or forfeiture, and it is subject to the three-year statute of limitations in NRS 11.090(3)(a). Because the bank waited more than four years after this alleged statutory violation to file this action, its NRS 116.1113-violation claim is time-barred.

As its final claim, the bank alleges that SFR was unjustly enriched by the foreclosure purchase.[31] Nevada's "statute of limitation for an unjust enrichment claim is four years."[32] U.S. Bank missed that window by four months, so its unjust-enrichment claim against SFR is also time-barred.

2. U.S. Bank's quiet-title claims were time barred four years after the foreclosure sale.

With the bank's NRS 116.1113 and unjust-enrichment claims time-barred, I turn to the question of which statutory period applies to its remaining equitable claims to quiet title. The bank takes the sweeping position that quiet-title actions in Nevada are governed by the five-year statutes of limitations in NRS 11.070 and 11.080, making its claims timely.[33] Though some quiet-title claims in Nevada are governed by these statutory provisions, not all of them are. NRS 11.080 provides a five-year deadline for claims for "the recovery of real property, or for the

[30] ECF No. 1 at 10–11.

[31] *Id*. at 12.

[32] *In re Amerco Derivative Litig*., 252 P.3d 681, 703 (Nev. 2011) (citing NRS 11.190(2)(c)).

[33] ECF No. 34 at 6.

recovery of the possession thereof other than mining claims . . . ."[34] But U.S. Bank's is not an action for the recovery of property or possession of property. If U.S. Bank wins, it gets only a declaration that its lien remains on the property. So NRS 11.080 has no application to U.S. Bank's quiet-title claims.

NRS 11.070 provides a five-year statute of limitations for actions or defenses "founded upon the title to real property or to rents or to services out of the same."[35] U.S. Bank's claims do not fall under NRS 11.070 because they are not founded upon title, rents, or services, but upon lien rights created by a deed of trust. And although these claims impact or may impact title, they themselves are not founded upon title as NRS 11.070 requires. So U.S. Bank cannot reap the benefits of the liberal five-year limitations period in NRS 11.070 for its claims either.

U.S. Bank cites a handful of cases in which other judges in this district have applied these five-year limitation periods to a wide swath of HOA-foreclosure-related claims.[36] With limited exceptions that do not apply here, trial-court opinions are not binding on other trial judges within this district,[37] and I do not find those orders persuasive. They contain no analysis of the language in these statutes or how it relates to an equitable quiet-title claim brought by a deed-of-trust beneficiary. At most, they reference other cases in which a court has offered the same unreasoned conclusion, primarily the Ninth Circuit's opinion in *Weeping Hollow Avenue Trust v.*

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[34] Nev. Rev. Stat. § 11.080.

[35] Nev. Rev. Stat. § 11.070.

[36] *See* ECF No. 34 at 5–8 (collecting cases); *but see Bank of Am., N.A. v. Country Garden Owners Ass'n*, No. 2:17-cv-01850-APG-CWH, 2018 WL 1336721, at *2 (D. Nev. Mar. 14, 2018) (holding that the four-year catchall limitation period in § 11.220 applies to quiet-title claims by a lienholder seeking to determine whether an HOA sale extinguished its deed of trust).

[37] L.R. IA 7-3(f) ("A decision by one judge in this district is not binding on any other district judge . . . and does not constitute the rule of law in this district.").

Spencer[38] and its unpublished disposition in *Scott v. Mortgage Elec. Reg. Sys.*,[39] or the Nevada Supreme Court's holding in *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JP Morgan Chase Bank.*[40] But even those underlying cases are materially distinguishable from this case because the claim that the court was analyzing in each was brought by a titleholder, not a lienholder like U.S. Bank. So, unlike U.S. Bank's claims, those were founded on title or sought to recover property, so they were properly governed by the five-year statutes of limitation in NRS 11.070 and 11.080.

The bank also avers that the Nevada Supreme Court "reiterated that Nevada's five-year statute of limitations applies to quiet title claims" in its en banc opinion in *Las Vegas Development Group v. Blaha*.[41] But U.S. Bank's superficial treatment of *Blaha* glosses over the material distinctions that render it inapplicable here. The claim that the *Blaha* court was evaluating belonged to Las Vegas Development Group (LVDG), who had purchased property in an NRS Chapter 116 HOA foreclosure sale. Five months after that sale, Bank of America conducted a foreclosure sale under NRS Chapter 107 (based on its deed of trust) and then sold the property to Blaha.[42] LVDG sued for quiet title, claiming that it is the rightful owner of the property because the HOA foreclosure sale extinguished the bank's interest, rendering the transfer to Blaha void.[43]

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[38] *Weeping Hollow Ave. Tr. v. Spencer*, 831 F.3d 1110 (9th Cir. 2016).

[39] *Scott v. Mortgage Elec. Reg. Sys.*, 2015 WL 657874 (9th Cir. Feb. 17, 2015) (unpublished).

[40] *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JP Morgan Chase Bank*, 388 P.3d 226 (Nev. 2017).

[41] ECF No. 34 at 5–6 (citing *Las Vegas Dev. Grp., LLC v. Blaha*, 416 P.3d 233 (Nev. 2018)); *accord* ECF No. 35 at 6.

[42] *Blaha*, 416 P.3d at 235.

[43] *Id*.

True, the Nevada Supreme Court broadly characterized LVDG's claim as one "seeking to quiet title and have its rights determined on the merits" and concluded that LVDG's claim was "governed by NRS 11.080, which provides for a five-year statute of limitations." But the devil is in the details of NRS 11.080. This narrow statute does not apply to all quiet title actions, just those for the recovery of real property or its possession.[44] And while purchaser LVDG was seeking to recover real property in *Blaha*, U.S. Bank stands in different shoes. Because U.S. Bank seeks only a determination that its lien remains on the property—it is not seeking to recover real property or its possession—this action is not governed by NRS 11.080 and its five-year statutory period.

But I also cannot agree with SFR and the HOA that the bank's equitable quiet-title claims are subject to the three-year statute of limitations in NRS 11.090(3)(a).[45] That statute governs actions "upon a liability created by statute, other than a penalty or forfeiture."[46] But U.S. Bank's claims are not actions upon a liability created by statute; they are equitable actions to determine adverse interests in real property, as codified in NRS 40.010.[47] Section 40.010 does not create liability, and a party cannot impose liability upon another through that statute. Rather, the statute allows for a proceeding to determine adverse claims to property. Even if I interpret the bank's quiet-title actions as claims under NRS 116.3116, they still do not seek to impose liability under that statute. So NRS 11.090(3)(a) does not apply.

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[44] Nev. Rev. Stat. § 11.080 (providing that "[n]o action for the recovery of real property, or for the recovery of the possession thereof other than mining claims, shall be maintained, unless it appears that the plaintiff or the plaintiff's ancestor, predecessor or grantor was seized or possessed of the premises in question, within 5 years before the commencement thereof.").

[45] *See* ECF Nos. 29 at 6, 32 at 10–12.

[46] Nev. Rev. Stat. § 11.190(3)(a).

[47] *See supra* at p. 5; *Shadow Wood HOA*, 366 P.3d at 1111 (recounting that "NRS 40.010 essentially codified the court's existing equity jurisprudence" (comma omitted)).

With no squarely applicable limitations statute for U.S. Bank's equitable quiet-title claims, I am left with the catch-all four-year deadline in NRS 11.220, which states that "[a]n action for relief, not hereinbefore provided for, must be commenced within 4 years after the cause of action shall have accrued."[48] Because the foreclosure sale occurred on January 25, 2013, and this action was filed more than four years later on May 26, 2017, U.S. Bank's remaining quiet-title claims are time barred. I thus grant summary judgment in favor of the defendants and against U.S. Bank on all of the bank's claims,[49] and I deny the bank's motion for summary judgment on these claims as moot.[50]

B. SFR's motion for summary judgment on its counterclaim [ECF No. 32]

SFR also moves for summary judgment on its own quiet-title claim against the bank and Nguyen. Because Nguyen has been defaulted,[51] the proper vehicle for seeking judgment against him is a motion for default judgment under Rule 55(b) that applies the factors articulated by the Ninth Circuit in *Eitel v. McCool*,[52] not summary judgment. So I deny SFR's request for summary judgment against Nguyen and consider the motion only against the bank.

Summary judgment is available, however, against U.S. Bank. SFR argues that it is entitled to a declaration that the foreclosure sale was valid and that it took the property free of the bank's deed of trust, which was extinguished as a result of the foreclosure sale.[53] As the Nevada Supreme Court recognized in *SFR*, "proper foreclosure" of an HOA's superpriority lien

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[48] Nev. Rev. Stat. §11.220.

[49] Because I grant summary judgment on this basis, I need not and do not reach SFR's or the HOA's other challenges to the bank's claims.

[50] ECF No. 30.

[51] ECF No. 33.

[52] *Eitel v. McCool*, 782 F.2d 1470 (9th Cir. 1986).

[53] *See* ECF No. 15 at 15 (SFR's counterclaim).

"extinguish[es] a first deed of trust."[54] So, if the HOA properly foreclosed on its superpriority lien on the Nguyen property, U.S. Bank's first trust deed was wiped out, and SFR's interest is unencumbered by the bank's lien.[55] Nevada law renders certain recitals in a foreclosure deed—about default, the mailing of the notice of delinquent assessment, the recording of notices, and the giving of the notice of the sale, for example—"conclusive proof of the matters recited" against the property's former owners "and all other persons."[56]

With its affirmative claims now time-barred, the bank claims that SFR has two roadblocks to summary judgment: (1) the statutory scheme under which the foreclosure occurred was deemed unconstitutional by the Ninth Circuit in *Bourne Valley Court Trust v. Wells Fargo Bank*;[57] and (2) "evidence of fraud, unfairness, or oppression" requires the court to set aside the foreclosure sale. Neither argument carries the day.

The bank is right that the Ninth Circuit held in *Bourne Valley* that the statutory scheme in NRS Chapter 116 that authorized this foreclosure sale violated lenders' due-process rights because it did not require the HOA to send the lender notice of the foreclosure sale.[58] The lynchpin of the *Bourne Valley* holding was the majority's interpretation of Chapter 116's notice requirements: it found that the statute's (since-amended) scheme was an opt-in one that required

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[54] *SFR*, 334 P.3d at 419; *see also Freedom Mortg. Corp. v. Las Vegas Dev. Grp., LLC*, 106 F. Supp. 3d 1174, 1178 (D. Nev. 2015) (describing Nevada's HOA statutory-lien scheme that is codified in NRS Chapter 116 and its history).

[55] *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 366 P.3d 1105, 1116 (Nev. 2016) (citing *SFR* for the proposition that, "if the association forecloses on its superpriority lien portion, the sale also would extinguish other subordinate interests in the property.").

[56] Nev. Rev. Stat. §§ 116.31166(1)–(2); *accord Nationstar Mortg. v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641, 646 (Nev. 2017) (collecting authorities).

[57] *Bourne Valley Court Trust v. Wells Fargo Bank*, 832 F.3d 1154 (9th Cir. 2016).

[58] ECF No. 1 at 8.

notice of the foreclosure "only if the lender had affirmatively requested notice."[59] The panel expressly rejected the notion that NRS Chapter 116 incorporated the additional notice rules from NRS 107.090 so foreclosing HOAs "were required to provide notice to mortgage lenders even absent a request."[60]

But in *SFR Investments Pool 1, LLC v. Bank of New York Mellon*,[61] the Nevada Supreme Court held that the *Bourne Valley* majority incorrectly interpreted this state statutory scheme.[62] And because federal district courts must follow the holdings of the state's highest court when applying state law, *Bourne Valley* is no longer controlling.[63] As I have previously held, and the Nevada Supreme Court has confirmed, the HOA foreclosure scheme in place at the time of this 2013 foreclosure sale did not violate due process.[64] The bank's argument that *Bourne Valley* prevents the relief that SFR seeks thus fails as a matter of law.

The bank's final salvo is that "actual evidence of fraud, unfairness, or oppression" requires the court to set aside the foreclosure sale.[65] Quiet-title claims like SFR's "are governed

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[59] *Bourne Valley*, 832 F.2d at 1157.

[60] *Id*. at 1159.

[61] *SFR Investments Pool 1, LLC v. Bank of New York Mellon*, 422 P.3d 1248, 1253 (Nev. 2018).

[62] *Id*. at 1253 ("we decline to follow the majority holding in *Bourne Valley*, 832 F.3d at 1159. NRS 116.31168 fully incorporated both the opt-in and mandatory notice provisions of NRS 107.090 and, to the extent NRS Chapter 116 was ambiguous in this regard, legislative history and the principles of statutory construction support this conclusion.").

[63] *See Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 885 n.7 (9th Cir. 2000) (quoting *Owen v. United States*, 713 F.2d 1461, 1464 (9th Cir. 1983)) (noting that the circuit's interpretation of state law is binding only "in the absence of any subsequent indication from the [state] courts that the circuit's "interpretation was incorrect."); *see also Cal. Teachers Ass'n v. State Bd. of Educ.*, 271 F.3d 1141, 1146 (9th Cir. 2001) ("[I]t is solely within the province of the state courts to authoritatively construe state legislation.").

[64] *See, e.g., Capital One, N.A v. Las Vegas Dev. Grp.*, LLC, No. 2:15-cv-01436-JAD-PAL, 2016 WL 3607160, at *5 (D. Nev. June 30, 2016).

[65] ECF No. 35 at 21.

by" the Nevada Supreme Court's "longstanding framework for evaluating any other real property foreclosure sale: whether the sale was affected by some element of fraud, unfairness, or oppression."[66] "Demonstrating that an association sold a property at its foreclosure sale for an inadequate price is not enough to set aside that sale; there must also be a showing of fraud, unfairness, or oppression."[67] The bank offers two irregularities here that it claims show fraud, unfairness or oppression: (1) the HOA foreclosed on the property while Nguyen was in bankruptcy, thus violating the automatic stay (presumably in 11 U.S.C. § 362); and (2) the HOA purchased the property at the foreclosure sale and only later transferred it to SFR.

Even if I assume that Nevada law would deem a violation of the automatic bankruptcy stay to be evidence of fraud, unfairness, or oppression in the foreclosure process, the record does not support the conclusion that the stay was actually violated here. Nguyen's bankruptcy records supplied by the bank reflect that the final decree in his bankruptcy case was entered, and that case was closed, on September 13, 2012—four months before the January 25, 2013, foreclosure sale.[68] Even the notice of the foreclosure sale is dated and was recorded after the bankruptcy case closed.[69] So the record does not support the bank's contention that the foreclosure sale violated a bankruptcy stay.

The bank also appears to be wrong in its belief that the HOA bought the property at the foreclosure sale and only later transferred it to SFR.[70] The "Foreclosure Deed" supplied by the

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[66] *Shadow Canyon*, 405 P.3d at 646.

[67] *Id*. at 647 (quoting *Shadow Wood*, 366 P.3d at 1112).

[68] ECF No. 31-9 at 2.

[69] *See* ECF No. 31-10.

[70] ECF No. 35 at 21 ("Given that the HOA purchased the Property and later transferred its interest to SFR, U.S. Bank can further demonstrate fraud, unfairness, and oppression by the Purchaser (the HOA)").

bank reflects that the HOA's agent (Nevada Association Services, Inc.) sold the property to SFR at the foreclosure sale on January 25, 2013, for $22,400.[71] Nothing in the records that the bank has provided suggests that the HOA itself purchased the property at its own foreclosure sale only to later convey it to SFR, and the bank offers no hint about where it gets this notion from. The bank has thus offered no genuine issue of fact to preclude summary judgment on SFR's quiet-title claim.

Conclusion

IT IS THEREFORE ORDERED that the Torrey Pines Ranch Estates Homeowners Association's Motion for Summary Judgment and SFR's Motion for Summary Judgment **[ECF Nos. 29, 32] are GRANTED in part:**

- **All claims by U.S. Bank National Association, as Trustee for Banc of America Funding 2006-G Trust, are DISMISSED** with prejudice as time-barred; and
- **Partial summary judgment is granted in favor of SFR and against U.S. Bank on SFR's counterclaim.** SFR is entitled to a declaration that the January 25, 2013, HOA foreclosure sale at which it purchased the real property at 6209 Rodman Ridge Court, Las Vegas, Nevada, 89130, APN # 125-26-110-002 was valid, and SFR took that property without it being subject to plaintiff's first trust deed because that interest was extinguished by operation of NRS Chapter 116.

IT IS FURTHER ORDERED that U.S. Bank's Motion for Summary Judgment **[ECF No. 30] is DENIED** as moot.

[71] ECF No. 31-11 (Foreclosure Deed).

This order resolves all claims by and between SFR, the HOA, and U.S. Bank, leaving only SFR's third-party claim against defaulted defendant Nguyen. So, with good cause appearing and no just reason for delay, **I direct the Clerk of Court under Rule 54(b) of the Federal Rules of Civil Procedure to ENTER FINAL JUDGMENT in favor of SFR and the HOA on U.S. Bank's claims, and in favor of SFR and against U.S. Bank on SFR's counterclaim.** That judgment should state that "IT IS HEREBY DECLARED that the January 25, 2013, HOA foreclosure sale at which it purchased the real property at 6209 Rodman Ridge Court, Las Vegas, Nevada 89130, APN # 125-26-110-002 was valid, and SFR took that property without it being subject to plaintiff's first trust deed because that interest was extinguished by operation of NRS Chapter 116."

Dated: March 27, 2019

U.S. District Judge Jennifer A. Dorsey

EXHIBIT 18

EXHIBIT 18

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWALT, INC., ALTERNATIVE LOAN TRUST 2006-OC7, MORTGAGE PASS-THROUGH CERTIFICATES,

Plaintiff,

v.

SFR INVESTMENTS POOL 1, LLC,

Defendant.

Case No. 2:18-cv-00363-RFB-VCF

ORDER

I. INTRODUCTION

Before the Court are Defendant's Motion to Dismiss (ECF No. 11), Plaintiff's Motion for Partial Summary Judgment (ECF No. 35), and Defendant's Motion for Summary Judgment (ECF No. 40).

In the complaint filed February 28, 2018, Plaintiff seeks declaratory relief and injunctive relief on the basis of a quiet title claim. ECF No. 1. For the reasons stated below, the Court grants the Motion to Dismiss and dismisses Plaintiff's complaint in its entirety.

II. FACTUAL BACKGROUND

The Court summarizes the facts alleged in Plaintiff's complaint. ECF No. 1. The Court also takes judicial notice of the publicly filed documents attached to the submissions regarding the motion to dismiss.

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On or about April 12, 2006, Oliver J. Siores ("Borrower") purchased real property located at 6906 Graceful Cloud Avenue, Henderson, NV 89011-4980; Parcel No. 161-35-213-104 (the "Property"). Borrower financed ownership of the property by way of loan in the amount of $135,000.00 secured by a Deed of Trust dated April 12, 2006, executed in favor of non-party the First National Bank of Arizona. The Deed of Trust was assigned to Plaintiff on January 7, 2010. Siores defaulted under the terms of the note and Deed of Trust by failing to make all payments due.

The Property was encumbered by a homeowners' association lien in favor of the Mesa Homeowners Association ("HOA"). Upon information and belief, Borrower purportedly failed to pay the HOA all amounts alleged due to the HOA.

On October 16, 2012, the HOA, through its agent, Alessi & Koenig, LLC ("Alessi"), recorded a Notice of Delinquent Assessment Lien. This Notice stated the amount due to the HOA was $4,140.65, consisting of $4,065.65 in collection and/or attorneys' fees, assessments, interest, late fees, and service charges and $75.00 in collection costs. The Notice did not identify the super-priority amount claimed by the HOA.

On May 6, 2013, the HOA, through Alessi, filed a Notice of Default and Election to Sell Under Homeowners Association Lien. This Notice of Default stated the amount due to the HOA was $5,634.11 but did not identify the super-priority amount claimed by the HOA.

After the Notice of Default was recorded, Bank of America, who then serviced the loan secured by the Deed of Trust, through counsel at Miles Bauer Bergstrom & Winters ("Miles Bauer"), contacted Alessi and requested a payoff ledger detailing the amounts owed in an attempt to determine the super-priority amount. Alessi sent a payoff ledger, and informed Bank of America that the last nine months of delinquent assessments for the Property—the super-priority amount—was $630.00. Accordingly, Bank of America, through Miles Bauer, tendered payment of $630.00 to Alessi to satisfy the super-priority portion of the HOA's lien on July 11, 2013. Alessi rejected the payment.

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On November 5, 2013, the HOA, through Alessi, recorded a Notice of Trustee's Sale, setting the sale for December 4, 2013. This Notice of Sale stated the amount due to the HOA was $7,818.81. The Notice of Sale did not identify the super-priority amount claimed by the HOA.

The HOA non-judicially foreclosed on the Property on December 4, 2013, selling the Property to Defendant for $14,000.00.

In none of the recorded documents nor in any notice did the HOA or Alessi specify whether it was foreclosing on the purported super-priority portion of its lien, if any, or on the sub-priority portion of its lien. In none of the recorded documents nor in any notice did the HOA or Alessi specify that the Deed of Trust would be extinguished by the HOA's foreclosure. The HOA's sale of the property to Defendant was for approximately 10% of the value of the principal balance on the senior deed of trust.

III. PROCEDURAL BACKGROUND

Plaintiff filed its Complaint on February 28, 2018. ECF No. 1.

Defendant filed the instant Motion to Dismiss on April 23, 2018. ECF No. 11. The Court entered a scheduling order on June 5, 2018. ECF No. 18. Apart from one disputed deposition, discovery concluded on October 22, 2018.

Plaintiff filed the instant Motion for Partial Summary Judgment on November 21, 2018. ECF No. 35. Defendant filed the instant Motion for Summary Judgment on January 22, 2019. ECF No. 40.

IV. LEGAL STANDARD

In order to state a claim upon which relief can be granted, a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). In ruling on a motion to dismiss for failure to state a claim, "[a]ll well-pleaded allegations of material fact in the complaint are accepted as true and are construed in the light most favorable to the non-moving party." Faulkner v. ADT Security Servs., Inc., 706 F.3d 1017, 1019 (9th Cir. 2013). To survive a motion to dismiss, a complaint must contain "sufficient factual matter,

accepted as true, to state a claim to relief that is plausible on its face," meaning that the court can reasonably infer "that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation and internal quotation marks omitted).

V. DISCUSSION

Defendant argues that Plaintiff's claims are time barred. For statute of limitations calculations, time is computed from the day the cause of action accrued. Clark v. Robison, 944 P.2d 788, 789 (Nev. 1997). The sale of the Property took place on December 4, 2013 and Trustee's Deed Upon Sale vesting title in Defendant was recorded on December 9, 2013. Plaintiff filed its Complaint over four years later on February 28, 2018.

Plaintiff argues that the cause of action in fact accrued on September 18, 2014, the date of the Nevada Supreme Court decision in SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408 (Nev. 2014). Plaintiff argues that it could not have been aware of its cause of action until the holding in SFR Investments that Nevada Revised Statute ("NRS") 116.3116 established a super-priority lien. But the Nevada Supreme Court has held that SFR Investments applies retroactively and constitutes an interpretation of NRS 116.3116 rather than a change in law. K&P Homes v. Christiana Trust, 398 P.3d 292, 295 (Nev. 2017). Moreover, a simple review of the plain text of the statute at the time would have put Plaintiff on notice of its claim as the statute clearly references a super-priority interest. NRS 116.3116. The Court finds that because NRS 116.3116 was in effect at the time of foreclosure sale, the cause of action accrued at that time.

Plaintiff's complaint seeks quiet title on the basis that: (1) NRS Chapter 116 facially violates Plaintiff's due process rights under the federal constitution; (2) the recorded notices failed to describe the lien in sufficient detail required by Nevada law, including a failure to identify the super-priority amount and the consequences for failure to pay the super-priority amount; (3) Defendant wrongfully rejected Plaintiff's tendered payment of the super-priority amount; (4) the sale was oppressive and unfair; (5) the recorded notices failed to describe the lien in sufficient detail required by constitutional due process, including a failure to identify the super-priority amount and the consequences for failure to pay the super-priority amount; (6) Defendant's

rejection of Plaintiff's payment of the super-priority amount violated Plaintiff's due process rights under the federal constitution; and (7) Defendant does not qualify as a bona fide purchaser for sale.

The Court finds that all of Plaintiff's claims are foreclosed by the applicable statutes of limitations. Actions upon a liability created by statute carry a three-year statute of limitations pursuant to NRS 11.190(3)(a). To the extent Plaintiff argues that the recorded notices fail to comply with Nevada law under NRS Chapter 116 or any other statute, the argument is foreclosed. The Court finds that Plaintiff's argument that the recorded notices failed to describe the lien in sufficient detail required by Nevada law, including a failure to identify the super-priority amount and the consequences for failure to pay the super-priority amount, and its argument that Defendant wrongfully rejected Plaintiff's tendered payment of the super-priority amount are subject to a three-year statute of limitations as they derive from rights and process in NRS Chapter 116.

Plaintiff's remaining claims, including its constitutional claims regarding the facial constitutionality of NRS Chapter 116, the as-applied constitutionality of the notices and rejected tender in this case carry at most a four-year statute of limitations pursuant to the catch-all provision at NRS 11.220. The four-year limitation of the catch-all provision similarly bars Plaintiff's equitable claims related to tender, unfair sale, and bona fide purchaser status, as well as Plaintiff's claim that the recorded notices fail to comply with Nevada law on bases other than statutory provisions.

Plaintiff argues that its request for declaratory relief is not barred by the statute of limitations. But because "[a] claim for declaratory relief is subject to a statute of limitations generally applicable to civil claims," Zuill v. Shanahan, 80 F.3d 1366, 1369–70 (9th Cir. 1996), the Court finds that statutes of limitations as outlined above apply to bar declaratory relief. Facklam, relied upon by Plaintiff, holds only that a statute of limitations does not operate to bar a nonjudicial foreclosure, as such a foreclosure is neither a civil nor a criminal judicial proceeding, but Facklam does not hold that a statute of limitations cannot bar a judicial action challenging a nonjudicial foreclosure. See Facklam v. HSBC Bank USA for Deutsche ALT-A Sec. Mortg. Loan Tr., 401 P.3d 1068, 1070–71 (Nev. 2017) (en banc).

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Further, while Nevada law recognizes that "[t]he statute of limitations applies differently depending on the type of relief sought" and that "claimants retain the right to prevent future violations of their constitutional rights [through prospective relief]," City of Fernley v. State, Dep't of Tax, 366 P.3d 699, 706 (Nev. 2016), the relief Plaintiff seeks is retrospective in nature. Plaintiff attempts to craft its relief in a manner to suggest it is prospective: whether Plaintiff can proceed to judicially foreclose on the senior deed of trust. But to so find, the Court would first need to award retrospective relief by finding that the foreclosure sale did not extinguish the deed of trust or that the foreclosure sale was void, meaning a deed of trust existed on which the judicial foreclosure claim could proceed.

Additionally, the Court finds that NRS 106.240 does not extend the applicable statute of limitations to a ten-year term. NRS 106.240 does not create a statute of limitations; "NRS 106.240 creates a conclusive presumption that a lien on real property is extinguished ten years after the debt becomes due." Pro-Max Corp. v. Feenstra, 16 P.3d 1074, 1077 (Nev. 2001).

Plaintiff is also not entitled to the five-year statute of limitations for certain quiet title actions pursuant to NRS 11.070 and 11.080. The statute of limitations provided by these code sections only apply when the plaintiff actually "was seized or possessed of the premises." Nev. Rev. Stat. §§ 11.070, 11.080; see also Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A., 388 P.3d 226, 232 (Nev. 2017) (NRS 11.080); Bissell v. Coll. Dev. Co., 469 P.2d 705, 707 (Nev. 1970) (NRS 11.070). NRS 11.070 and 11.080 do not apply to claims by parties that held only a lien interest, not title.

Plaintiff argues that Defendant is estopped from asserting a statute of limitations argument where Defendant's own prior conduct caused Plaintiff to run afoul of the statute and it is equitable to hold Defendant responsible for that result. The Court rejects Plaintiff's assertion that Defendant's conduct somehow contributed to statutory violations in the form of the rejection of the alleged tender. The allegation of a rejection of tender does not establish misconduct. Plaintiff was not prevented from pursuing any legal remedies after the foreclosure sale.

The Court also rejects Plaintiff's argument that Defendant failed to take any action after the HOA foreclosure sale to extinguish Plaintiff's deed of trust, constituting evidence that

Defendant conceded the ongoing validity of Plaintiff's trust. Plaintiff's argument suggests that Defendant would have needed to bring its own lawsuit in order to avoid waiver of the statute of limitations. The Court finds that no such requirement is supported by Nevada law and Plaintiff has identified no Nevada precedent or statute which requires such action by Defendant. Defendant did not have to take any action to extinguish Plaintiff's deed of trust, as the deed of trust was extinguished at the HOA foreclosure sale pursuant to NRS 116.3116. Defendant did not have to take any action at that time to preserve a statute of limitations defense in the present action.

Based upon the above findings, the Court thus declares that Plaintiff has no enforceable lien, interest or property right in the real property located at 6906 Graceful Cloud Avenue, Henderson, NV 89011-4980; Parcel No. 161-35-213-104. The Court further finds that there is no basis to support the lis pendens in this case as Plaintiff has no existing interest in this property. NRS 14.015. The lis pendens shall therefore be expunged.

VI. CONCLUSION

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss (ECF No. 11) is GRANTED, that all other pending motions (ECF Nos. 35, 40) are DENIED as moot, and that Plaintiff's Complaint is DISMISSED in its entirety with prejudice. The Clerk of Court shall enter judgment accordingly in favor of Defendant and close this case.

IT IS FURTHER ORDERED that the lis pendens recorded against the Property in the Official Records of the Clark County Recorder as Instrument No. 201803010002730 is expunged. The Clark County Recorder is directed by this Order to expunge this lis pendens.

DATED: March 26, 2019.

RICHARD F. BOULWARE, II
UNITED STATES DISTRCIT JUDGE

EXHIBIT 19

EXHIBIT 19

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

BANK OF AMERICA, N.A.,

Plaintiff,

v.

COUNTRY GARDEN OWNERS ASSOCIATION and SFR INVESTMENTS POOL 1, LLC,

Defendants.

Case No. 2:17-cv-01850-APG-CWH

ORDER GRANTING MOTIONS TO DISMISS

(ECF Nos. 17, 20)

This is one of many lawsuits arising out of non-judicial foreclosure sales by homeowners associations (HOAs). Plaintiff Bank of America asserts a claim for "quiet title/declaratory judgment" against defendants Country Garden Owners Association (the HOA) and SFR Investments Pool 1, LLC (the current property owner) on the basis that the HOA foreclosure sale did not extinguish its deed of trust. ECF No. 1 at 7-12. Bank of America also asserts damages claims against Country Garden for breach of Nevada Revised Statutes § 116.1113 and wrongful foreclosure.

The defendants move to dismiss Bank of America's claims as time-barred. I agree, so I grant the motions to dismiss.

I. ANALYSIS

In considering a motion to dismiss, "all well-pleaded allegations of material fact are taken as true and construed in a light most favorable to the non-moving party." *Wyler Summit P'ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). However, I do not necessarily assume the truth of legal conclusions merely because they are cast in the form of factual allegations in the complaint. *See Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994). A plaintiff must make sufficient factual allegations to establish a plausible entitlement to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). Such allegations

must amount to "more than labels and conclusions, [or] a formulaic recitation of the elements of a cause of action." *Id.* at 555.

"A claim may be dismissed as untimely pursuant to a 12(b)(6) motion only when the running of the statute of limitations is apparent on the face of the complaint." *United States ex rel. Air Control Techs., Inc. v. Pre Con Indus., Inc.*, 720 F.3d 1174, 1178 (9th Cir. 2013) (alteration and quotation omitted). A limitations period begins to run "from the day the cause of action accrued." *Clark v. Robison*, 944 P.2d 788, 789 (Nev. 1997). A cause of action generally accrues "when the wrong occurs and a party sustains injuries for which relief could be sought." *Petersen v. Bruen*, 792 P.2d 18, 20 (Nev. 1990); *see also State ex rel. Dep't of Transp. v. Pub. Emps.' Ret. Sys. of Nev.*, 83 P.3d 815, 817 (Nev. 2004) (en banc) ("A cause of action 'accrues' when a suit may be maintained thereon." (quotation omitted)). Nevada has adopted the discovery rule, and thus time limits generally "do not commence and the cause of action does not 'accrue' until the aggrieved party knew, or reasonably should have known, of the facts giving rise to the damage or injury." *G & H Assocs. v. Ernest W. Hahn, Inc.*, 934 P.2d 229, 233 (Nev. 1997).

A. Quiet Title

Bank of America's "quiet title/declaratory judgment" claim arises under Nevada Revised Statutes § 40.010. Under that section, an "action may be brought by any person against another who claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim." Nev. Rev. Stat. § 40.010. Thus, any person claiming an interest in the property may seek to determine adverse claims, even if that person does not hold title to, or possession of, the property.

The parties dispute, however, which statute of limitations applies when, as here, the person seeking to determine its adverse interest in property has a lien but does not have a claim to title to the property. The parties offer three possibilities: (1) Nevada Revised Statutes § 11.070, which provides a five-year period for quiet title claims; (2) § 11.190(3)(a), which provides a three-year period for "[a]n action upon a liability created by statute;" or (3) § 11.220, which provides a four-year catchall period for claims that are not covered by another provision.

The Supreme Court of Nevada has not addressed which statute of limitations applies in these circumstances. I therefore must predict how that court would decide the question, "using intermediate appellate court decisions, statutes, and decisions from other jurisdictions as interpretive aids." *Gravquick A/S v. Trimble Navigation Int'l Ltd.*, 323 F.3d 1219, 1222 (9th Cir. 2003).

Under Nevada rules of statutory interpretation, I look first to the statute's plain language. *Clay v. Eighth Jud. Dist. Ct.*, 305 P.3d 898, 902 (Nev. 2013). If the statute's "language is clear and unambiguous," I enforce it "as written." *Id.* (quotation omitted). I "avoid[] statutory interpretation that renders language meaningless or superfluous," and "interpret a rule or statute in harmony with other rules and statutes." *Id.* (quotation omitted).

Nevada Revised Statutes § 11.070 provides the limitation period for quiet title actions. Pursuant to that statute,

> No cause of action or defense to an action, founded upon the title to real property, . . . shall be effectual, unless it appears that the person prosecuting the action or making the defense, or under whose title the action is prosecuted or the defense is made, . . . was seized or possessed of the premises in question within 5 years before the committing of the act in respect to which said action is prosecuted or defense made.

This statute does not apply to Bank of America's claims because Bank of America holds only a lien interest, it has no claim to title to the property, and it seeks only to validate its lien rights. Bank of America's claim thus is not "founded upon the title to real property," nor was Bank of America "seized or possessed of the premises."[1]

Section 11.190(3)(a) also does not apply. That section provides a three-year period for "[a]n action upon a liability created by statute, other than a penalty or forfeiture." Bank of America's claim is not an action upon liability created by statute. Instead, Bank of America seeks

[1] I have previously concluded that this statute applies to claims brought by lienholders in similar circumstances. *See Nationstar Mortg. LLC v. Amber Hills II Homeowners Ass'n*, No. 2:15-cv-01433-APG-CWH, 2016 WL 1298108, at *3-4 (D. Nev. Mar. 31, 2016). However, upon closer inspection of the statutory language and the basis for Bank of America's claims in this case, I conclude this statutory section does not apply here.

a declaration under § 40.010 that its lien was not extinguished by the HOA foreclosure sale. Section 40.010 does not create liability, and a party cannot impose liability upon another through that statute. Rather, the statute allows for a proceeding to determine adverse claims to property. And Bank of America does not seek to impose liability in its quiet title/declaratory relief claim. Its question is whether its lien still encumbers the property, not who is personally liable for the underlying debt.

Consequently, I conclude that the catchall four-year limitation period in § 11.220 applies.[2] The foreclosure sale took place on September 5, 2012, and the trustee's deed upon sale was recorded on February 14, 2013. ECF No. 1 at 6. The complaint was filed more than four years later, on July 6, 2017. Bank of America's quiet title/declaratory relief claim is therefore untimely.

Bank of America argues that its declaratory judgment claim cannot be time-barred because enforcement of its deed of trust is not time-barred and it is seeking a declaration regarding the validity of that deed of trust. However, Bank of America's quiet title/declaratory relief claim does not seek to enforce the deed of trust. Rather, it seeks to determine whether its lien was extinguished. Additionally, Bank of America cites no authority for the proposition that despite knowing about a foreclosure that calls into question its interest in the property, the statute of limitations did not start running for it to pursue a declaration that its interest was not extinguished by that foreclosure.

Finally, Bank of America contends that it did not know it was injured until the Supreme Court of Nevada issued its ruling in *SFR Investments Pool 1, LLC v U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014) (en banc). But simply reading the statute that grants HOAs a superpriority lien would have put the bank on notice of the possibility that its deed of trust was in jeopardy. Indeed, its own allegations show the *SFR* decision was not unanticipated because Bank of America attempted to pay off the superpriority amount in March 2010. *See* ECF No. 1 at 6. Further, *SFR*

[2] Bank of America has not suggested any other characterizations of its claim or offered any alternative statutes of limitation that might apply.

"did not create new law or overrule existing precedent; rather, that decision declared what NRS 116.3116 has required since the statute's inception." *K&P Homes v. Christiana Tr.*, 398 P.3d 292, 295 (Nev. 2017) (en banc). Consequently, I dismiss Bank of America's quiet title/declaratory relief claim as time-barred.

B. Section 116.1113 and Wrongful Foreclosure

A wrongful foreclosure claim "challenges the authority behind the foreclosure, not the foreclosure act itself." *McKnight Family, L.L.P. v. Adept Mgmt.*, 310 P.3d 555, 559 (Nev. 2013) (en banc). Because Country Garden's authority to foreclose arises from Chapter 116, Bank of America's claim essentially is for damages based on liability created by a statute. This claim is therefore time-barred under Nevada Revised Statutes § 11.190(3)(a) because it was not brought within three years. *Amber Hills II Homeowners Ass'n*, 2016 WL 1298108, at *5. Similarly, because the claim for damages under § 116.1113 is based on the alleged breach of a statutory duty, it also must be brought within three years under § 11.190(3)(a), and is time-barred. *Id.*

Bank of America contends that its damages claims are not ripe because no court has declared its deed of trust extinguished so it has not yet suffered any damages. This argument is belied by the fact that Bank of America brings those damages claims now even though its deed of trust has not been declared extinguished. *See U.S. Bank Nat'l Ass'n v. Woodland Vill.*, No. 3:16-cv-00501-RCJ-WGC, 2016 WL 7116016, at *3 (D. Nev. Dec. 6, 2016) (rejecting a similar argument). Because Bank of America's interest in the property was called into question at the time of the foreclosure sale due to the HOA's superpriority lien, Bank of America knew as of the foreclosure sale that either its deed of trust was not extinguished so it was not damaged, or its deed of trust was extinguished so it was damaged. No later than when the trustee's deed upon sale was recorded, Bank of America knew the content of the HOA's notices, knew that Country Garden had rejected its tender, and knew the property had been sold at a foreclosure sale for $6,737.80.[3] Thus, based on the complaint's allegations, Bank of America had the facts

[3] The trustee's deed was recorded February 14, 2013. ECF No. 1 at 6. Even if Bank of America did not discover the allegedly inadequate price until then, its claims are still untimely.

supporting its contention that the HOA foreclosure sale was improperly conducted as of the date of the foreclosure sale. *See Nationstar Mortg., LLC v. Falls at Hidden Canyon Homeowners Ass'n*, No. 2:15-cv-01287-RCJ-NJK, 2017 WL 2587926, at *2 (D. Nev. June 14, 2017) (holding the plaintiff's predecessor-in-interest "could have asserted claims for violation of NRS 116.113 and wrongful foreclosure as soon as it obtained facts to support a contention that the HOA's sale of the Property was improper"). Bank of America does not identify any other fact that it discovered after the HOA foreclosure sale that would extend the limitation period. I therefore grant the motion to dismiss the claims for wrongful foreclosure and breach of § 116.1113 as time-barred.

II. CONCLUSION

IT IS THEREFORE ORDERED that defendant SFR Investments Pool 1, LLC's motion to dismiss **(ECF No. 17) is GRANTED**.

IT IS FURTHER ORDERED that defendant Country Garden Owners' Association's motion to dismiss **(ECF No. 20) is GRANTED**.

IT IS FURTHER ORDERED that the clerk of court is directed to enter judgment in favor of SFR Investments Pool 1, LLC and Country Garden Owners' Association and against plaintiff Bank of America, N.A. and to close this case.

DATED this 14th day of March, 2018.

ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE

RPLY

WRIGHT, FINLAY & ZAK, LLP
R. Samuel Ehlers, Esq.
Nevada Bar No. 9313
Aaron D. Lancaster, Esq.
Nevada Bar No. 10115
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
(702) 475-7964 - Fax (702) 946-1345
alancaster@wrightlegal.net
Attorneys for Defendant Wells Fargo Bank, National Association, as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Pass-Through Certificates Series 2005-11

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 8149 PALACE MONACO,

Plaintiff,

vs.

ROBERT NARDIZZI a/k/a ROBERT A. NARDIZZI, an individual; MONACO LANDSCAPE MAINTENANCE ASSOCIATION, a Nevada domestic non-profit corporation; WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE STRUCTURED ADJUSTABLE RATE MORTGAGE LOAN TRUST, PASSTHROUGH CERTIFICATES SERIES 2005-11, a business entity location unknown; DOE individuals 1 through 10; and ROE business entities 11 through 30,

Defendants.

WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE STRUCTURED ADJUSTABLE RATE MORTGAGE LOAN TRUST, PASSTHROUGH CERTIFICATES SERIES 2005-11,

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 8149 PALACE MONACO; MONACO LANDSCAPE

Case No.: A-18-770245-C
Dept. No.: XXVIII

WELLS FARGO'S REPLY TO SATICOY BAY'S OPPOSITION AND IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

MAINTENANCE ASSOCIATION; and RED ROCK FINANCIAL SERVICES, LLC,

Counter-defendant.

WELLS FARGO'S REPLY TO SATICOY BAY'S OPPOSITION AND IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

COMES NOW, Defendant/Counterclaimant, Wells Fargo Bank, National Association, as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Pass-Through Certificates Series 2005-11 ("Wells Fargo Trust"), by and through its attorneys of record, R. Samuel Ehlers, Esq. and Aaron D. Lancaster, Esq., of the law firm of Wright, Finlay & Zak, LLP, and hereby files its Reply to Saticoy Bay LLC Series 8149 Palace Monaco's Opposition and in Support of its Motion for Summary Judgment (the "Reply").

This Reply is made and based upon the attached Memorandum of Points and Authorities, all judicially noticeable facts, all pleadings and papers on file herein, and on any oral or documentary evidence that may be submitted at a hearing on this matter.

DATED this 11th day of December, 2019.

WRIGHT, FINLAY & ZAK, LLP

/s/ Aaron D. Lancaster
Aaron D. Lancaster, Esq.
Nevada Bar No. 10115
7785 W. Sahara Avenue, Suite 200
Las Vegas, NV 89117
Attorney for Defendant Wells Fargo Bank, National Association, as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Pass-Through Certificates Series 2005-11

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Wells Fargo Trust's Motion for Summary Judgment should be granted for any of the following reasons, any of which independently support a judicial determination that the first Deed of Trust was not extinguished by the HOA Sale, and that Saticoy Bay LLC Series 8149

Palace Monaco's ("Saticoy Bay") interest is subject to that Deed of Trust, or in the alternative, that the HOA Sale should be set aside because it was invalid:

First, as a limited purpose association, Monaco Landscape Maintenance Association ("HOA") is not governed by NRS Chapter 116 but governed by the terms of the CC&Rs. *Saticoy Bay LLC Series 4500 Pacific Sun v. Lakeview Loan Servicing, LLC*, 441 P.3d 81 (Nev. 2019) ("*Pacific Sun*"). Therefore, the mortgage protection provisions in the CC&Rs are enforceable such that the homeowners association waived its right to foreclose on the superpriority portion of its lien and the foreclosure sale did not extinguish the first position Deed of Trust.

Second, the record owner at the time of the HOA Sale satisfied the superpriority lien by making partial payments in the amount of almost eight times the superpriority amount, and that amount was applied to the oldest outstanding assessments.[1] The superpriority portion of the HOA lien was discharged before the HOA Sale, meaning Saticoy Bay could only have acquired a subordinate interest.

Third, (1) the HOA, or its agent, failed to provide the notices required by NRS Chapter 116 to MERS, (2) MERS did not receive timely notice by alternative means, and (3) MERS suffered prejudice. *U.S. Bank, Nat'l Ass'n ND v. Res. Grp., LLC*, 135 Nev. Ad. Op. 26, 444 P.3d 442, 448 (2019).

Fourth, there is evidence of fraud, oppression and unfairness in the foreclosure process and when coupled with the inadequate purchase price of the Property requires that the results of the HOA Sale be set aside as a matter of Nevada law.

II. RESPONSE TO SATICOY BAY'S STATEMENT OF FACTS

Wells Fargo Trust incorporates the Statement of Undisputed Facts set forth in its Motion for Summary Judgment filed with the Court on October 28, 2019 ("WF MSJ"). Wells Fargo Trust herein addresses the following factual contentions made by Saticoy Bay:

1. The real property located at 8149 Palace Monaco Avenue, Las Vegas, NV ("Property") was located in the MONACO LANDSCAPE MAINTENANCE ASSOCIATION,

[1] *See* Exhibits 14-17 to the WF MSJ; *see also* HOA Trustee Deposition, 86:10-14.

INC. homeowners association and governed by the Declaration of Covenants, Conditions, Restrictions and Easements for Monoco ("CC&Rs").[2]

2. On March 7, 2005, a Deed of Trust was executed by Robert Nardizzi ("Nardizzi" or "Homeowner") that secured a loan in the amount of $185,700.00 ("Deed of Trust").[3]

3. On April 3, 2006, a second Deed of Trust was executed by Nardizzi that identified Wells Fargo Bank, N.A., as the beneficiary, and secured a loan in the amount of $100,000.00 ("Second Deed of Trust").[4] It should be noted that Wells Fargo Bank, N.A., the beneficiary of the Second Deed of Trust, is a separate party then Wells Fargo Trust.

4. The delinquent assessments as of the execution of the Notice of Lien totaled $114.00.[5] The superpriority portion of the HOA's lien as of the execution of the Notice of Lien was $114.00.

5. Neither the HOA nor the HOA Trustee mailed a copy of the Notice of Default to MERS, despite MERS being identified as the beneficiary in the Deed of Trust.[6] Wells Fargo Bank, N.A., the beneficiary of the Second Deed of Trust, is a separate party then Wells Fargo Trust. Service of the Notice of Default on Wells Fargo Bank, N.A. would not be effective upon Wells Fargo Trust.

6. The HOA Trustee was provided with a trustee sale guarantee that identified MERS as the beneficiary and IndyMac Bank F.S. B. as the lender of the Deed of Trust.[7] The trustee sale guarantee also identifies Wells Fargo Bank as the beneficiary of the Second Deed of Trust.[8]

7. On September 17, 2009, HOA Trustee provided letters to Indymac Bank, F.S.B.,

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[2] A true and correct copy of the CC&Rs recorded in the Clark County Recorder's Office as Book and Instrument Number 980923.01097 is attached to WF MSJ as Exhibit 1. All other recordings stated hereafter are recorded in the same manner.
[3] The Deed of Trust is attached to WF MSJ as Exhibit 3.
[4] The Second Deed of Trust is attached to the WF MSJ as Exhibit 4.
[5] *See* HOA Trustee Accounting Ledger (WFZ000435-39), attached to WF MSJ as Exhibit 6.
[6] *See* HOA Trustee's Mailing Affidavit of Notice of Default, HOA Trustee Business Records, WFZ000340-45), attached to WF MSJ as Exhibit 8.
[7] *Id*. at 56:11-24; see also Trustee's Sale Guarantee attached to WF MSJ as Exhibit 10.
[8] HOA Deposition, at 57:2-11.

("Lender") and Wells Fargo Bank, N.A., that stated, "[t]he Association's Lien for Delinquent Assessments is Junior only to the Senior Lender/Mortgage Holder." ("HOA Trustee Letters")[9]

8. Neither the HOA nor the HOA Trustee mailed a copy of the Notice of Sale to MERS, despite MERS being identified as the beneficiary in the Deed of Trust.[10] Wells Fargo Bank, N.A., the beneficiary of the Second Deed of Trust, is a separate party then Wells Fargo Trust. Service of the Notice of Sale on Wells Fargo Bank, N.A. would not be effective upon Wells Fargo Trust.

9. Nardizzi entered into a Payment agreement with the HOA, wherein Nardizzi tendered the following payments to the HOA, or its agent the HOA Trustee, as partial satisfaction of the delinquent assessments. These payments were received by the HOA, or its agent the HOA Trustee, and applied to Nardizzi's delinquent assessment account:

a. May 30, 2013, in the amount of $404.00, which the HOA allocated $114.00 to the January 1, 2009 semi-annual assessment and $15.00 to the July 1, 2009 semi-annual assessment[11] (the only assessment that was due at the time the HOA recorded the Notice of Lien was the January 1, 2009 assessment in the amount of $114.00. Therefore, the superpriority was satisfied with this payment);

b. June 21, 2013, in the amount of $169.00, which the HOA allocated $94.00 to the July 1, 2009 semi-annual assessment;[12]

c. July 22, 2013, in the amount of $168.00, which the HOA allocated $114.00 to the January 1, 2010 semi-annual assessment and $54.00 to the July 1, 2010 semi-annual assessment;[13] and

d. August 23, 2013, in the amount of $168.00, which the HOA allocated $60.00 to the July 1, 2010 semi-annual assessment and $108.00 to the January 1, 2011

[9] *See* HOA Trustee Business Records, WFZ000326-27, attached to WF MSJ as Exhibit 11.
[10] *See* HOA Trustee's Mailing Affidavit of Notice of Sale, HOA Trustee Business Records, WFZ000576-584, attached to WF MSJ as Exhibit 14.
[11] Attached to WF MSJ as Exhibit 15.
[12] Attached to WF MSJ as Exhibit 16.
[13] Attached to WF MSJ as Exhibit 17.

semi-annual assessment.[14]

10. Nardizzi's payments totaled $909.00.[15]

11. The HOA Trustee allocated Nardizzi's payments to the oldest outstanding assessments of the HOA.[16]

12. Nardizzi's payments satisfied the superpriority component ($114.00) of the HOA's lien prior to the HOA Sale date of December 3, 2013.

13. A non-judicial foreclosure sale occurred on December 3, 2013 (hereinafter the "HOA Sale"), whereby HOA conveyed its interest in the Property to Saticoy Bay for the sum of $17,400.[17]

14. At the time of the HOA's Sale, the fair market value of the Property was $185,000.[18]

15. Saticoy Bay asserts, "Notwithstanding the fact that Wells Fargo did not have a recorded interest in the Property until January 26, 2017, Wells Fargo and its predecessors in interest were on actual notice of the 2009 default and the 2013 HOA foreclosure."[19] Wells Fargo Bank, N.A., is the beneficiary of the Second Deed of Trust and is alleged to have been provided with notice of the HOA Sale, however, Wells Fargo Bank, N.A. and Wells Fargo Bank, National Association, as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Pass-Through Certificates Series 2005-11 are separate entities. Additionally, the mailing address for Wells Fargo Bank, N.A., as provided in the Second Deed of Trust, is P.O. Box 31557, Billings, MT 59107,[20] and the mailing address for Wells Fargo Trust, as provided in the January 26, 2017 Corporate Assignment of Deed of Trust, is "c/o Ocwen Loan Servicing, LLC, 1661 Worthington Road, Ste 100, West Palm Beach, FL 33409."[21]

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[14] Attached to WF MSJ as Exhibit 18.
[15] *See* Exhibits 15-18.
[16] *See* HOA Trustee Deposition, 86:10-14, Exhibit 9.
[17] The Foreclosure Deed is attached to WF MSJ as Exhibit 19.
[18] See Plaintiff's Designation of Expert Witness, R. Scott Dugan, SRA, attached to WF MSJ as Exhibit 20 and incorporated by this reference herein.
[19] *See* Saticoy Bay's Opposition at 5:11-14.
[20] *See* Second Deed of Trust attached to the WF MSJ as Exhibit 4.
[21] See Assignment attached to the WF MSJ as Exhibit 21.

III. LEGAL ARGUMENT

A. QUIET TITLE CLAIMS ARE RECIRPOCAL BY NATURE.

Saticoy Bay seeks to dismiss Wells Fargo Trust's quiet title claims while simultaneously asserting its own quiet title claim regarding the same Property, HOA Sale and facts. "Plaintiff's Quiet Title claim is governed by the five-year limitations set forth in NRS 11.070, which applies to a "cause of action or defense to an action, founded upon title to real property." NRS 11.070. A quiet title claim is reciprocal in nature as it "requests a judicial determination of all adverse claims to disputed property." *Deutsche Bank Nat. Trust v. SFR Investments*, 2019 WL 1410887 at *3 (D. Nev. March 28, 2019)(quoting *Del Webb Conservation Holding Corp. v. Tolman*, 44 F. Supp 2nd 1105, 1110 (D. Nev. 1999) (citing *Clay v. Scheeline Banking & Trust Co.,* 159 P.1081, 1082-83 (Nev. 1916)).

Saticoy Bay filed a Complaint for Declaratory Relief and Quiet Title, on February 27, 2018. Saticoy Bay cannot assert that Wells Fargo Trust's quiet title claims have a three-year statute of limitations, while simultaneously requesting to grant its claims for quiet title. Assuming *arguendo* that such a thing could occur, it would make no sense as Wells Fargo Trust would still be able to bring all defenses in defense of Saticoy Bay's Quiet Title action.

Also, there is undisputed evidence that the HOA is a limited purpose homeowners association and not governed by NRS Chapter 116, the foreclosure notices were not properly mailed to the beneficiary of the Deed of Trust and that the homeowner paid the superpriority lien amount to the HOA Trustee prior to the HOA sale.

B. WELLS FARGO TRUST'S CLAIMS ARE NOT GOVERNED BY THE THREE-YEAR LIMITATION PERIOD IN NRS 11.190(3).

1. Wells Fargo Trust's Quiet Title Claim Would Also Be Subject to the Five-Year Period Provided Under NRS 11.080.

In *Gray Eagle*, the Nevada Supreme Court considered the statute of limitations applicable to a quiet title action resulting from a homeowners association non-judicial foreclosure sale and explicitly held that "a complaint for quiet title to have its rights determined on the merits [ ] would be governed by NRS 11.080. *Saticoy Bay LLC Series 2021 Gray Eagle*

Way v. JPMorgan Chase Bank, N.A., 388 P.3d 226, 232 (Nev. 2017) ("*Gray Eagle*") Specifically, the court held that a complaint for quiet title is governed by NRS 11.080 which provides for a five-year statute of limitations beginning from the time the "plaintiff or the plaintiff's ancestor, predecessor or grantor was seized or possessed of the premises in question." 388 P.3d at 232. Since the party seeking quiet title, Saticoy Bay, did not acquire its interest in the Property until it purchased the property at the foreclosure sale, the statute of limitations could not have began to run prior to the date of the foreclosure sale. *Id*.; *see also Scott v. Mortg. Elec. Registration Sys.*, No. 13-15129, 605 Fed. Appx. 598, 2015 WL 657874 (9th Cir. Feb. 17, 2015) (unpub) (the statute of limitations for quiet title claims in Nevada is five years). "In *Kerr v. Church*, 74 Nev. 264, 329 P.2d 277 (1958), clear dictum advises that the applicable statute of limitation to a quiet title action is NRS 11.080." *Lanigir v. Arden*, 82 Nev. 28, 409 P.2d 891, 895 n.3 (1966). That statute specifies a 5-year limitation period.

Similarly, this matter concerns the non-judicial foreclosure of the HOA's lien. The HOA Sale occurred on December 3, 2013. As such, pursuant to NRS 11.080, Wells Fargo Trust had at least five (5) years from the date of the HOA Sale to bring an action for quiet title against the third-party purchaser, Saticoy Bay, arising out of the HOA Sale. Therefore, the Counterclaim filed on October 18, 2013, was timely.

2. The Five-Year Statute of Limitations in NRS 11.070 Applies to Wells Fargo Trust's Quiet Title Claims.

Wells Fargo Trust's quiet title claims are subject to the five-year statutes of limitations provided under NRS 11.070 or NRS 11.080. *See JPMorgan Chase Bank, N.A. v. SFR Investments Pool 1, LLC*, No. 2:16-cv-02005-JCM-VCF, 2017 WL 3317813, at *2 (D. Nev. Aug. 2, 2017); *Nationstar Mortg. LLC v. Amber Hills II Homeowners Ass'n*, No. 2:15-cv-01433-APG-CWH, 2016 WL 1298108, at *3-4 (D. Nev. Mar. 31, 2016)). The five-year period of NRS 11.070 applies to claims or defenses "*founded upon the title* to real property," where "*the person prosecuting the action* or making the defense, *or* under whose title the action is prosecuted or the defense is made, *or the ancestor, predecessor, or grantor of such person*, was seized or possessed of the premises in question." NRS 11.070 (emphases added). Accordingly,

the statute does not specify that the claimant—here, Wells Fargo Trust—*itself* have a claim to title or to have been in possession of the property. Rather, all that is required is that (1) title to the property is foundational to the claim and (2) the claimant or one of several other entities—specifically including the claimant's "grantor"—had possession within the last five years.

Here, Wells Fargo Trust's claim readily satisfies each of the two statutory requirements. *First*, the claim is "founded upon … title." The claim, after all, is denominated quiet *title*. And that sensibly reflects the substance of the dispute, which is whether the HOA conveyed clear *title* to Saticoy Bay, or whether the Deed of Trust continued to encumber *title*.[22] Thus, courts routinely apply NRS 11.070 to quiet-title claims brought by lienholders seeking to confirm the validity of their security interest, as Wells Fargo Trust does here. As a matter of law and logic, a claim whose legal "purpose" is to "quiet title to … [p]roperty" is necessarily "founded upon … title" to the property. Had Nevada's legislature intended to limit NRS 11.070 narrowly to *claims of title* rather than to apply more broadly to any claim *founded upon title*, it could easily have done so, but it did not. In enacting the broader language, the legislature encompassed within NRS 11.070's scope all claims to determine the validity of deed of trust encumbrances on title.

Second, Wells Fargo Trust's "grantor" is the former homeowner/borrower—a person who was unquestionably "seized or possessed of the premises" at the time of the HOA Sale. A "grantor" in Nevada law includes a borrower who has executed a deed of trust to provide another party with a security interest in the property. *See* NRS 107.410 ("'Borrower' means a natural person who is a mortgagor or *grantor of a deed of trust under a residential mortgage loan*.") (emphasis added); *Rose v. First Fed. Sav. & Loan Ass'n of Nevada*, 777 P.2d 1318, 1319 (Nev. 1989) (grantor of deed of trust is party obligated to pay the loan). There is no dispute that here, the borrower on the note and grantor of the deed of trust which Wells Fargo Trust owns and for which Wells Fargo Trust is record beneficiary—had possession of the Property up until the HOA Sale on December 3, 2013, less than five years before the Complaint

[22] Nevada's Supreme Court has described deeds of trust as "encumbering … title." *Philip v. EMC Mortg. Corp.*, 381 P.3d 650, 2012 WL 6588891 (Nev. 2012) (unpublished).

and Counterclaim were filed. Because NRS 11.070 applies where *either* a quiet title plaintiff itself, "*or the … grantor of such person,* was seized or possessed of the premises in question," whether Wells Fargo Trust was "seized or possessed of the premises," is irrelevant. NRS 11.070 (emphasis added)).

Moreover, the Nevada Supreme Court's sole citation to NRS 11.070 in the last 40 years confirms that the statute covers claims where the claimant has a property interest other than title. In that case, *Bentley v. State*, the court considered the claims of intervenors whose dispute concerned *water rights*, not title. *See* No. 64773, 2016 WL 3856572 (Nev. 2016) (unpublished order of affirmance). The parties against whom the intervenors asserted their claims, the Bentleys, had built a structure diverting a greater share of the contested water to their property than they had drawn before. *Id.* at *10. The Nevada Supreme Court calculated the timeliness of the intervenors' claims based on the date that *the Bentleys* seized that larger amount of the water flow; it did not consider when the *intervenors* had possession to any of the claimed flow of water. *Id.* Thus, not only did the Nevada Supreme Court apply NRS 11.070 to claims involving property interests that were *not* title to real property, but it also calculated the limitations period based on when the target of the claim, not the claimant, had acquired possession of that property interest.

Nevada's lower courts have similarly followed this plain reading of NRS 11.070, and have applied it to claims involving disputes over whether a lien continued to encumber a property, the same issue in dispute here. For example, in *Raymer v. U.S. Bank National Association*, a Nevada state district court cited NRS 11.070 in holding that a claim concerning the continuing validity of a lien was untimely filed after five years. No. 16-A-739731-C, 2016 WL 10651933, at *2 (Nev. Dist. Ct. Dec. 28, 2016).

3. The Statute of Limitations did not begin to run until September 18, 2014.

In its Motion, Saticoy Bay asserts that Wells Fargo Trust's claims are untimely because the HOA Sale occurred on December 3, 2013. In Nevada, the statute of limitations does not begin to run until "the **discovery** by the aggrieved party of the facts constituting [tort]…." *Siragusa v. Brown*, 114 Nev. 1384, 1391, 971 P.2d 801, 806 (1998) (emphasis added).

Furthermore, the Nevada Supreme Court has held, on multiple occasions, that imputing knowledge of the tort is something that must be decided by "the trier of fact." *Id.; See also, Oak Grove Inv. v. Bell & Gossett Co*., 99 Nev. 616, 623, 668 P.2d 1075, 1079 (1983); *Millspaugh v. Millspaugh*, 96 Nev. 446, 449, 611 P.2d 201, 202 (1980) (stating that time of discovery is a question for the fact-finder where "the facts are susceptible to opposing inferences").

In Nevada, the Supreme Court decision in *SFR*, began to clarify the landscape of HOA foreclosure laws for the first time. The *SFR* decision, issued September 18, 2014, displaced over 20 years of practice with respect to the relationship of first deeds of trust to HOA assessment liens. Prior to the entry of that decision, the overwhelming majority of state and federal court decisions showed the question of whether foreclosure of an association lien extinguished a first deed of trust had not been answered. Prior to *SFR*, many Nevada courts ruled that foreclosure sales pursuant to NRS 116.3116, *et seq*. did not eliminate a first deed of trust and NRS 116.3116(2) merely created payment priority liens.

Therefore, prior to the entry of the *SFR* decision, Wells Fargo Trust was under the justified impression that the tortious actions of the HOA and HOA Trustee did not affect the priority of its first position deed of trust. Therefore, this Court should calculate the statute of limitations period for Wells Fargo Trust's claims to begin on September 18, 2014, making the claims timely.

4. The Statute of Limitation was Tolled Pending the NRED Claim.

In its Motion, Saticoy Bay argues that Wells Fargo Trust's claims are barred by the three-year statute of limitation. Saticoy Bay ignores, however, that the statute limitation was tolled. On December 29, 2015, Wells Fargo Trust's predecessor submitted an Alternative Dispute Resolution Claim to the State of Nevada Department of Business and Industry, Real Estate Division, Common-Interest Communities and Condominium Hotels Program ("NRED") pursuant to NRS 38.310.[23] The Alternative Dispute Resolution Claim was unsuccessfully

[23] A copy of the filed-stamped Alternative Dispute Resolution Claim Form is attached hereto as **Exhibit 23**.

resolved on June 12, 2017.[24] **Pursuant to NRS 38.350, the statute of limitation was tolled from December 29, 2015 through June 12, 2017.** Because of the tolling, the statute of limitation is calculated as follows:

- Number of days from 12/29/13 (recordation of Foreclosure Deed Upon Sale) to 2/27/2018 (filing of Saticoy Bay's Complaint): 1,520 Days or 4 Years, 60 Days
- Number of days from 12/29/15 (filing of Alternative Dispute Resolution Claim) to 6/12/2017 (day NRED closed the matter): 530 Days or 1 Year, 165 Days

Based on the tolling, Saticoy Bay filed its Complaint and claims 990 days (1,520 – 530 = 990) after the recording of the Foreclosure Deed Upon Sale, within the three-year statute of limitation argued by Saticoy Bay. Therefore, even if the three-year statute of limitations applied – which is does not – Wells Fargo Trust's claims are not time barred.

C. THE HOA IS A LIMITED-PURPOSE ASSOCIATION EXEMPT FROM NRS CHAPTER 116.

In *Saticoy Bay LLC Series 4500 Pacific Sun v. Lakeview Loan Servicing, LLC*, 441 P.3d 81 (Nev. 2019) ("*Pacific Sun*"), the Nevada Supreme Court reviewed the CC&Rs for a homeowners association and held that it, "**was a limited purpose association under NRS 116.1201(2) and (6). The district court therefore also correctly concluded that [the homeowners association]'s foreclosure sale did not extinguish respondent's deed of trust and that [buyer] took title to the property subject to the first deed of trust**." *Id*. (emphasis added). The Court further noted, "the district court determined that the mortgage protection provision in the CC&Rs was enforceable such that the homeowners association waived its right to foreclose on the superpriority portion of its lien." *Id*. at FN5.

In this matter, Saticoy Bay argues that the CC&Rs do not meet the requirement of NAC 116.090(1)(a) and the CC&Rs do not state the HOA was formed for the sole purpose of maintaining the common elements.[25] However, Section 2.2 of the CC&Rs explicitly states, "The **sole purpose of the Association** is to provide for the maintenance, repair, improvement,

[24] A copy of the letter closing the NRED is attached hereto as **Exhibit 24**.
[25] *See* Opposition at 11:11-16.

upkeep, replacement, preservation, and day-to-day operation of the Association Property[26] . . ." (emphasis added); Section 6.2 states, "The **sole purpose and reason for the formation and existence of the Association** is to maintain the common parkway areas and other Association Property in satisfaction of a condition imposed by the County for approval of the Project." (emphasis added). The Preamble to the CC&Rs states:

> To the extent the Project is deemed to be a common-interest community under Chapter 116 of the Nevada Revised Statutes ("NRS"), the Project **shall be deemed to be a limited expense planned community under the NRS Sections 116.110368 and 116.1203(1)(b) and subject only to the minimum Sections of Chapter 116 required by Section 116.1203(1)(b) unless otherwise expressly stated in this Declaration**.[27]
>
> It is the express intention of Declaration that the Project be, **at all times, a limited expense liability planned community in accordance with NRS Sections 116.1203(1)(b), 116.4101(g), and that this Declaration and the Project not be subject to any Sections of NRS Chapter 116 except those Sections expressly required by Sections 116.1203(b)(b) and 116.1203(2), unless otherwise expressly stated in this Declaration**.[28] (Emphasis added.)

Monaco is a limited purpose association pursuant to NAC 116.090(1)(a), NRS § 116.1201(2) and (6) and is not governed by NRS Chapter 116. NRS § 116.3116 does not apply to Monaco by the express language of Nevada law and the CC&Rs.

Saticoy also argues that pursuant to NAC 116.090(1)(c) the HOA does not meet the requirements of a "limited-purpose association".[29] Saticoy Bay asserts that the inclusion of "use restrictions" in the CC&Rs is impermissible and removes the HOA's exemption from NRS Chapter 116.

NRS § 116.1201(2)(a)(5) and NAC 116.090(c) require that to be a limited-purpose association that the declaration prohibits:

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[26] Section 1.7 of the CC&Rs defines Association Property as "(i) those certain parkway and drainage areas within the Property and Improvements therein . . . (ii) certain Specimen Trees and or other Entry Improvements . . . and (iii) any other common real property areas within the Property or common Improvements . . . ."

[27] *See* the last paragraph of the Preamble Section of the CC&Rs, Exhibit 1.

[28] *See* Articles 8.2 of the CC&Rs, Exhibit 1.

[29] See Opposition, 11:21-12:1-23.

(1) **The association, and not a unit's owner, from enforcing a use restriction against a unit's owner**;

(2) **The association from adopting any rules or regulations concerning the enforcement of a use restriction against a unit's owners**; and

(3) **The imposition of a fine or any other penalty against a unit's owner for a violation of a use restriction**.

Emphasis added.

The CC&Rs explicitly provides that the HOA does not have the right to enforce any restrictions concerning the use of the Property. The CC&Rs adhere to the requirements of NRS § 116.1201(2)(a)(5) and NAC 116.090(1)(c). Section 17.3.1 states:

> Right of Private Enforcement. Except as otherwise expressly provided herein, **the Association (as to the Association Property only), and any Owner . . . shall have the right, but not the duty, to enforce any or all of the provisions of this Declaration against any property within the Property** and the respective Owner, tenant, subtenant, licensee, or the like thereof. Such right shall include an action for damages, as well as an action to enjoin any violation of this Declaration. **The enforcement powers of the Association shall be limited to enforcement of any provisions of this Declaration concerning the Association Property and the Association and, except for the levy and collection of Assessments, the Association shall have no authority, right, or duty to enforce any provisions of this Declaration which concern any other portions of the Property, including the Lots, Development Tracts, and Other Areas.**

(Emphasis added.) [30]

Clearly, the inclusion of "use restrictions" in the CC&Rs does not eliminate the HOA's exemption from NRS Chapter 116 as the CC&Rs explicitly prohibits the HOA **from enforcing a use restriction against a unit's owner**; **adopting any rules or regulations concerning the enforcement of a use restriction against a unit's owners**; and "**[t]he imposition of a fine or any other penalty against a unit's owner for a violation of a use restriction**." NAC 116.090(1)(c). Moreover, Section 9.1 of the CC&Rs, again, expressly prohibits the HOA from "tak[ing] any action which would jeopardize or remove [the NRS 116.1201(a)(i)] exemption"

[30] See **Exhibit 1**.

and "the power to enforce the use restrictions set forth in Article 10 . . . or in any other provision of this Declaration."

As Monaco is governed by the terms of the CC&Rs and not Chapter 116 by the express language of the statute and CC&Rs the Deed of Trust had priority over the assessments and was protected in the event of the foreclosure via the following mortgage protection clause:

> 8.4 Priority of Lien. **The lien of any of the Assessments, including default interest, costs, expenses and attorneys' fees as provided for herein, shall be subordinate to the lien of any First Mortgage** Recorded prior to Recordation of a Notice of Default.
>
> 15.1 Mortgagee Protection. Notwithstanding any other provision of this Declaration, **no amendment or violation of this Declaration shall operate to defeat or render invalid the rights of the Beneficiary under any Deed of Trust or the Mortgagee under any Mortgage upon any of the Property made in good faith and for value** . . .

Emphasis added. Therefore, Saticoy Bay took title to the Property subject to the Deed of Trust.

D. THE HOA SALE WAS SUBJECT TO THE DEED OF TRUST.

The Nevada Supreme Court in *Saticoy Bay LLC Series 2141 Golden Hill v. JPMorgan Chase Bank, N.A.* ("*Golden Hill*") held that "[t]he record contains undisputed evidence that the former homeowner made payments sufficient to satisfy the superpriority component of the HOA's lien and that the HOA applied those payments to the superpriority component of the former homeowner's outstanding balance." The Court continued "[t]hus, the district court correctly determined that that at the time of the foreclosure sale, there was no superpriority component of the HOA's lien that could have extinguished respondent's deed of trust." *Id*. Here, the fact pattern mirrors that of *Golden Hill*.

In this matter, Saticoy Bay does not dispute that at the time of the Notice of Lien was recorded, May 20, 2009, the superpriority lien was $114[31] for the Property. Further, Saticoy Bay does not dispute that Nardizzi made partial payments on May 30, 2013 of $404.00, which was allocated by the HOA Trustee, at the direction of the HOA, to Nardizzi's account as $114.00 to the January 1, 2009 semi-annual assessment and $15.00 to the July 1, 2009 semi-annual

[31] *See* Notice of Lien, Exhibit 5; and HOA Trustee Accounting Ledger, Exhibit 6.

assessment;[32] June 21, 2013 of $169.00, which was allocated by the HOA Trustee, at the direction of the HOA, to Nardizzi's account as $94.00 to the July 1, 2009 semi-annual assessment;[33] July 22, 2013 of $168.00, which was allocated by the HOA Trustee, at the direction of the HOA, to Nardizzi's account as $114.00 to the January 1, 2010 semi-annual assessment and $54.00 to the July 1, 2010 semi-annual assessment;[34] and August 23, 2013 of $168.00, which was allocated by the HOA Trustee, at the direction of the HOA, to Nardizzi's account as $60.00 to the July 1, 2010 semi-annual assessment and $108.00 to the January 1, 2011 semi-annual assessment[35], totaling $909, almost eight times the superpriority lien amount.

Nardizzi's payments were allocated to the oldest outstanding assessments first. The HOA engaged Red Rock Financial Service to serve as its collection agency for all things relating to the delinquent assessments, including the collection of delinquent payments, application of the delinquent payments to the homeowner's account and all collection and foreclosure activities. The HOA Wells Fargo Trust propounded the following Interrogatories upon the HOA, and the HOA's responses:[36]

> INTERROGATORY NO. 22: Please provide a detailed accounting of any and all money remitted to YOU between January 1, 2009 and the HOA Sale, including sums collected from the Borrower.
>
> RESPONSE TO INTERROGATORY NO. 22: . . . . Without waiving said objections, Monaco responds as follows: **Monaco outsources its collection activities and was not present at the HOA Sale. Any information regarding the accounts remitted between January 1, 2009 and the HOA Sale would be in the possession custody and control of the foreclosure trustee.**
>
> INTERROGATORY NO. 16: Please describe all Documents that evidence any effort by any Person to negotiate discuss, or tender all or a portion of the amount due and owing under the Lien before the HOA Sale.
>
> RESPONSE TO INTERROGATORY NO. 16: . . . . Without waiving said

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[32] *See* HOA Trustee Business Records (WFZ0511-12, WFZ000487), Exhibit 15.
[33] *See* HOA Trustee Business Records (WFZ0493-9, WFZ000478), Exhibit 16.
[34] *See* HOA Trustee Business Records (WFZ0484-86, WFZ000478), Exhibit 17.
[35] *See* HOA Trustee Business Records, (WFZ0475-77, WFZ000473), Exhibit 18.
[36] Monaco Landscape Maintenance Association's Responses to Wells Fargo's First Set of Interrogatories, attached hereto as Exhibit 25.

> objections, Monaco responds as follows: Monaco has no information responsive to this Request as **it outsources collection and foreclosure activities to its collection vendor, RRFS**.
>
> INTERROGATORY NO. 18: Please provide an accounting of all compensation, consideration, and/or value paid by the HOA Trustee to YOU or anyone at YOUR direction for the conveyance evidenced by the Foreclosure Deed recorded against the Property.
>
> RESPONSE TO INTERROGATORY NO. 18: . . . . Without waiving said objections, Monaco responds as follows: The Interrogatory, as phrased, is vague and ambiguous as to the information sought, and therefore, impermissibly requires Monaco to guess as to the actual information sought. Further, **Monaco outsources all collection activities. Further, Monaco relied on the collections company to perform the collection activities pursuant to Nevada Law**.

(Emphasis added.) The HOA relied entirely upon the HOA Trustee in the collection of payments from Nardizzi, handling of the foreclosure notices and the HOA Sale: "Once a property is referred to collections, all collection activity is handled by the collections company[,]"[37] "Monaco outsources collection activities and therefore relied on the collection company's expertise[],"[38] "Monaco is unaware of any documents that were sent from the HOA as it outsources its collection and foreclosure activities to RRFS."[39]

REQUEST FOR PRODUCTION NO. 39: All Documents and Communications regarding the HOA's allocation of accepted payments for delinquent assessments.

RESPONSE TO REQUEST FOR PRODUCTION NO. 39: . . . . Without waiving said objections, Monaco responds as follows: **Monaco outsources all collections activities**.[40] Emphasis added.

Saticoy Bay does not dispute that at the time of the Notice of Lien was recorded, May 20, 2009, the superpriority lien was $114[41] for the Property. Further, Saticoy Bay does not dispute that Nardizzi made partial payments on May 30, 2013 of $404.00, which was allocated by the HOA Trustee, at the direction of the HOA, to Nardizzi's account as $114.00 to the

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[37] Exhibit 25, at Response to Interrogatory No. 9.
[38] Exhibit 25, at Response to Interrogatory No. 13.
[39] Exhibit 25, at Response to Interrogatory No. 12.
[40] Monaco Landscape Maintenance Association's Responses to Wells Fargo's First Set of Requests for Production of Documents, attached hereto as Exhibit 26.
[41] *See* Notice of Lien, Exhibit 5; and HOA Trustee Accounting Ledger, Exhibit 6.

January 1, 2009 semi-annual assessment and $15.00 to the July 1, 2009 semi-annual assessment;[42] June 21, 2013 of $169.00, which was allocated by the HOA Trustee, at the direction of the HOA, to Nardizzi's account as $94.00 to the July 1, 2009 semi-annual assessment;[43] July 22, 2013 of $168.00, which was allocated by the HOA Trustee, at the direction of the HOA, to Nardizzi's account as $114.00 to the January 1, 2010 semi-annual assessment and $54.00 to the July 1, 2010 semi-annual assessment;[44] and August 23, 2013 of $168.00, which was allocated by the HOA Trustee, at the direction of the HOA, to Nardizzi's account as $60.00 to the July 1, 2010 semi-annual assessment and $108.00 to the January 1, 2011 semi-annual assessment[45], totaling $909, almost eight times the superpriority lien amount.

Nardizzi made payments after the Notice of Lien that were more than sufficient to cover the superpriority portion of the HOA's lien, and those payments were applied to the oldest outstanding assessments. Therefore, the superpriority lien was satisfied and extinguished prior to the HOA Sale. As a result, the HOA only proceeded to sale on its sub-priority portion of the lien and the Deed of Trust was not extinguished by the HOA Sale as a matter of law.

E. THE SALE IS VOID AS THE HOA, OR ITS AGENT, FAILED TO PROVIDE THE REQUISITE NOTICES TO MERS, MERS DID NOT RECEIVE NOTICE BY ALTERNATIVE MEANS, AND MERS WAS PREJUDICED.

The Nevada Supreme Court held that under NRS 107.080 (2011), the sale is void to the extent it purports to extinguish the first position deed of trust if: (1) the HOA, or its agent, failed to provide the notices required by NRS Chapter 116 to a subordinate lienholder, (2) a subordinate lienholder did not receive timely notice by alternative means, and (3) the subordinate lienholder suffered prejudice. *U.S. Bank, Nat'l Ass'n ND v. Res. Grp., LLC*, 135 Nev. Ad. Op. 26, 444 P.3d 442, 448 (2019) ("*Resources Group*"). NRS 116.31168(1) requires notice to subordinate interest holders. Nevada statutes "**require an HOA seeking to foreclose a superpriority lien to send the holder of a recorded first deed of trust notices of default**

[42] *See* HOA Trustee Business Records (WFZ0511-12, WFZ000487), Exhibit 15.
[43] *See* HOA Trustee Business Records (WFZ0493-9, WFZ000478), Exhibit 16.
[44] *See* HOA Trustee Business Records (WFZ0484-86, WFZ000478), Exhibit 17.
[45] *See* HOA Trustee Business Records, (WFZ0475-77, WFZ000473), Exhibit 18.

and of sale, even though the deed of trust holder has not formally requested them." *Resources Group*, 444 P.3d at 445 (*citing SFR Invs. Pool 1, LLC v. Bank of New York Mellon*, 134 Nev., Adv. Op. 58, 422 P.3d 1248 (2018).

The Deed of Trust states that "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 Agreement**." (Emphasis is in original.) In *Edelstein v. Bank of New York Mellon*, 286 P.3d 249 (2012), the Nevada Supreme Court determined that MERS' designation as the beneficiary of the Deed of Trust must be recognized for two reasons:

> First, it is an express part of the contract that we are not at liberty to disregard, and it is not repugnant to the remainder of the contract. *See Royal Indem. Co. v. Special Serv.*, 82 Nev. 148, 150, 413 P.2d 500, 502 (1966). In Beyer v. Bank of America, the United States District Court for the District of Oregon examined a deed of trust which, like the one at issue here, stated that "MERS is the beneficiary under this Security Instrument." 800 F.Supp.2d 1157, 1160-62 (D.Or.2011). After examining the language of the trust deed and determining that the deed granted "MERS the right to exercise all rights and interests of the lender," the court held that "MERS [is] a proper beneficiary under the trust deed."
>
> Second, it is prudent to have the recorded beneficiary be the actual beneficiary and not just a shell for the "true" beneficiary. In Nevada, the purpose of recording a beneficial interest under a deed of trust is to provide "constructive notice … to all persons." NRS 106.210.

Id. at 258-59. "MERS, as a valid beneficiary, may assign its beneficial interest in the deed of trust to the holder of the note . . ." *Id*. at 260.

Saticoy Bay does not dispute that MERS is identified as the beneficiary in the Deed of Trust, providing constructive notice to all persons that MERS was the beneficiary of the Deed of Trust, or that the HOA did not mail the Notice of Default and Notice of Sale to MERS. Red Rock's NRCP 30(b)(6) witness, testified:

> Q. During your time at Red Rock, have you ever seen copies of an HOA foreclosure notice mailed to MERS regarding other properties?
>
> A. Yes.

Q. Would you say it's common in more than 50 percent of the time, or less than 50 percent?

A. I think 50 percent would probably be a good number there.[46]

Saticoy Bay does not provide any evidence that MERS received the Notice of Default or the Notice of Sale by any alternative means. As MERS was the record beneficiary of the Deed of Trust, MERS was required to receive notice of the HOA Sale. "**[A]n HOA seeking to foreclose a superpriority lien [must] send the holder of a recorded first deed of trust notices of default and of sale**, even though the deed of trust holder has not formally requested them." *Resources Group*, 444 P.3d at 445. Clearly, the Deed of Trust cannot be extinguished from the Property as its holder never received a copy of the operative foreclosure notices, or had actual notice of the sale by any means.

As MERS was not provided the Notice of Default and Notice of Sale it was deprived of all of the requisite information contained in the foreclosure notices, including, but not limited to: (1) the existence of the HOA lien; (2) the sale date; (3) that the HOA was proceeding with the HOA Sale; (4) description of the deficiency in payment; and (5) the name and address of the person authorized by the association to enforce the lien by sale. MERS was prejudiced by not being able to protect the beneficial interest in the Deed of Trust.

F. HOA SALE WAS VOID BECAUSE THE PURCHASE PRICE WAS LESS THAN 10% OF THE FAIR MARKET VALUE OF THE PROPERTY AND THERE IS EVIDENCE OF FRAUD, OPPRESSION, OR UNFAIRNESS.

"[M]ere inadequacy of price is not in itself sufficient to set aside the foreclosure sale, but it should be considered together with any alleged irregularities in the sale process to determine whether the sale was affected by fraud, unfairness, or oppression." *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. Adv. Op. 91, 405 P.3d 641 at 648 (Nov. 22, 2017) ("*Shadow Canyon*"). The Court further explained "[t]hat does not mean, however, that sales price is wholly irrelevant, in this respect, we adhere to the observation in *Golden* that **where the inadequacy of the price is great**, a court may grant relief based on

[46] HOA Trustee Deposition, 54:7-22, Exhibit 9.

***slight* evidence of fraud, unfairness, or oppression**." *Id.* (emphasis added).

Saticoy Bay does not dispute that the fair market value of the Property at the time of the HOA Sale was $185,000[47] and the winning bid at the HOA Sale was $17,400, **less than 10% of the Property's value**. Due to the wide disparity between the fair market value and foreclosure sales price, the evidence of unfairness, fraud, or oppression need only be ever-so-slight in order for the HOA Sale to be declared invalid.

The following significant evidence of fraud, oppression and unfairness associated with the foreclosure sale supports the setting aside of the HOA Sale: **first**, the HOA put the public on constructive notice in its CC&Rs—including Buyer, and other prospective bidders—that the HOA's foreclosure would not disturb the first Deed of Trust. **Second**, the HOA Trustee advised the Lender that "[t]he Association's Lien for Delinquent Assessments is Junior only to the Senior Lender/Mortgage Holder."[48] **Third**, the Borrower paid an amount equal to almost eight times the superpriority amount to the HOA Trustee before the HOA Sale, and that amount was applied to the oldest outstanding assessments.[49] The superpriority portion of the HOA lien was discharged before the HOA Sale, meaning Saticoy Bay could only have acquired a subordinate interest. **Fourth**, neither Monaco nor the HOA Trustee mailed the Notice of Default or Notice of Sale to MERS, despite the fact that it was the beneficiary of record under the Deed of Trust.

As set forth by this Court in the Order, the sale violates NRS Chapter 116.3116, et seq. because MERS never received the Notice of Default and Notice of Sale.

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[47] *See* Plaintiff's Expert Report of Scott Dugan, Exhibit 20.
[48] *See* HOA Trustee Business Records, WFZ000326-27, Exhibit 11.
[49] *See* Exhibits 15-18; *see also* HOA Trustee Deposition, 86:10-14, Exhibit 9.

VI. CONCLUSION

For the reasons stated above, Plaintiff's Motion for Summary Judgment should be granted.

DATED this 11th day of December, 2019.

WRIGHT, FINLAY & ZAK, LLP

/s/ Aaron D. Lancaster
R. Samuel Ehlers, Esq.
Nevada Bar No. 9313
Aaron D. Lancaster, Esq.
Nevada Bar No. 10115
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
Attorney for Defendant/Counterclaimant, Wells Fargo Bank, National Association, as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Pass-Through Certificates Series 2005-11

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 18th day of November, 2019, I did cause a true copy of the foregoing **WELLS FARGO'S REPLY TO SATICOY BAY'S OPPOSITION AND IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFCR 9 as follows:

office@bohnlawfirm.com
mbohn@bohnlawfirm.com
dkoch@kochscow.com
sscow@kochscow.com
bwight@kochscow.com
bebert@lipsonneilson.com
snutt@lipsonneilson.com
rrittenhouse@lipsonneilson.com
aeshenbaugh@kochscow.com
sochoa@lipsonneilson.com
dscow@kochscow.com
JIsaacson@lipsonneilson.com

/s/ Lisa Cox
An Employee of Wright, Finlay & Zak, LLP

Exhibit 25

Exhibit 25

Exhibit 25

LIPSON NEILSON P.C.
J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
JANEEN ISAACSON, ESQ.
Nevada Bar No. 6249
9900 Covington Cross Drive, Ste. 120
Las Vegas, Nevada 89144
(702) 382-1500 phone
(702) 382-1512 fax
bebert@lipsonneilson.com
jisaacson@lipsonneilson.com
Attorneys for Defendants/Counterdefendants
Monaco Landscape Maintenance Association

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 8149 PALACE MONACO, a Nevada limited liability company, Plaintiff, vs. ROBERT NARDIZZI, a/k/a ROBERT A. NARDIZZI, an individual; MONACO LANDSCAPE MAINTANANCE ASSOCIATION, a Nevada domestic non-profit corporation; WELLS FARGO BANK, NATONAL ASSOCIATION, AS TRUSTEE FOR THE STRUCTURED ADJUSTABLE RATE MORTGAGE LOAN TRUST, PASS-THROUGH CERTIFICATES SERIES 2005-11, a business entity location unknown, DOE individuals 1 through 10; and ROE business entities 11 through 30, Defendants.	CASE NO.: A-18-770245-C DEPT NO.: 28 **MONACO LANDSCAPE MAINTANCE ASSOCIATION'S RESPONSES TO WELLS FARGO'S FIRST SET OF INTERROGATORIES**
WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE STRUCTURED ADJUSTABLE RATE MORTGAGE LOAN TRUST, PASS-THROUGH CERTIFICATES SERIES 2005-11	

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 8149 PALACE MONACO; MONACO LANDSCAPE MAINTANANCE ASSOCIATION; and RED ROCK FINANCIAL SERVICES, LLC,

Counterdefendants.

TO: Wells Fargo Bank, National Association, as Trustee for the Structured Adjustable Rate Mortgage Loan Trust Pass-Through Certificates Series 2005-11, Defendant / Counterclaimant;

TO: R. Samuel Ehlers, Esq., and Aaron D. Lancaster, Esq., attorneys for Wells Fargo

Defendant / Counterdefendant Monaco Landscape Maintenance Association ("Monaco" or "HOA"), by and through its counsel of record, Lipson Neilson, P.C., hereby submits its responses to Wells Fargo Bank, National Association as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Pass Through Certificates Series 2006-11's ("Wells Fargo") First Set of Interrogatories.

DEFINITIONS AND INSTRUCTIONS

A. "Unduly Burdensome" – this interrogatory seeks discovery that is unduly burdensome or expensive, taking into account the needs of the case, limitation on the party's resources, and the importance of the issues at stake in this litigation.

B. "Vague" – the interrogatory contains a word or phrase that is not adequately defined, or the overall request is confusing or ambiguous.

C. "Overly Broad" – the interrogatory seeks information or documents beyond the scope of, or beyond the time period relevant to, the subject matter of this litigation.

D. "Nondiscoverable / Irrelevant" – the interrogatory in question concerns a matter that is not relevant to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence.

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

E. Because some of these responses may have been ascertained by Monaco's attorneys, investigators and/or through discovery in this litigation. Monaco may not have personal knowledge of the information from which these responses are derived.

GENERAL OBJECTIONS

Monaco objects to Wells Fargo's interrogatories to the extent that the interrogatories seek any information not protected by any absolute or qualified privilege or exemption, including, but not limited to, the attorney-client privilege, the attorney work-product exemption, and the consulting-expert exemption. Specifically, Monaco objects to Wells Fargo's interrogatories on the grounds:

A. Monaco objects to Wells Fargo's interrogatories to the extent they seek documents or disclosures of information that is protected from disclosure by the attorney-client privilege in accordance with Rule 26 of the Nevada Rules of Civil Procedure and Sections 49.035-49.115 of the Nevada Revised Statute.

B. Monaco objects to Wells Fargo's interrogatories to the extent they seek documents or disclosure of information that is protected from disclosure by the work-product exemption in accordance with Rule 26(b)(3) of the Nevada Rules of Civil Procedure and applicable case law.

C. Monaco objects to Wells Fargo's interrogatories to the extent they seek documents or information protected from disclosure pursuant to the consultant-expert exemption in accordance with Rule 26(b)(4)of the Nevada Rules of Civil Procedure and applicable case law.

D. Monaco objects to Wells Fargo's interrogatories to the extent they seek trade secrets, commercially sensitive information, or confidential proprietary data entitled to protection under Rule 26(c)(1)(g) of the Nevada Rules of Civil Procedure.

E. Monaco objects to Wells Fargo's interrogatories on the grounds that they are excessively burdensome and that much of the information requested may be obtained by Wells Fargo from other sources more conveniently, less expensively, and with less burden.

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F. These responses will be made on the basis of information and writings available to and located by Monaco upon reasonably investigation. There may be additional information with respect to the interrogatories propounded by Wells Fargo of which Monaco, despite reasonable inquiry, is presently unaware. Monaco reserves the right to modify or supplement any response with additional information as it becomes available.

G. No incidental or implied admissions will be made by the responses to interrogatories. The fact that Monaco may respond or object to any interrogatory shall not be deemed an admission that Monaco accepts or admits the existence of any facts set forth or assumed by such interrogatory, or that such response constitutes admissible evidence. The fact that Monaco responds to any part of any interrogatory is not to be deemed a waiver by Monaco of objections, including privilege, to other parts of such interrogatories.

H. Monaco objects to any instruction or interrogatory to the extent that it would impose upon Monaco greater duties than are set forth under the Nevada Rules of Civil Procedure. Monaco will supplement responses to certain interrogatories as required by Rule 26(c) of the Nevada Rules of Civil Procedure.

I. Each response will be subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any and all other objections on any ground that would require the exclusion from evidence of any statement herein if any such statements were made by a witness present and testifying at trial, all of which objections and grounds are expressed reserved and may be interposed at trial.

J. Monaco objects to these interrogatories to the extent they seek information in violation of the privacy rights of third parties.

K. Monaco objects to these interrogatories to the extent they are compound, contain improper subparts, and comprise several interrogatories in one, which is prohibited by NRCP 22(a)(1). These general objections are expressly incorporated into each of the responses set forth below.

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

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9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

INTERROGATORIES

INTERROGATORY NO. 1:

Identify each person who assisted YOU in the preparation of the Responses to these Interrogatories by name, title and address. YOU may omit anyone who simply typed the Responses.

RESPONSE TO INTERROGATORY NO. 1:

In addition to the undersigned counsel, Corey Clapper of First Service Residential located at 8290 Arville St., Las Vegas, Nevada 89139, in the care of Lipson Neilson, P.C., 9900 Covington Cross Dr., Suite 120, Las Vegas, Nevada 89144.

INTERROGATORY NO. 2:

Please set forth and describe in detail, all actions, mailings, postings and publishing, if any, that were undertaken by YOU, or on YOUR behalf, relating to the HOA Notices, including, but not limited to, whether they were mailed, how they were mailed, the name of the Person who mailed them, when they were mailed, and to whom they were mailed, including their address.

RESPONSE TO INTERROGATORY NO. 2:

Monaco objects to this Request as it seeks information that is more obtainable from co-defendant Red Rock Financial Services, LLC ("RRFS"), which is more convenient, less burdensome and less expensive. NRCP 26(b)(2). Pursuant to NRCP 33(d), the requested information can be derived or ascertained from records already produced by the HOA and the burden of deriving, summarizing, or ascertaining the requested information "is substantially the same for the party serving the Interrogatory as for the party served" and therefore, "it is a sufficient answer to such Interrogatory to specify the records from which the answer may be derived or ascertained."

Without waiving said objections, Monaco responds as follows: No foreclosure notices were sent from the HOA. Any notices required by law to be sent would have been sent by RRFS. *See* Monaco Landscape Maintenance Association's First Supplemental Disclosure Pursuant to Nev. R. Civ. P. 16.1 ("Monaco's Disclosures"); Red Rock Financial

Services Foreclosure File ("RRFS Foreclosure File") – MON000160-MON000670 and records produced by other parties.

INTERROGATORY NO. 3:

If any of the mailings described in Interrogatory No. 2, were returned TO YOU or YOU were notified that the mailing(s) were not delivered to any of the addressees, please identify each addressee and the address used, and whether the mail was re-sent to another address, and if so, the new address.

RESPONSE TO INTERROGATORY NO. 3:

Please see Monaco's objections and Response to Interrogatory No. 2. Additionally, Monaco objects to this Interrogatory on the grounds that it seeks to place an additional legal burden on the HOA not provided for in NRS Chapter 116 or Nevada law during the pertinent time period.

INTERROGATORY NO. 4:

If YOU received a returned receipt for any of the mailings identified in Interrogatory No. 2, please identify the addressee(s) and their address(es).

RESPONSE TO INTERROGATORY NO. 4:

See Response and Objections to Interrogatory No.'s 2 and 3.

INTERROGATORY NO. 5:

Please Identify any and all Documents and/or other forms of Communication that were sent to and/or received from any party named in this litigation, in connection with the Property, excluding pleadings and discovery.

RESPONSE TO INTERROGATORY NO. 5:

Monaco objects to this Interrogatory on the grounds that it is overly broad, burdensome, vague and ambiguous as to the term "in connection with the Property" and is not reasonably calculated to lead to the discovery of admissible evidence. *Schlatter v. Eighth Judicial Dist. Ct.* 93 Nev. 189, 192, 561 P.2d 1342, 1344 (1977). Monaco objects to this Interrogatory on the grounds that it is not reasonably limited in time or scope.

Without waiving said objections, Monaco responds as follows: Monaco disclosed all

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9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
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non-privileged responsive documents in its Initial and First Supplemental Disclosures.

INTERROGATORY NO. 6:

Please Identify any and all Documents and/or other forms of Communication that were sent to and/or received from the Borrower in connection with the Property.

RESPONSE TO INTERROGATORY NO. 6:

Monaco objects to this Interrogatory on the grounds it is overly broad, burdensome, vague and ambiguous as to the term "in connection with the Property" and is not reasonably calculated to lead to the discovery of admissible evidence. *Schlatter v. Eighth Judicial Dist. Ct.* 93 Nev. 189, 192, 561, P.2d 1342, 1344 (1977). Monaco objects to this Interrogatory on the grounds that it is not reasonably limited in time and scope.

Without waiving said objections, Monaco responds as follows: Monaco disclosed all non-privileged responsive documents in its Initial and First Supplemental Disclosures.

INTERROGATORY NO. 7:

Please set forth and describe in detail, the type and nature of any and all fees, assessments, or other monetary charges ("Lien") relating to the HOA Notices, including the monetary amount attributed to each component part of the Lien, the time frame/date(s) for which each component part of the Lien was derived, and how each component part of the Lien was calculated.

RESPONSE TO INTERROGATORY NO. 7:

Monaco objects to this Interrogatory on the ground that it seeks documents which are irrelevant and immaterial because recitals within the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of NRS 116. *See* NRS 116.3116; *SFR v. U.S. Bank, N.A.,* 334 P.3d 408 (Nev. 2014). Further, the information sought is obtainable from co-defendant RRFS, which is more convenient, less burdensome, and less expensive. NRCP 26(b)(2)(C)(i).

Without waiving said objections, Monaco responds as follows: The document speaks for itself. Further, pursuant to NRCP 33(d), the requested information can be derived or ascertained from records already produced by the HOA and the burden of deriving,

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Telephone: (702) 382-1500 Facsimile: (702) 382-1512

summarizing, or ascertaining the requested information "is substantially the same for the party serving the Interrogatory as for the party served" and therefore, "it is a sufficient answer to such Interrogatory to specify the records from which the answer may be derived or ascertained." Monaco has produced all relevant documents in its disclosures. *See* Monaco's Disclosures; Monaco's 2010, 2014 and 2017 Collection Policies – MON000110-MON000121 and RRFS Foreclosure File – MON000160-MON000670.

INTERROGATORY NO. 8:

Please set forth and describe in detail, the type and nature of any and all fees, assessments, or other monetary charges included in the Notice of Lien, including the monetary amount attributed to each component part of the Notice of Lien, the time frame/date(s) for which each component part of the Notice of Lien was derived, and how each component part of the Notice of Lien was calculated.

RESPONSE TO INTERROGATORY NO. 8:

Monaco objects to this Interrogatory on the ground that it seeks documents which are irrelevant and immaterial because recitals within the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of NRS 116. *See* NRS 116.3116; *SFR v. U.S. Bank, N.A.,* 334 P.3d 408 (Nev. 2014). Further, the information sought is obtainable from co-defendant RRFS, which is more convenient, less burdensome, and less expensive. NRCP 26(b)(2)(C)(i).

Without waiving said objections, Monaco responds as follows: The document speaks for itself. Further, pursuant to NRCP 33(d), the requested information can be derived or ascertained from records already produced by the HOA and the burden of deriving, summarizing, or ascertaining the requested information "is substantially the same for the party serving the Interrogatory as for the party served" and therefore, "it is a sufficient answer to such Interrogatory to specify the records from which the answer may be derived or ascertained." Monaco has produced all relevant documents in its disclosures. *See* Monaco's Disclosures; Monaco's 2010, 2014 and 2017 Collection Policies – MON000110-MON000121 andRRFS Foreclosure File – MON000160-MON000670.

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

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9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
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INTERROGATORY NO. 9:

If YOU believe that any portion of the Lien related to the HOA Sale is entitled to "super-priority" status, please describe in detail the type and nature of any and all component parts of what YOU deem "super-priority", including the monetary amount attributed to each component part, the time frame / date(s) for which each component part of the "super-priority" lien was derived, and how each component part of the "super-priority" lien was calculated.

RESPONSE TO INTERROGATORY NO. 9:

Monaco objects to this Interrogatory on the grounds that it seeks a legal conclusion regarding the "super-priority" amount. Monaco objects to this Interrogatory on the grounds that it seeks information which is irrelevant and immaterial because the recitals in the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of NRS 116, which sets forth what may be included in a lien, and that including the entire amount is proper for lien foreclosure notices. *See* NRS 116.3116; *SFR Investments Pool 1, LLC v. New York Community,* 130 Nev. Ad. Op. 75 (2014); *See also Shadow Wood HOA v. New York Community,* 132 Nev. Ad. Op. 5 (Jan. 28, 2016).

Without waiving said objections, Monaco responds as follows: Monaco has no information responsive to this Interrogatory. Once a property is referred to collections, all collection activity is handled by the collections company. Notwithstanding the foregoing, please see Notices included in RRFS Foreclosure File – MON000160-MON000670.

INTERROGATORY NO. 10:

Please Identify the file YOU maintained related to the HOA Sale, the party or person having custody of it, and the location of each file.

RESPONSE TO INTERROGATORY NO. 10:

Monaco disclosed all non-privileged responsive documents in its possession in its disclosures. Further, Monaco outsources all collection activities to RRFS, which maintains its own files, however please see RRFS Foreclosure File – MON000160-MON000670, previously disclosed in Monaco's Disclosures. Discovery is ongoing. Monaco may

supplement this response as necessary.

INTERROGATORY NO. 11:

If YOU mailed any of the Documents relating to the HOA Notices to the Borrower or Propounding Party, or its predecessors, attorneys, agents, trustees, or servicers, please Identify the Document(s), and describe the date and type of mailing, the addressees, and whether a returned receipt came back signed, or YOUR mailing was returned undeliverable.

RESPONSE TO INTERROGATORY NO. 11:

Monaco is unaware of any documents that were sent from the HOA as it outsources its collection and foreclosure activities to RRFS. *See* Monaco's Disclosures; RRFS Foreclosure File – MON000160-MON000670.

INTERROGATORY NO. 12:

If YOU mailed any of the Documents relating to the HOA Notices to MERS please Identify the Document(s), and describe the date and type of mailing, the addressee, and whether a returned receipt came back signed, or YOUR mailing was returned undeliverable.

RESPONSE TO INTERROGATORY NO. 12:

Monaco is unaware of any documents that were sent from the HOA as it outsources its collection and foreclosure activities to RRFS. *See* Monaco's Disclosures, RRFS Foreclosure File – MON000160-MON000670.

INTERROGATORY NO. 13:

Please describe YOUR policies and procedures, in effect prior to the HOA foreclosure of the Property, for provided payoff demands in response to a request for a "super-priority" lien payoff demand by a first security interest holder.

RESPONSE TO INTERROGATORY NO. 13:

Monaco objects to this Interrogatory on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco objects to this Interrogatory on the grounds that

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is it ambiguous and vague as to the term "super-priority lien payoff." Monaco objects to this Interrogatory on the grounds that it is not reasonably limited in time and scope. Monaco objects to this Request as it is a complete hypothetical. Monaco objects to this Interrogatory in that it seeks a legal conclusion and presents a hypothetical fact regarding an obligation to provide information about the undetermined super-priority lien amount. Monaco further objects to this Interrogatory on the grounds that it seeks to place an additional legal burden on the HOA not provided for in NRS Chapter 116.

Without waiving said objections, Monaco responds as follows: Upon information and belief, Monaco follows state and federal statutes regarding disclosure of financial information about homeowner, and acceptance or rejection of lien payments or funds from third parties on behalf of homeowners. Additionally, Monaco follows its collection policy as adopted at the time. *See* Monaco's 2010, 2014 and 2017 Collection Policies – MON000110-MON000121. At a certain point in the process, Monaco outsources collection activities and therefore relied on the collection company's expertise. Further, each of the publicly recorded foreclosure notices contains the lien amount pursuant to NRS 116 and contact information for RRFS. *See* RRFS Foreclosure File – MON000160-MON000670.

INTERROGATORY NO. 14:

Please Identify any and all Documents and/or other forms of Communication between YOU and the HOA Trustee before the HOA Sale, including anyone YOU understood to be its attorneys, agents, trustees, or servicers, in connection with the Property.

RESPONSE TO INTERROGATORY NO. 14:

Monaco objects to this Interrogatory on the grounds that it is not reasonably calculated in time or scope and seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, Monaco objects to this Interrogatory on the grounds that it is overly broad regarding "any and all documents" and seeks information which may be protected by the attorney-client privilege and/or attorney work-product doctrine.

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Without waiving said objections, Monaco responds as follows: Monaco disclosed all non-privileged responsive documents in its possession in its disclosures. See Monaco's Disclosures; Emails from 2013-2015 – MON000142-MON000159. Discovery is ongoing. Monaco will supplement is necessary

INTERROGATORY NO. 15:

Please Identify any and all Documents exchanged or delivered between YOU and the HOA Trustee before and/or after the HOA Sale in connection with the Property.

RESPONSE TO INTERROGATORY NO. 15:

Monaco objects to this Interrogatory on the grounds that it is not reasonably limited in time or scope and seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco further objects to this Interrogatory on the grounds that it is burdensome and duplicative of information already provided in Response to Interrogatory No. 14.

Without waiving said objections, Monaco responds as follows: Monaco disclosed all non-privileged responsive documents in its possession in its disclosures.

INTERROGATORY NO. 16:

Please describe all Documents that evidence any effort by any Person to negotiate discuss, or tender all or a portion of the amount due and owing under the Lien before the HOA Sale.

RESPONSE TO INTERROGATORY NO. 16:

Monaco objects to this Interrogatory on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco further objects as the request is vague and ambiguous as to the term "tender." Monaco objects to this Interrogatory on the grounds that it seeks a legal conclusion. Monaco further objects to this Interrogatory on the grounds that it seeks to place an additional legal burden on the HOA not provided for in NRS Chapter 116.

Without waiving said objections, Monaco responds as follows: Monaco has no

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
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information responsive to this Request as it outsources collection and foreclosure activities to its collection vendor, RRFS. *See* Monaco's Disclosures; RRFS Foreclosure File – MON000160-MON000670. Discovery is ongoing. Monaco will supplement if necessary.

INTERROGATORY NO. 17:

Please describe all Documents that evidence a report to YOU of the HOA Sale, including, but not necessarily limited to, any report by the sale crier, and relating to the number of Person(s) in attendance, the Person(s) who qualified to bid before the HOA Sale, the number / amount of each bid, and the party making the bid, and the results.

RESPONSE TO INTERROGATORY NO. 17:

Monaco objects to this Interrogatory on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco further objects to this Interrogatory on the grounds it lacks foundation and assumes facts not established in discovery.

Without waiving said objection, Monaco responds as follows: Monaco disclosed all non-privileged responsive documents in its possession in its disclosures. Monaco outsources its collection and foreclosure activities to its collection vendor, RRFS. *See* Monaco's Disclosures; RRFS Foreclosure File – MON000160-MON000670).

INTERROGATORY NO. 18:

Please provide an accounting of all compensation, consideration, and/or value paid by the HOA Trustee to YOU or anyone at YOUR direction for the conveyance evidenced by the Foreclosure Deed recorded against the Property.

RESPONSE TO INTERROGATORY NO. 18:

Monaco objects to this Interrogatory on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco objects to this Interrogatory on the grounds it is unduly burdensome and overly broad. Monaco objects to this Interrogatory as it is vague and ambiguous as to the terms "compensation," "consideration," "value," and "conveyance."

Without waiving said objections, Monaco responds as follows: The Interrogatory, as

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
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phrased, is vague and ambiguous as to the information sought, and therefore, impermissibly requires Monaco to guess as to the actual information sought. Further, Monaco outsources all collection activities. Further, Monaco relied on the collections company to perform the collection activities pursuant to Nevada Law. Any information regarding this Interrogatory would be in the possession, custody and control of the foreclosure trustee.

INTERROGATORY NO. 19:

If YOU have ever had any agreement(s)/contract(s) with the HOA Trustee (and/or its agents) regarding compensation for its services in connection with foreclosure sales, please Identify whether the agreement is written, oral, or both, the date, title, and contents of the agreement(s)/contract(s), including amendments and renewals thereof.

RESPONSE TO INTERROGATORY NO. 19:

Monaco objects to this Interrogatory on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. *Schlatter v. English Judicial Dist. Ct.,* 93 Nev. 189, 192, 561 P.2d 1342, 1344 (1977). Monaco further objects to this Interrogatory on the grounds that it is not reasonably limited in time or scope.

Without waiving said objections, Monaco responds as follows: *See* Monaco's Disclosures: Emails from 2013-2015 – MON000142-MON000159. Discovery is ongoing. This response will be supplemented if necessary.

INTERROGATORY NO. 20:

State the amount of each and every bid at the HOA Sale and Identify each every bidder at the HOA Sale.

RESPONSE TO INTERROGATORY NO. 20:

Monaco objects to this Interrogatory on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence as the recitals in the Foreclosure Deed are conclusive proof of compliance with the notice requirements of NRS Chapter 116. *See* NRS 116.3116; *SFR Investments Pool I, LLC v. U.S. Bank, N.A.,* 130 Nev. Adv. Op.

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9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
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75 (2014).

Without waiving said objections, Monaco responds as follows: Monaco outsources its collection and foreclosure activities. Further, Monaco relied on the collections company to perform the collection activities pursuant to Nevada Law. *See* Monaco's Disclosures; RRFS Foreclosure File – MON000160-MON000670.

INTERROGATORY NO. 21:

Please provide a detailed accounting of any and all money remitted to YOU at the HOA Sale, including the return / disbursement of any sums collected to qualify the bidders at the HOA Sale.

RESPONSE TO INTERROGATORY NO. 21:

Monaco objects to this Interrogatory on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco objects to this Interrogatory on the grounds it is unduly burdensome and overly broad.

Without waiving said objections, Monaco responds as follows: Monaco outsources its collection activities and was not present at the HOA Sale. Any information regarding the amounts remitted at the HOA sale would be in the possession custody and control of the foreclosure trustee. *See* Monaco's Disclosures; RRFS Foreclosure File – MON000160-MON000670.

INTERROGATORY NO. 22:

Please provide a detailed accounting of any and all money remitted to YOU between January 1, 2009 and the HOA Sale, including sums collected from the Borrower.

RESPONSE TO INTERROGATORY NO. 22:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco objects to this Interrogatory on the grounds it is unduly burdensome and overly broad.

Without waiving said objections, Monaco responds as follows: Monaco outsources

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

its collection activities and was not present at the HOA Sale. Any information regarding the accounts remitted between January 1, 2009 and the HOA Sale would be in the possession custody and control of the foreclosure trustee. *See* Monaco's Disclosures; RRFS Foreclosure File – MON000160-MON000670.

INTERROGATORY NO. 23:

If YOU have ever had any agreement(s)/contract(s) with the Borrower regarding payment of delinquent assessments, please Identify whether the agreement is written, oral, or both, the date, title, and contents of the agreement(s)/contract(s), including amendments and renewals thereof.

RESPONSE TO INTERROGATORY NO. 23:

Monaco objects to this Interrogatory on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. *Schlatter v. English Judicial Dist. Ct.,* 93 Nev. 189, 192, 561 P.2d 1342, 1344 (1977). Monaco further objects to this Interrogatory on the grounds that it is not reasonably limited in time or scope.

Without waiving said objections, Monaco responds as follows: Monaco and the collections company made efforts to allow the Borrower to pay amounts legally owed to Monaco. *See* Monaco's Disclosures: Emails from 2013-2015 – MON000142-MON000159. Discovery is ongoing. This response will be supplemented if necessary.

INTERROGATORY NO. 24:

If any disclosures or pronouncements concerning the Lien or the Property were made at the time of the HOA Sale, Identify those Communications.

RESPONSE TO INTERROGATORY NO. 24:

Monaco objects to this Interrogatory on the grounds that it is vague and overly broad as to the terms "disclosures" and "pronouncements" and unduly burdensome as the HOA was not present at the HOA Sale. Monaco objects to this Interrogatory on the grounds that it seeks information which is irrelevant to the claims and defenses of the parties in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence.

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

Without waiving said objections, Monaco responds as follows: Monaco has no information responsive to this Interrogatory as it outsources its collection and foreclosure activities. *See* Monaco's Disclosures; RRFS Foreclosure File – MON000160-MON000670.

INTERROGATORY NO. 25:

Identify the property or community manager for the Property for each year from the recordation of the Notice of Lien, as that term is described within "HOA Notices" in the Definitions section above, through the present.

RESPONSE TO INTERROGATORY NO. 25:

Monaco objects to this Interrogatory on the grounds that it is overly broad in time and not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving said objection, Monaco responds as follows: Corey Clapper.

INTERROGATORY NO. 24:

Review each of YOUR Responses to the First Set of Requests for Admissions propounded upon YOU concurrently with these Interrogatories. For each response to the First Set of Requests for Admissions that is not an unqualified admission, state:

(a) The number of the Request;

(b) All facts upon which YOU based YOUR response and/or denial;

(c) Identify each person with personal knowledge of the facts upon which YOU based YOUR response;

(d) Identify each Document or writing that supports YOUR response.

RESPONSE TO INTERROGATORY NO. 24:

Monaco objects to this Interrogatory on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. *Schlatter v. Eighth Judicial Dist. Ct.,* 93 Nev. 189, 192, 561 P.2d 1342, 1344 (1977). Monaco objects to this Interrogatory on the grounds that it is not limited in time and scope. Monaco further objects to this Request on the grounds it is burdensome, harassing, and duplicative of information sought in other discovery requests. Additionally, this Interrogatory is impermissibly compound. *See, e.g., Kendall v. GES*

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

Exposition Services, Inc., 174 F.R.D. 684 (D. Nev. 1997). Furthermore, the request is burdensome and oppressive as it is all-encompassing and requires the HOA to provide a detailed narrative of its entire defense, including the identity of every witness and document that supports each answer that is not an unqualified admission. *See e.g., Hilt v. SFC, Inc.,* 170 F.R.D. 182, 186-87 (D. Kan. 1997); *Grynberg v. Total S.A.* 2006 WL 1186836, *6-7 (D. Colo. 2006).

Without waiving said objections, Monaco responds as follows: Monaco's Responses and Objections to the Request for Admissions speak for themselves.

Dated this 17th day of September, 2019

LIPSON NEILSON, P.C.

By: /s/ Janeen V. Isaacson
_____

J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
JANEEN ISAACSON, ESQ.
Nevada Bar No. 6249
9900 Covington Cross Drive, Ste. 120
Las Vegas, Nevada 89144
(702) 382-1500 phone
(702) 382-1512 fax
bebert@lipsonneilson.com
jisaacson@lipsonneilson.com
Attorneys for Defendants/Counterdefendants Monaco Landscape Maintenance Association

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of September, 2019, service of the foregoing **MONACO LANDSCAPE MAINTANCE ASSOCIATION'S RESPONSES TO WELLS FARGO'S FIRST SET OF INTERROGATORIES** was made pursuant to FRCP 5(b) and electronically transmitted to the Clerk's Office using the CM/ECF system for filing and transmittal to all interested parties.

Natalie C. Lehman, Esq. Nevada Bar No. 12995 WRIGHT FINLAY & ZAK, LLP 7785 W. Sahara Ave., Suite 200 Las Vegas, Nevada 89117 (702) 475-7964 – Telephone nlehman@wrightlegal.net *Attorneys for Wells Fargo Bank, National Association, as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Pass-Through Certificates Series 2005-11.*	Michael F. Bohn, Esq. Nevada Bar No. 1641 MICHAEL F. BOHN, ESQ., LTD. 2260 Corporate Circle, Suite 480 Henderson, Nevada 89074 (702) 642-3113 – Telephone (702) 642-9766 – Facsimile mbohn@bohnlawfirm.com *Attorneys for Saticoy Bay LLC Series 8149 Palace Monaco*

/s/ Renee M. Rittenhouse

An Employee of LIPSON NEILSON, P.C.

Exhibit 26

Exhibit 26

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LIPSON NEILSON P.C.
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Las Vegas, Nevada 89144
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jisaacson@lipsonneilson.com
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Monaco Landscape Maintenance Association

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 8149 PALACE MONACO, a Nevada limited liability company, Plaintiff, vs. ROBERT NARDIZZI, a/k/a ROBERT A. NARDIZZI, an individual; MONACO LANDSCAPE MAINTANANCE ASSOCIATION, a Nevada domestic non-profit corporation; WELLS FARGO BANK, NATONAL ASSOCIATION, AS TRUSTEE FOR THE STRUCTURED ADJUSTABLE RATE MORTGAGE LOAN TRUST, PASS-THROUGH CERTIFICATES SERIES 2005-11, a business entity location unknown, DOE individuals 1 through 10; and ROE business entities 11 through 30, Defendants.	CASE NO.: A-18-770245-C DEPT NO.: 28 **MONACO LANDSCAPE MAINTANCE ASSOCIATION'S RESPONSES TO WELLS FARGO'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**
WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE STRUCTURED ADJUSTABLE RATE MORTGAGE LOAN TRUST, PASS-THROUGH CERTIFICATES SERIES 2005-11	

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 8149 PALACE MONACO; MONACO LANDSCAPE MAINTANANCE ASSOCIATION; and RED ROCK FINANCIAL SERVICES, LLC,

Counterdefendants.

TO: Wells Fargo Bank, National Association, as Trustee for the Structured Adjustable Rate Mortgage Loan Trust Pass-Through Certificates Series 2005-11, Defendant / Counterclaimant;

TO: R. Samuel Ehlers, Esq., and Aaron D. Lancaster, Esq., attorneys for Wells Fargo

Defendant / Counterdefendant Monaco Landscape Maintenance Association ("Monaco"), by and through its counsel of record, Lipson Neilson, P.C., hereby submits its responses to Wells Fargo Bank, National Association as Trustee for the Structured Adjustable Rate Mortgage Loan Trust Pass-Through Certificates, Series 2005-11's ("Wells Fargo") First Set of Requests for Production of Documents.

DEFINITIONS AND INSTRUCTIONS

A. "Unduly Burdensome" – the request seeks discovery that is unduly burdensome or expensive, taking into account the needs of the case, limitation on the party's resources, and the importance of the issues at stake in this litigation.

B. "Vague" – the request contains a word or phrase that is not adequately defined, or the overall request is confusing or ambiguous.

C. "Overly Broad" – the request seeks information or documents beyond the scope of, or beyond the time period relevant to, the subject matter of this litigation.

D. "Nondiscoverable / Irrelevant" – the request in question concerns a matter that is not relevant to the subject matter of this litigation and is not reasonably calculated to lead to the discovery of admissible evidence.

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

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9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

GENERAL OBJECTIONS

Monaco objects to Wells Fargo's Requests to the extent that they seek any information that is protected by any absolute or qualified privilege or exemption, including, but not limited to, the attorney-client privilege, the attorney work-product exemption, and the consulting-expert exemption. Specifically, Monaco objects to Wells Fargo's Requests on the following grounds.

A. Monaco objects to Wells Fargo's Requests to the extent they seek documents or disclosure of information that is protected from disclosure by the attorney-client privilege in accordance with Rule 26 of the Nevada Rules of Civil Procedure and sections 49.035-49.115 of the Nevada Revised Statutes.

B. Monaco objects to Wells Fargo's Requests to the extent they seek documents or disclosure of information that is protected from disclosure by the work-product exemption in accordance with Rule 26(b)(3) of the Nevada Rules of Civil Procedure and applicable case law.

C. Monaco objects to Wells Fargo's Requests to the extent they seek documents or information protected from disclosure pursuant to the consultant-expert exemption in accordance with Rule 26(b)(4) of the Nevada Rules of Civil Procedure and applicable case law.

D. Monaco objects to Wells Fargo's Requests to the extent they seek trade secrets, commercially sensitive information, or confidential proprietary data entitled to protection under Rule 26(c)(1)(g) of the Nevada Rules of Civil Procedure.

E. Monaco objects to Wells Fargo's Requests on the grounds that they are excessively burdensome and that much of the information requested may be obtained by Wells Fargo from other sources more conveniently, less expensively, and with less burden.

F. These responses will be made on the basis of information and writings available to and located by Monaco upon reasonably invesitigation. Monaco reserves the right to modify or supplement any response with additional information as it becomes available.

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
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G. No incidental or implied admissions will be made by the responses to these Requests. The fact that Monaco may respond or object to any Request shall not be deemed an admission that Monaco accepts or admits the existence of any facts set forth or assumed by such a request, or that such response constitutes admissible evidence. The fact that Monaco responds to part of the Request is not to be deemed a waiver by Monaco of objections, including privilege.

H. Monaco objects to any Request to the extent that it would impose upon Monaco greater duties than are set forth under the Nevada Rules of Civil Procedure. Monaco will supplement responses as required by Rule 26(c) of the Nevada Rules of Civil Procedure.

I. Each response will be subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any and all other objections on any ground that would require the exclusion from evidence of any documents herein, all of which objections and grounds are expressed reserved and may be interposed at trial.

RESPONSES

REQUEST FOR PRODUCTION NO. 1:

Any and all Documents YOU sent to or received from Wells Fargo or its predecessors, attorneys, agents, trustees, or servicers regarding the Property from 2004 to present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Monaco objects to this Request on the grounds that the request is overly broad and unduly burdensome in time and/or scope. Monaco also objects to this Request on the grounds it is beyond the scope of permissible discovery because a party does not need to be made aware of its own documents.

Without waiving said objections, Monaco outsources collection activities. Any document sent or received from Wells Fargo or its attorneys or agents regarding the Property would have been between the collection agent, Red Rock Financial Services, LLC ("RRFS") and Wells Fargo.

REQUEST FOR PRODUCTION NO. 2:

Any and all Documents YOU sent to or received from the Buyer and/or its attorneys or agents regarding the Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco also objects to this request on the grounds that the request is overly broad and unduly burdensome in time and/or scope. The request also requests information [which if disclosed] would be in violation of third party privacy rights.

Without waiving said objections, Monaco responds as follows: See Monaco Landscape Maintenance Association's First Supplemental Disclosure Pursuant to Nev. R. Civ. P. 16.1 ("Monaco's Disclosures")

REQUEST FOR PRODUCTION NO. 3:

Any and all Documents YOU sent to or received from the HOA Trustee or its attorneys or agents regarding the Property from 2009 to present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Monaco objects to this Request on the grounds it seeks information which is irrelevant to the claims in this lawsuit, not reasonably calculated to lead to the discovery of admissible evidence, and is not reasonably limited in scope and time. Monaco further objects to this Request on the grounds that it seeks information which may be protected by the attorney-client privilege, or confidential, or proprietary information.

Without waiving said objections, Monaco responds as follows: See Monaco's Disclosures.

REQUEST FOR PRODUCTION NO. 4:

Any and all Documents YOU sent to or received from the Borrower or his attorneys, agents, or trustees regarding the Property from January 1, 2008 to Present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Monaco objects to this Request on the grounds it seeks information which is

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

irrelevant to the claims in this lawsuit, not reasonably calculated to lead to the discovery of admissible evidence, and is not reasonably limited in time and scope. Monaco further objects to this Request on the grounds that it seeks information which may be protected by the attorney-client privilege, or confidential, or proprietary information.

Without waiving said objections, Monaco outsources collection activities. The majority of communications sent to or received from Borrower or its attorneys or agents regarding the Property would have been between the collection agency, RRFS, and Borrower. See Monaco's disclosures.

REQUEST FOR PRODUCTION NO. 5:

Any and all Documents evidencing Trustee's Sale Guarantees, endorsements, "date downs", or other title insurance products for the above-referenced Property obtained during the FORECLOSURE TIME PERIOD.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Monaco objects to this Request as overly broad as to "all documents"; calls for the production of materials which may be protected by the attorney work product privilege; calls for materials which are beyond the scope of NRCP 26; and improperly assumes that any guarantee or title insurance policy might be involved..

Without waiving said objections, Monaco responds as follows: See Monaco's disclosures.

REQUEST FOR PRODUCTION NO. 6:

Any and all Documents which support YOUR contention that the HOA Sale was valid.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco objects to this Request on the grounds that it seeks information which is irrelevant and immaterial because recitals within the Foreclosure Deed are conclusive proof of compliance with the notice requirements of Chapter 116. *See* NRS

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

116.3116; *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.,* 130 Nev. Adv. Op. 75 (2014). Monaco further objects to this Request on the grounds this Request is burdensome and harassing as the Notices were recorded for the world to see and all lenders had actual notice of pertinent Notices.

Without waiving said objections, Monaco responds as follows: *See* Monaco's Disclosures; RRFS Foreclosure File – MON000160-MON000670.

REQUEST FOR PRODUCTION NO. 7:

Any and all Documents which support YOUR contention that the HOA Trustee complied with all statutory notice requirements in conducting the HOA Sale.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco objects to this Request on the grounds that it seeks information which is irrelevant and immaterial because recitals within the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of Chapter 116. *See* NRS 116.3116; *SFR Investments Pool 1, LLC. V. U.S. Bank, N.A.,* 130 Nev. Adv. Op. 75 (2014). Monaco further objects on the grounds this request is burdensome and harassing as the Notices were recorded for the world to see and all lenders had actual notice of pertinent Notices.

Without waiving said objections, Monaco responds as follows: *See* Monaco's Disclosures; RRFS Foreclosure File – MON000160-MON000670.

REQUEST FOR PRODUCTION NO. 8:

Any and all Documents which support YOUR contention that the amounts stated in the HOA Notices represented the correct amounts owed to the HOA at the time of recording.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery

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Telephone: (702) 382-1500 Facsimile: (702) 382-1512

of admissible evidence. Monaco objects to this Request on the grounds that it seeks information which is irrelevant and immaterial because recitals within the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of Chapter 116. *See* NRS 116.3116; *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.,* 130 Nev. Adv. Op. 75 (2014). Monaco further objects on the grounds this Request is burdensome and harassing as the Notices were recorded for the world to see and all lenders had actual notice of pertinent Notices.

Without waiving said objections, Monaco responds as follows: Monaco outsources its collection activities. *See* Monaco's Disclosures; Monaco's 2010, 2014 and 2017 Collection Policies – MON000110-MON00012 and RRFS Foreclosure File – MON000160-MON000670.

REQUEST FOR PRODUCTION NO. 9:

YOUR entire file regarding the Property and the HOA Sale for the Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco further objects to this Request on the grounds that it is not reasonably limited in time and scope. Monaco objects to this Request to the extent this request seeks information [which if disclosed] would be in violation of third-party privacy rights. Monaco objects to this Request on the grounds it lacks foundation and assumes facts not established in discovery. Monaco objects to this Request on the grounds that it is burdensome and duplicative of information already provided.

Without waiving said objections, Monaco responds as follows: Monaco disclosed all non-privileged responsive documents in its possession. Monaco outsources its collection activities to RRFS. *See* Monaco's Disclosures; RRFS Foreclosure File – MON000160-MON000670.

REQUEST FOR PRODUCTION NO. 10:

Any and all Documents Related to, and/or bidding instructions, bids and

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

qualifications of potential bidders, for the HOA Sale of the Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Monaco objects to this Request on the grounds that it seeks information that is irrelevant to the claims of this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco objects to this Request on the grounds that it is overbroad in time and scope. Monaco objects to this Request to the extent that it seeks information [which if disclosed] would be in violation of third-party privacy rights. Monaco objects to this Request on the grounds it lacks foundation and assumes facts not established in discovery. Monaco objects to this Request on the grounds that it is burdensome and duplicative of information already provided.

Without waiving said objections, Monaco responds as follows: *See* Monaco's Disclosures; RRFS Foreclosure File – MON000160-MON000670.

REQUEST FOR PRODUCTION NO. 11:

All Documents that YOU referenced, Identified, referred to, and/or consulted in responding to Wells Fargo's First Set of Interrogatories and Requests for Admissions to YOU.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Monaco objects to this Request on the grounds that it seeks information that is irrelevant to the claims of this lawsuit and is not reasonably calculated to lead to the discovery of admissible evidence. Monaco further objects to this Request on the grounds that it seeks information which may be protected by the attorney-client privilege, or confidential, or proprietary information. Additionally, the responses to Wells Fargo's written discovery is self-explanatory in the answers and objections to same.

Without waiving said objections, Monaco responds as follows: See Monaco's Disclosures.

REQUEST FOR PRODUCTION NO. 12:

All Documents that reflect calculations of the amount of the Lien against the Property, at the inception of the collection and at each stage of the foreclosure thereafter,

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

to the extent the amount was corrected, increased, or modified in any way, through the HOA Sale date.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

This Request is unduly burdensome, ambiguous, vague and undefined as to the term "correct amounts"' and seeks information which is irrelevant and immaterial because the recitals in the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of NRS 116 which sets forth what may be included in a lien, and that including the entire amount is proper for lien foreclosure notices. *See* NRS 116.3116; *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.,* 130 Nev. Adv. Op. 75 (2014).

Without waiving said objections, Monaco responds as follows: Monaco outsources its collection activities, which includes the preparation of the recorded notices. *See* Monaco's Disclosures.

REQUEST FOR PRODUCTION NO. 13:

All Documents reflecting, Relating to, and/or concerning the mailings, personal services, and postings of the HOA Notices.

RESPONSE TO REQUEST FOR PRODUTION NO. 13:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco objects to this Request on the grounds that it is not reasonably limited in time or scope. Monaco objects to this Request on the grounds that it seeks information which is irrelevant and immaterial because recitals within the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of Chapter 116. *See* NRS 116.3116; *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.,* 130 Nev. Adv. Op. 75 (2014). Monaco further objects on the grounds this Request lacks foundation and assumes facts not established in discovery. Monaco further objects on the grounds this request is burdensome and harassing as the Notices were recorded for the world to see and all lenders had actual notice of pertinent Notices.

Without waiving said objections, Monaco responds as follows: Monaco outsources

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

its collection activities, which includes the preparation and mailing of the recorded notices. *See* Monaco's Disclosures.

REQUEST FOR PRODUCTION NO. 14:

All Documents YOU contend demonstrate or imply that Wells Fargo or its predecessors, agents, servicers, or trustees had notice of the Lien, Notice of Default, Notice of Sale, and/or HOA Sale.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Monaco responds and incorporates by reference its objections and response to Request No. 13. In addition, Wells Fargo (and/or its predecessors, agents, servicers, or trustees) was on notice of the HOA's lien due to Nevada's adoption of the Chapter 116 in 1991, thus it was on notice of the HOA's lien from the recordation of the CC&Rs. Additionally, Wells Fargo (and/or its predecessors, agents, servicers, or trustees) specifically reference the HOA in the Deed of trust and knew the HOA Lien could affect its property interest if the Borrower defaulted on HOA assessments. Monaco further objects on the grounds this request is burdensome and harassing as the Notice was recorded for the world to see and all lenders had actual notice of pertinent Notices.

Without waiving the objections, Monaco responds as follows: Monaco outsources its collection activities. *See* Monaco's Disclosures.

REQUEST FOR PRODUCTION NO. 15:

All Documents reflecting, Relating to, and/or concerning the Notice of Lien, as described under "HOA Notices" in the definitions section.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Monaco responds and incorporates by reference its objections and response to Request No. 13.

Without waiving the objections, Monaco responds as follows: Monaco outsources its collection activities. *See* Monaco's Disclosures.

REQUEST FOR PRODUCTION NO. 16:

All Documents reflecting, Relating to, and/or concerning the Notice of Default, as

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

described under “HOA Notices” in the Definitions section.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Monaco responds and incorporates by reference its objections and response to Request No. 13.

Without waiving the objections, Monaco responds as follows: Monaco outsources its collection activities. *See* Monaco’s Disclosures..

REQUEST FOR PRODUCTION NO. 17:

All Documents reflecting, Relating to, and/or concerning the Notice of Sale, as described under “HOA Notices” in the Definitions section.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Monaco responds and incorporates by reference its objections and response to Request No. 13.

Without waiving the objections, Monaco responds as follows: Monaco outsources its collection activities. *See* Monaco’s Disclosures.

REQUEST FOR PRODUCTION NO. 18:

All Documents pertaining to posting and mailing of Notice of Tenant, including any return receipts.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

Monaco objects on the grounds that it is vague and ambiguous as to the undefined term “Notice to Tenant” and requires the HOA to speculate as to its meaning.

Based on the foregoing objection, the HOA is unable to respond to this request.

REQUEST FOR PRODUCTION NO. 19:

All Documents pertaining to delivery of the Foreclosure Deed to the Ombudsman.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant and immaterial because recitals within the Trustee’s Deed Upon Sale are conclusive proof of compliance with the notice requirements of Chapter 116. *See* NRS 116.3116; *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.,* 130 Nev. Adv. Op. 75 (2014).

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9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
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Monaco further objects on the grounds this request is burdensome and harassing as the sale deed was recorded for the world to see. Monaco objects on the grounds this Request assumes legal requirements not present in NRS 116. Monaco objects to the Request on the grounds that it is burdensome and duplicative of information already provided.

Without waiving said objections, Monaco responds as follows: Monaco outsources its collection activities. *See* Monaco's Disclosures.

REQUEST FOR PRODUCTION NO. 20:

All Documents evidencing any written/oral announcements at the HOA Sale.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

Monaco responds and incorporates by reference its objections and response to Request No. 13.

Without waiving the objections, Monaco responds as follows: Monaco outsources its collection activities. *See* Monaco's Disclosures.

REQUEST FOR PRODUCTION NO. 21:

All Documents Related to any agreement(s)/contract(s) between YOU and the HOA's community manager at any time from the inception of the collection for the Property and at each stage of the foreclosure thereafter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco objects to this Request on the grounds that it is vague and ambiguous and is not limited in time and scope making the request unduly burdensome.

Without waiving said objections, Monaco responds as follows: Discovery is ongoing. Monaco will supplement if necessary.

REQUEST FOR PRODUCTION NO. 22:

All Documents related to any agreement(s)/contract(s) between YOU and the Buyer from 2004 to present.

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LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco further objects to this Request on the grounds that it is not reasonably limited in time or scope. Monaco further objects to this Request on the grounds it lacks foundation and assumes facts not established in discovery. The Request is also overly broad and unduly burdensome.

Without waiving said objections, Monaco responds as follows: Monaco has no documents responsive to this Request. Discovery is ongoing. Monaco will supplement if necessary.

REQUEST FOR PRODUCTION NO. 23:

All Documents related to any agreement(s)/contract(s) between YOU and the Borrower from January 1, 2008 to present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence and is not reasonably limited in time or scope. Monaco objects to this Interrogatory on the grounds that it seeks information which may be protected by the attorney-client privilege, or confidential, or proprietary information.

Without waiving the objections, Monaco responds as follows: See Monaco Disclosures.

REQUEST FOR PRODUCTION NO. 24:

All Documents Related to any agreement(s)/contract(s) between YOU and the HOA Trustee in effect during the FORECLOSURE TIME PERIOD.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence and is not reasonably limited in time or scope. Monaco objects to

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

this Request on the grounds that it seeks information which may be protected by the attorney-client privilege, or confidential, or proprietary information.

Without waiving said objections, Monaco responds as follows: *See* Monaco's Disclosures.

REQUEST FOR PRODUCTION NO. 25:

All Documents Related to any agreement(s)/contract(s) between YOU and any professional property purchaser in effect during the FORECLOSURE TIME PERIOD.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco further objects to this Request on the grounds that it is not reasonably limited in time or scope. Monaco further objects to this Request on the grounds it lacks foundation and assumes facts not established in discovery. Monaco objects to this Request on the grounds that it seeks information which may be protected by the attorney-client privilege, or confidential, or proprietary information.

Without waiving said objection, Monaco responds as follows: Monaco has no documents responsive to this request.

REQUEST FOR PRODUCTION NO. 26:

All minutes of the regular meetings of the Board of Directors and the HOA annual meetings Related to the Borrower or the Property during the FORECLOSURE TIME PERIOD.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence.

Without waiving said objections, Monaco responds as follows: *See* Monaco's Disclosures; Monaco's 2010-2013 Executive Session Meeting Minutes – MON000123-MON000138.

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

REQUEST FOR PRODUCTION NO. 27:

All minutes of the regular meetings of the Board of Directors and the HOA annual meetings Related to the Borrower, the Property, the contract or agreement, or the relationship of the disputes Related thereto, between YOU and the HOA community manager, or any collection agent or foreclosure trustee including without limitation the HOA Trustee; the selection, retention and termination of the HOA Trustee and all other collection companies used by the HOA during the FORECLOSURE TIME PERIOD.

RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco further objects that this Request is overly broad in scope, unduly burdensome and compound as it seeks documents from two different types of meetings (the Board of Directors meeting and the HOA annual meeting) related to two different entities (the HOA community manager and the collection agent) for at least six different categories of documents (relating to: (1) Borrower; (2) the Property; (3) the contracts/agreements between the HOA and its community manager; (4) the contracts/agreements between the HOA and its collection agent(s)/foreclosure trustee(s); (5) a vague and ambiguous Request regarding the "relationship . . . related thereto"; and (6) a vague and ambiguous Request regarding the "disputes related thereto"), which results in at least 24 seperae categories of Requested documents.

Without waiving said objections, Monaco responds as follows: *See* Monaco's Disclosures.

REQUEST FOR PRODUCTION NO. 28:

All minutes of the regular meetings of the Board of Directors and the HOA annual meetings Related to policies or procedures for the HOA or its community managers or collection agents and foreclosure trustees including the HOA Trustee for responding to requests by beneficiaries, or their attorneys, agents, trustees, or servicers regarding their

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9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

requests for lien payoffs or their tender of partial of full payment of the HOA liens prior to any HOA non-judicial foreclosure sale during the FORECLOSURE TIME PERIOD.

RESPONSE TO REQUEST FOR PRODUCTION NO. 28:

Monaco objects to this Request on the grounds that it seeks information that is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco further objects to this Request on the grounds that it is vague and ambiguous as to the terms "lien payoffs" and "tender" and calls for a legal conclusion. Monaco further objects to this Request on the grounds that it is not reasonably limited in time or scope, is unduly burdensome, and compound as it seeks information for at least 12 separate and distinct categories of documents. Monaco further objects as this Request assumes facts regarding "policies and procedures" and presents a hypothetical fact regarding an obligation to provide information about the undetermined super-priority lien amount. Additionally, the Request seeks information subject to the attorney-client privilege. The attorney-client privilege is broadly construed and extends to "factual information" and "legal advice."

Without waiving said objections, Monaco responds as follows: *See* Monaco's Disclosures.

REQUEST FOR PRODUCTION NO. 29:

All Documents and Communications between or among the HOA, the HOA Trustee, and/or any person or entity, regarding an attempt to tender partial or full payment of the Lien prior to the HOA Sale.

RESPONSE TO REQUEST FOR PRODUCTION NO. 29:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco further objects to this Request on the grounds that it is vague and ambiguous as to the term "tender" and calls for a legal conclusion. Monaco further objects to this Request on the grounds that it is a hypothetical fact regarding an attempt to tender and is beyond the scope of permissible discovery because a party does

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Telephone: (702) 382-1500 Facsimile: (702) 382-1512

not need to be made aware of the contents of its own documents.

Without waiving said objections, Monaco responds as follows: Monaco outsources all collections activity. *See* Monaco's Disclosures.

REQUEST FOR PRODUCTION NO. 30:

All Documents and Communications between or among the HOA, the HOA Trustee, and the Borrower, regarding an attempt to tender partial or full payment of the Lien prior to the HOA Sale.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco further objects to this Request on the grounds that it is vague and ambiguous as to the term "tender" and calls for a legal conclusion. Monaco further objects to this Request on the grounds that it is a hypothetical fact regarding an attempt to tender and is beyond the scope of permissible discovery because a party does not need to be made aware of the contents of their own documents.

Without waiving said objections, Monaco responds as follows: Monaco outsources its collections activity. *See* Monaco's Disclosures.

REQUEST FOR PRODUCTION NO. 31:

All Documents pertaining to the initial notice required by NRS 116.31162(4), and proof of mailing, sent to the unit owners prior to the Notice of Lien, including any return receipts.

RESPONSE TO REQUEST FOR PRODUCTION NO. 31:

Monaco objects to this Request on the grounds it lacks foundation, assumes facts not established in discovery, and seeks information that is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco objects to this Request on the grounds that it seeks information that is irrelevant and immaterial because recitals within the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of Chapter 116. *See* NRS 116.3116; *SFR*

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Telephone: (702) 382-1500 Facsimile: (702) 382-1512

Investments Pool 1, LLC v. U.S Bank, N.A., 130 Nev. Adv. Op. 75 (2014). Monaco further objects to this Request on the grounds that it improperly imposes a legal duty on the HOA not provided for during the pertinent time period as the notice referred to in this Request was not required by the version of NRS 116.31162 in effect at the time the Notice of Delinquent Assessment Lien was recorded.

Without waiving said objections, Monaco responds as follows: See MON000261.

REQUEST FOR PRODUCTION NO. 32:

All Documents Identifying or pertaining to the person designated under NRS 116.31162(2) to sign the Notice of Default.

RESPONSE TO REQUEST FOR PRODUCTION NO. 32:

Monaco objects to this Request on the grounds that it seeks information that is irrelevant and immaterial because recitals within the Trustee's Deed Upon Sale are conclusive proof of compliance with the notice requirements of Chapter 116. *See* NRS 116.3116; *SFR Investments Pool I, LLC v. U.S. Bank, N.A.,* 130 Nev. Adv. Op. 75 (2014). Further, pursuant to Nevada Law, NRS 116.31162(2) provides that the notice may be "signed by the person designated in the declaration or by the association for that purpose or, if no one is designated, by the president of the association." *See also Nationstar Mortgage, LLC v. Saticoy Bay LLS Series 2227 Shadow Canyon,* 133 Nev. Adv. Op. 91 (2017) (concluding that an HOA may generally designate a foreclosure trustee to sign the notice and not a specific employee as NRS 116.073's definition of "person" supplements NRS 0.039's general definition of "person", which expressly includes "any . . .association.")

Without waiving said objections, Monaco responds as follows: *See* Monaco's Disclosures; Monaco's 2010, 2014 and 2017 Collection Policies – MON000110-MON000121.

REQUEST FOR PRODUCTION NO. 33:

All Documents relating to the conveyance of the Property at the HOA Sale that is evidenced by the Foreclosure Deed.

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Telephone: (702) 382-1500 Facsimile: (702) 382-1512

RESPONSE TO REQUEST FOR PRODUCTION NO. 33:

Monaco objects to this Request on the grounds that it is vague and ambiguous as to the term "relating to" as well as over broad and unduly burdensome.

Without waiving said objections, Monaco responds as follows: Monaco outsources all collections activity. *See* Monaco's Disclosures.

REQUEST FOR PRODUCTION NO. 34:

All Documents and Communications between or among the HOA, the HOA Trustee, and/or any person or entity, regarding acceptance of a partial or full payment of the HOA Lien prior to the HOA Sale.

RESPONSE TO REQUEST FOR PRODUCTION NO. 34:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco further objects to this Request as it is beyond the scope of permissible discovery because a party does not need to be made aware of the contents of its own documents.

Without waiving said objections, Monaco responds as follows: Monaco outsources all collections activity. *See* Monaco's Disclosures.

REQUEST FOR PRODUCTION NO. 35:

All Documents and Communications between or among the HOA, the HOA Trustee, and the Borrower, regarding an attempt to tender partial or full payment of the Lien prior to the HOA Sale.

RESPONSE TO REQUEST FOR PRODUCTION NO. 35:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco further objects to this Request as it is beyond the scope of permissible discovery because a party does not need to be made aware of the contents of its own documents.

Without waiving said objections, Monaco responds as follows: Monaco outsources

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9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

all collections activity. *See* Monaco's Disclosures.

REQUEST FOR PRODUCTION NO. 36:

All Documents and Communications between or among the HOA, the HOA Trustee, and Buyer regarding the HOA Sale or the Property.

RESPONSE TO REQUEST FOR PRODUCTION NO. 36:

Monaco objects to this Request on the grounds it seeks information which is irrelevant to the claims in this lawsuit, not reasonably calculated to lead to the discovery of admissible evidence, and is unduly burdensome.

Without waiving said objections, Monaco responds as follows: Monaco outsources all collections activity. See Monaco's Disclosures.

REQUEST FOR PRODUCTION NO. 37:

Any and all Documents YOU sent to or received from MERS regarding the Property from January 1, 2008 to present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 37:

Monaco objects to this Request on the grounds it seeks information which is irrelevant to the claims in this lawsuit, not reasonably calculated to lead to the discovery of admissible evidence, and is unduly burdensome.

Without waiving said objections, Monaco responds as follows: Monaco outsources all collections activity. See Monaco's Disclosures.

REQUEST FOR PRODUCTION NO. 38:

All Documents and Communications regarding the HOA's collection policy concerning assessments.

RESPONSE TO REQUEST FOR PRODUCTION NO. 38:

Monaco objects to this Request on the grounds it seeks information which is irrelevant to the claims in this lawsuit, not reasonably calculated to lead to the discovery of admissible evidence, and is unduly burdensome.

Without waiving said objections, Monaco responds as follows: See Monaco's Disclosures, MON000110-MON000114.

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

REQUEST FOR PRODUCTION NO. 39:

All Documents and Communications regarding the HOA's allocation of accepted payments for delinquent assessments.

RESPONSE TO REQUEST FOR PRODUCTION NO. 39:

Monaco objects to this Request on the grounds that it seeks information which is irrelevant to the claims in this lawsuit and not reasonably calculated to lead to the discovery of admissible evidence. Monaco objects to this Request on the grounds that it is vague and ambiguous and is not limited in time and scope making the request unduly burdensome.

Without waiving said objections, Monaco responds as follows: Monaco outsources all collections activity. See Monaco's Disclosures.

Dated this 17th day of September, 2019

LIPSON NEILSON, P.C.

By: /s/ Janeen V. Isaacson
_____

J. WILLIAM EBERT, ESQ.
Nevada Bar No. 2697
JANEEN ISAACSON, ESQ.
Nevada Bar No. 6249
9900 Covington Cross Drive, Ste. 120
Las Vegas, Nevada 89144
(702) 382-1500 phone
(702) 382-1512 fax
bebert@lipsonneilson.com
jisaacson@lipsonneilson.com
Attorneys for Defendants/Counterdefendants Monaco Landscape Maintenance Association

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of September, 2019, service of the foregoing **MONACO LANDSCAPE MAINTANCE ASSOCIATION'S RESPONSES TO WELLS FARGO'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS** was made pursuant to FRCP 5(b) and electronically transmitted to the Clerk's Office using the CM/ECF system for filing and transmittal to all interested parties.

Natalie C. Lehman, Esq. Nevada Bar No. 12995 WRIGHT FINLAY & ZAK, LLP 7785 W. Sahara Ave., Suite 200 Las Vegas, Nevada 89117 (702) 475-7964 – Telephone nlehman@wrightlegal.net *Attorneys for Wells Fargo Bank, National Association, as Trustee for the Structured Adjustable Rate Mortgage Loan Trust, Pass-Through Certificates Series 2005-11.*	Michael F. Bohn, Esq. Nevada Bar No. 1641 MICHAEL F. BOHN, ESQ., LTD. 2260 Corporate Circle, Suite 480 Henderson, Nevada 89074 (702) 642-3113 – Telephone (702) 642-9766 – Facsimile mbohn@bohnlawfirm.com *Attorneys for Saticoy Bay LLC Series 8149 Palace Monaco*

/s/ Renee M. Rittenhouse

An Employee of LIPSON NEILSON, P.C.