

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS DEVELOPMENT)
GROUP, LLC, A NEVADA LIMITED)
LIABILITY COMPANY,)

Appellant,)

vs.)

THE BANK OF NEW YORK)
MELLON, F/K/A THE BANK OF NEW)
YORK, AS TRUSTEE FOR THE)
CERTIFICATEHOLDERS OF CWABS,)
INC., ASSET-BACKED)
CERTIFICATES, SERIES 2006-7,)

Respondent.)

Electronically Filed
Sep 14 2021 02:16 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court No. 81961

Consolidated with No. 82266

APPEAL

From the Eighth Judicial District Court,
The Honorable Mark R. Denton, District Court Judge
District Court Case No. A-17-756215-C

JOINT APPENDIX - VOLUME 1

Roger P. Croteau, Esq.
Nevada Bar No. 4958
Timothy E. Rhoda, Esq.
Nevada Bar No. 7878

ROGER P. CROTEAU AND ASSOCIATES, LTD
2810 West Charleston Boulevard, Suite 75
Las Vegas, Nevada 89102
Telephone: (702) 254-7775
Facsimile: (702) 228-7719

Attorneys for Plaintiff/Appellant Las Vegas Development Group, LLC

INDEX OF APPENDIX - CHRONOLOGICAL

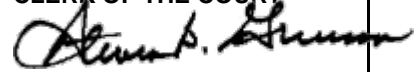
| DOCUMENT | PAGE |
|--|-------------|
| VOLUME 1 | |
| First Amended Complaint | 0001 - 0010 |
| Acceptance of Service | 0011 - 0012 |
| Answer to Complaint and Counterclaim | 0013 - 0038 |
| LVDG Motion to Dismiss Counterclaim and Motion for Summary Judgment | 0039 - 0063 |
| Opposition to Motion to Dismiss and Motion for Summary Judgment | 0064 - 0072 |
| Reply to Opposition to Motion to Dismiss and Motion for Summary Judgment | 0073 - 0081 |
| Transcript of Hearing 8-10-17 | 0082 - 0101 |
| VOLUME 2 | |
| BONY Motion for Summary Judgment | 0102 - 0231 |
| VOLUME 3 | |
| LVDG Opposition to Motion for Summary Judgment | 0232 - 0334 |
| Reply to Opposition to Motion for Summary Judgment | 0335 - 0367 |
| Order Denying Motion for Summary Judgment | 0368 - 0369 |
| Notice of Entry of Order Denying Motion for Summary Judgment | 0370 - 0373 |
| Answer to Counterclaim | 0374 - 0381 |
| Findings of Fact, Conclusions of Law and Judgment | 0382 - 0399 |
| VOLUME 4 | |
| BONY Memorandum of Costs and Disbursements | 0400 - 0475 |
| Notice of Entry of FFCL | 0476 - 0497 |
| Voluntary Dismissal of Hernandez | 0498 - 0500 |
| Notice of Appeal (Trial Court Judgment) | 0501 - 0503 |
| BONY Motion for Attorneys' Fees and Costs | 0504 - 0610 |
| Opposition to Motion for Attorneys' Fees and Costs | 0611 - 0621 |
| Reply in Support of Motion for Attorneys' Fees and Costs | 0622 - 0626 |

[illegible]

INDEX OF APPENDIX - ALPHABETICAL

| DOCUMENT | VOLUME : PAGE |
|--|----------------------|
| Acceptance of Service | 1:0011 |
| Answer to Complaint and Counterclaim | 1:0013 |
| Answer to Counterclaim | 3:0374 |
| Bench Trial Transcript - Day 1 | 5:0648 |
| Bench Trial Transcript - Day 2 | 5:0741 |
| BONY Memorandum of Costs and Disbursements | 4:0400 |
| BONY Motion for Attorneys' Fees and Costs | 4:0504 |
| BONY Motion for Summary Judgment | 2:0102 |
| Decision | 4:0627 |
| Findings of Fact, Conclusions of Law and Judgment | 3:0382 |
| First Amended Complaint | 1:0001 |
| LVDG Motion to Dismiss Counterclaim and Motion for Summary Judgment | 1:0039 |
| LVDG Opposition to Motion for Summary Judgment | 3:0232 |
| Notice of Appeal (Order Granting Attorney' Fees and Costs) | 4:0645 |
| Notice of Appeal (Trial Court Judgment) | 4:0501 |
| Notice of Entry of FFCL | 4:0476 |
| Notice of Entry of Order Denying Motion for Summary Judgment | 3:0370 |
| Notice of Entry of Order Granting Motion for Attorneys' Fees and Costs in Part | 4:0636 |
| Opposition to Motion for Attorneys' Fees and Costs | 4:0611 |
| Opposition to Motion to Dismiss and Motion for Summary Judgment | 1:0064 |
| Order Denying Motion for Summary Judgment | 3:0368 |
| Order Granting Motion for Attorneys' Fees and Costs in Part | 4:0631 |
| Reply in Support of Motion for Attorneys' Fees and Costs | 4:0622 |
| Reply to Opposition to Motion for Summary Judgment | 3:0335 |

[illegible]



1 **ACOM**
ROGER P. CROTEAU, ESQ.
2 Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
3 Nevada Bar No. 7878
ROGER P. CROTEAU & ASSOCIATES, LTD.
4 9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
5 (702) 254-7775
(702) 228-7719 (facsimile)
6 croteaulaw@croteaulaw.com
Attorney for Plaintiff
7 **LAS VEGAS DEVELOPMENT GROUP, LLC**

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 ***

12 LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)
13)
Plaintiff,)
14)
vs.)
15)
DANIA V. HERNANDEZ, an individual; THE)
16 BANK OF NEW YORK MELLON f/k/a THE)
BANK OF NEW YORK, AS TRUSTEE FOR)
17 THE CERTIFICATEHOLDERS OF CWABS,)
INC., ASSET-BACKED CERTIFICATES,)
18 SERIES 2006-7, a national banking association;)
DOE individuals I through XX; and ROE)
19 CORPORATIONS I through XX,)
20 Defendants.)

Case No. A-17-756215-C
Dept. No. XIII

**ARBITRATION EXEMPTION
CLAIMED: (1) TITLE TO REAL
PROPERTY; (2) DECLARATORY
RELIEF**

21 **FIRST AMENDED COMPLAINT**

22 COMES NOW, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, by and through
23 its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby complains and alleges
24 as follows:

25 **PARTIES**

26 1. At all times relevant to this matter, Plaintiff, LAS VEGAS DEVELOPMENT GROUP,
27 LLC, was and is a Nevada limited liability company, licensed to do business and doing
28

business in the County of Clark, State of Nevada.

2. Upon information and belief, at all times relevant to this matter, Defendant, DANIA V. HERNANDEZ, was and is an individual and resident of the County of Clark, State of Nevada.

3. Upon information and belief, at all times relevant to this matter, Defendant, THE BANK OF NEW YORK MELLON f/k/a THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2006-7 (“BONY”), was and is a national banking association, authorized to do business and doing business in the County of Clark, State of Nevada.

4. Plaintiff is unaware of the true names and capacities whether individuals, corporations, associates, or otherwise of Defendants DOES I through X and ROE Corporations I through X, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff is informed and believes and thereupon alleges that these Defendants, and each of them, claim some right, title or interest in the real property at issue herein or are in some manner responsible and liable for the acts and damages alleged in this Complaint. Plaintiff will seek leave of this Court to amend this Complaint to allege the true names and capacities of the DOES and ROE CORPORATIONS Defendants when the true names of the DOES and ROE CORPORATIONS Defendants are ascertained.

GENERAL ALLEGATIONS

5. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 4 hereof as if set forth fully herein.

6. Prior to the facts and circumstances alleged herein, a Declaration was recorded in the Office of the Recorder of Clark County, Nevada, thereby creating Hidden Canyon Owners Association (*the “HOA”*) and perfecting a lien in favor of the HOA on all real property located within the common interest community it governed, including but not limited to that real property commonly known as 1524 Highfield Court, North Las Vegas, Nevada 89032, Assessor Parcel No. 139-09-410-021 (*the “Property”*).

7. The lien having been recorded prior to any other liens is first in right and first in time as

to all other interests recorded after the Declaration with the exception of liens for real estate taxes and other governmental assessments.

8. N.R.S. Chapter 116 provides that the lien perfected by the Declaration is subordinate to a “first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent.”

9. While this statutory subordination applies to the majority of the lien perfected by the Declaration, pursuant to N.R.S. 116.3116(2)(c), it does not subordinate the lien to two specific charges incurred under it.

10. The charges which are specifically NOT subordinated to the first security interest include:
(1) any charges incurred by the association on a unit pursuant to NRS 116.310312 and;
(2) that portion of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

11. On or about April 3, 2006, Defendant, DANIA V. HERNANDEZ (“Former Owner”), acquired title to and ownership of the Property.

12. Between approximately April 3, 2006, and March 2, 2011, Former Owner held title to and ownership of the Property either jointly, in an individual capacity or by and through a trust.

13. Upon information and belief, Former Owner obtained one or more mortgages and/or lines of credit secured by the Property.

14. On April 19, 2006, a deed of trust was recorded against the Property in the Office of the Recorder of Clark County, Nevada, as Instrument No. 20060419-0000609 (“First Deed of Trust”).

15. Upon information and belief, BONY became the holder and/or owner of the First Deed of Trust by way of an assignment recorded in the Office of the Recorder of Clark County, Nevada on April 21, 2011, as Instrument No. 20110421-0000262. Upon information and belief, a Corrective Assignment was thereafter recorded on June 12, 2014, as Instrument

No. 20140612-0001984, which corrected BONY's name.

16. Former Owner may claim an interest in the Property.

17. BONY may claim a beneficial interest in the First Deed of Trust and, as such, claim an interest in the Property.

18. The Property is and was subject to certain Covenants, Conditions and Restrictions ("CC&Rs") of HOA.

19. By virtue of his or her ownership of the Property, Former Owner was a member of the HOA and accordingly was obligated to pay HOA assessments pursuant to the terms of the CC&Rs.

20. At some point in time during his or her ownership of the Property, Former Owner failed to pay the HOA assessments related to the Property.

21. As a result of the failure of Former Owner to pay the HOA assessments, HOA recorded a Notice of Delinquent Assessment Lien ("*HOA Lien*") with the Office of the Recorder of Clark County, Nevada.

22. Thereafter, HOA recorded a Notice of Default and Election to Sell with the Office of the Recorder of Clark County, Nevada.

23. Upon information and belief, the Notice of Default and Election to Sell was served upon the Former Owner, as well as all interested parties holding a security interest in the Property, including but not limited to BONY or its predecessor-in-interest.

24. After the expiration of 90 days from the recording and mailing of the Notice of Default and Election to Sell, HOA caused a Notice of Trustee's Sale to be recorded with Office of the Clark County Recorder.

25. Upon information and belief, the Notice of Trustee's Sale was served on the Former Owner, as well as all interested parties holding a security interest in the Property, including but not limited to BONY or its predecessor-in-interest.

26. On or about March 2, 2011, HOA caused a foreclosure sale ("*HOA Foreclosure Sale*") to take place pursuant to the powers conferred by the Nevada Revised Statutes 116.3116, 116.31162, 116.31163 and 116.31164; the CC&Rs; the Notice of Delinquent Assessment

Lien; and the Notice of Default and Election to Sell.

27. HOA purchased the Property by successfully bidding at the HOA Foreclosure Sale in accordance with N.R.S. 116.3116, *et seq.*
28. On or about March 3, 2011, a Trustee's Deed Upon Sale ("*HOA Foreclosure Deed*") was recorded in the Official Records of the Clark County Recorder as Instrument No. 20110303-0003434, vesting title to the Property in the name of HOA.
29. The HOA Foreclosure Sale complied with all requirements of law, including but not limited to, the recording and mailing of copies of the Notice of Delinquent Assessment and Notice of Default, and the recording, posting and publication of the Notice of Sale.
30. Upon information and belief, the Defendants had actual and/or constructive notice of the HOA foreclosure proceedings.
31. N.R.S. 116.3116(2) provides that an HOA Lien has priority over all other liens and encumbrances except:
- (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;
 - (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and
 - (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.
32. N.R.S. 116.3116(2) further provides that a portion of the HOA Lien has priority over even a first security interest in the Property, stating as follows:
- The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien[.]
33. The HOA incurred charges within the nine (9) months immediately preceding the initiation of the HOA foreclosure action that constituted super priority amounts.
34. No party still claiming an interest in the Property recorded a lien or encumbrance prior to the declaration creating the HOA.

35. HOA's bid at the HOA Foreclosure Sale was equal to or in excess of the amount necessary to satisfy the costs of sale and the super-priority portion of the HOA Lien.
36. Upon information and belief, the HOA or its agent distributed or should have distributed any excess funds to lien holders in order of priority pursuant to N.R.S. 116.3114(c).
37. Upon information and belief, Defendants had actual and/or constructive notice of the requirement to pay assessments to the HOA and of the HOA Lien.
38. Prior to the HOA Foreclosure Sale, the First Deed of Trust had not been assigned to the Secretary of Housing and Urban Development ("*HUD*"), Federal National Mortgage Association ("*FNMA*"), Federal Home Loan Mortgage Corporation ("*Freddie Mac*") or any governmental agency or instrumentality.
39. At the time of the HOA Foreclosure Sale, neither the United States nor any of its agencies or instrumentalities possessed any interest in the First Deed of Trust or the Property.
40. Upon information and belief, prior to the HOA Foreclosure Sale, no individual or entity paid the full amount of delinquent assessments described in the Notice of Default.
41. Upon information and belief, prior to the HOA Foreclosure Sale, no individual or entity paid the super-priority portion of the delinquent assessments described in the Notice of Default.
42. Upon information and belief, Defendants had actual and/or constructive notice of the super-priority portion of the HOA Lien.
43. Upon information and belief, Former Owner knew or should have known that his or her ownership interest would be extinguished through foreclosure if he or she failed to satisfy the HOA Lien.
44. Upon information and belief, BONY and/or its predecessor-in-interest knew or should have known that any security interest that it may have possessed pursuant to the First Deed of Trust would be extinguished through foreclosure if it failed to cure the super-priority portion of the HOA Lien representing nine (9) months of assessments for common expenses based upon the periodic budget adopted by the HOA which would have become due in the absence of acceleration for the relevant time period.

- 1 45. Pursuant to N.R.S. 116.31166, the HOA Foreclosure Sale vested title in HOA “without
2 equity or right of redemption.”
- 3 46. Pursuant to N.R.S. 116.31166, the HOA Foreclosure Deed is conclusive against the
4 Property’s “former owner, his or her heirs and assigns, and all other persons.”
- 5 47. Former Owner’s ownership interest in the Property was extinguished by the foreclosure
6 of the HOA Lien.
- 7 48. BONY and/or its predecessor-in-interest’s security interest in the Property, if any, was
8 extinguished by the foreclosure of the HOA Lien and the First Deed of Trust was
9 rendered null, void and unenforceable.
- 10 49. Any and all other existing security interests in the Property, if any, were likewise
11 extinguished by the foreclosure of the HOA Lien and rendered null, void and
12 unenforceable.
- 13 50. By virtue of its purchase of the Property at the HOA Foreclosure Sale, HOA became the
14 sole owner of all right, title and interest in the Property free and clear of any
15 encumbrances of the Defendants.
- 16 51. On March 30, 2011, HOA transferred and sold the Property to Plaintiff.
- 17 52. On March 31, 2011, a Quitclaim Deed was recorded in the Official Records of the Clark
18 County Recorder as Instrument No. 20110331-0003138, transferring all right, title and
19 interest in the Property from HOA to Plaintiff. Said Quitclaim Deed was re-recorded on
20 April 26, 2012, as Instrument No. 20120426-0000422, as January 28, 2013, as
21 Instrument No. 20130128-0002187.
- 22 53. In the matter of *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d
23 408, 2014 WL 4656471 (Adv. Op. No. 75, Sept. 18, 2014), the Nevada Supreme Court
24 resolved a split that previously existed in the state and federal courts of the State of
25 Nevada regarding the force, effect and interpretation of N.R.S. §116.3116.
- 26 54. In doing so, the Nevada Supreme Court clarified that the statute provides a homeowners
27 association a true super-priority lien over real property that can and does extinguish a first
28 deed of trust when non-judicially foreclosed. *Id.*

55. In *SFR Investments*, the Nevada Supreme Court also recognized that a foreclosure deed “reciting compliance with notice provisions of NRS 116.31162 through NRS 116.31168 ‘is conclusive’ as to the recitals ‘against the unit’s former owner, his or her heirs and assigns and all other persons.’” *See id.* at 3 (citing NRS 116.3116(2)).

56. Moreover, under Nevada law, the Association foreclosure sale and the resulting foreclosure deed are both presumed valid. NRS 47.250(16)-(18) (stating that disputable presumptions exist “that the law has been obeyed”; “that a trustee or other person, whose duty it was to convey real property to a particular person, has actually conveyed to that person, when such presumption is necessary to perfect the title of such person or a successor in interest”; “that private transactions have been fair and regular”; and “that the ordinary course of business has been followed.”).

57. More than 6 years have passed from the date of the HOA Foreclosure Sale until the filing of this action.

58. No Defendant has taken any action to contest the force and effect of the HOA Foreclosure Sale to date and the statutory time period in which they might do so has lapsed.

FIRST CAUSE OF ACTION

(Quiet Title/Declaratory Relief against all Defendants)

59. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 58 hereof as if set forth fully herein.

60. HOA properly acquired title and ownership of the Property at the HOA Foreclosure Sale

61. By virtue of its purchase of the Property at the HOA Foreclosure Sale, HOA became the sole owner of all right, title and interest in the Property free and clear of any encumbrances of the Defendants.

62. HOA subsequently transferred and sold the Property to Plaintiff.

63. Former Owner may claim an ownership interest in the Property.

64. BONY may claim a beneficial interest in the First Deed of Trust and, as such, claim an interest in the Property.

65. A justiciable controversy exists regarding the right, title and interest held by Plaintiff and

Defendants in the Property.

66. The interests of Plaintiff and Defendants are adverse in this justiciable controversy.

67. The Plaintiff has a legally protectible interest in the Property.

68. The controversy between Plaintiff and Defendants is ripe for judicial determination.

69. This Court should enter an Order which determines all and every claim, estate or interest of the parties in the Property.

70. The Plaintiff is entitled to a declaratory judgment finding that: (1) Plaintiff is the title owner of the Property; (2) the HOA Foreclosure Deed is valid and enforceable; (3) the HOA Foreclosure Sale extinguished the applicable Defendants' ownership and security interests in the Property as a matter of law; (4) Plaintiff's rights and interest in the Property are superior to any interest claimed by the Defendants.

71. Title to the Property should be quieted solely in the name of Plaintiff.

72. As a direct and proximate result of the actions of the Defendants, it has become necessary for Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.

73. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil Procedure as further facts become known.

WHEREFORE, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, prays for judgment as follows:

A. On its First Cause of Action, for an Order which determines all and every claim, estate or interest of the parties in the Property, finding that: (1) Plaintiff is the title owner of the Property; (2) the HOA Foreclosure Deed is valid and enforceable; (3) the HOA Foreclosure Sale extinguished the applicable Defendants' ownership and security interests in the Property; (4) Plaintiff's rights and interest in the Property are superior to any interest claimed by the Defendants.

//

//

//

- B. For costs and attorneys' fees incurred in bringing this action; and
C. For such other and further relief as this Court may deem meet and proper.

DATED this 8th day of June, 2017.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda
ROGER P. CROTEAU, ESQ.
Nevada State Bar No. 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
(702) 254-7775
Attorney for Plaintiff
LAS VEGAS DEVELOPMENT GROUP, LLC

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

AOSC
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
ROGER P. CROTEAU & ASSOCIATES, LTD.
9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
(702) 254-7775
(702) 228-7719 (facsimile)
croteaulaw@croteaulaw.com
Attorney for Plaintiff
LAS VEGAS DEVELOPMENT GROUP, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)
Plaintiff,)
vs.)
DANIA V. HERNANDEZ, an individual; THE)
BANK OF NEW YORK MELLON f/k/a THE)
BANK OF NEW YORK, AS TRUSTEE FOR)
THE CERTIFICATEHOLDERS OF CWABS,)
INC., ASSET-BACKED CERTIFICATES,)
SERIES 2006-7, a national banking association;)
DOE individuals I through XX; and ROE)
CORPORATIONS I through XX,)
Defendants.)

Case No. A-17-756215-C
Dept. No. XIII

ACCEPTANCE OF SERVICE

I, TENESA S. SCATURRO, of the law firm AKERMAN, LLP, do hereby accept service
of the above-captioned Summons and First Amended Complaint on behalf of the Defendant,
THE BANK OF NEW YORK MELLON f/k/a THE BANK OF NEW YORK, AS TRUSTEE
//

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

1 FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET-BACKED CERTIFICATES,
2 SERIES 2006-7, a national banking association, on this the 9 day of June, 2017.

3 AKERMAN, LLP

4 

5 TENESA S. SCATURRO, ESQ.

6 Nevada Bar No. 12488

7 1160 Town Center Drive, Suite 330

8 Las Vegas, Nevada 89144

9 (702) 634-5000

10 tenesa.scaturro@akerman.com

11 *Attorneys for Defendant*

12 **THE BANK OF NEW YORK MELLON**


13 **f/k/a THE BANK OF NEW YORK, AS**

14 **TRUSTEE FOR THE**

15 **CERTIFICATEHOLDERS OF CWABS,**

16 **INC., ASSET-BACKED**

17 **CERTIFICATES, SERIES 2006-7**



ANS

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

TENESA S. SCATURRO, ESQ.

Nevada Bar No. 12488

AKERMAN LLP

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: ariel.stern@akerman.com

Email: tenesa.scaturro@akerman.com

*Attorneys for The Bank of New York Mellon f/k/a
The Bank of New York, as Trustee for the
Certificateholders of CWABS, Inc., Asset-Backed
Certificates, Series 2006-7*

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC,
a Nevada limited liability company,

Plaintiff,

vs.

DANIA V. HERNANDEZ, an individual; THE
BANK OF NEW YORK MELLON F/K/A THE
BANK OF NEW YORK, AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF CWABS,
INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-7, a national banking association;
DOE individuals I through XX; and ROE
CORPORATIONS I through XX,

Defendants.

THE BANK OF NEW YORK MELLON F/K/A
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF
CWABS, INC., ASSET-BACKED
CERTIFICATES, SERIES 2006-7,

Counterclaimant,

vs.

LAS VEGAS DEVELOPMENT GROUP, LLC,
a Nevada limited liability company,

Counterdefendant.

Case No.: A-17-756215-C

Dept. No.: XIII

**THE BANK OF NEW YORK MELLON,
AS TRUSTEE'S ANSWER TO
PLAINTIFF'S COMPLAINT AND
COUNTERCLAIMS**

AKERMAN LLP

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

1 The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the
2 Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-7 (BoNYM) answers
3 Las Vegas Development Group, LLC's complaint as follows:

4 **PARTIES**

5 1. BoNYM is without sufficient information or belief to admit or deny the allegations of
6 Paragraph 1 and therefore denies the same.

7 2. BoNYM is without sufficient information or belief to admit or deny the allegations of
8 Paragraph 2 and therefore denies the same.

9 3. BoNYM admits that it does business in Clark County, Nevada. BoNYM is without
10 sufficient information to admit or deny the allegation that it conducted business in Clark County,
11 Nevada “at all relevant times to this matter” and therefore denies the same.

12 4. The allegations of Paragraph 4 relate to alleged fictitious parties, and BoNYM is
13 without sufficient information or knowledge to admit or deny allegations related to unknown
14 fictitious parties, and therefore denies the same.

15 **GENERAL ALLEGATIONS**

16 5. BoNYM adopts and incorporates by reference all of the preceding paragraphs as if
17 fully set forth herein.

18 6. BoNYM admits that Cheyenne Ridge Association (Hidden Canyon Owners
19 Association) recorded a Declaration of Covenants, Conditions, and Restrictions governing the
20 property located at 1524 Highfield Court, North Las Vegas, Nevada 89032. The remainder of the
21 allegations contained in paragraph 6 are legal conclusions to which no response is required. To the
22 extent such allegations require a response, BoNYM is without sufficient information or knowledge
23 to admit or deny the remaining allegations and therefore denies the same.

24 7. The allegations in paragraph 7 are legal conclusions to which no response is required.
25 To the extent such allegations require a response, BoNYM is without sufficient information or belief
26 to admit or deny and therefore denies the same.

27 8. The allegations in paragraph 8 are legal conclusions to which no response is required.
28 To the extent a response is required, BoNYM denies that the allegations are a full or complete

1 statement of applicable law. BoNYM denies that the HOA foreclosure extinguished the deed of
2 trust.

3 9. The allegations in paragraph 9 are legal conclusions to which no response is required.
4 To the extent a response is required, BoNYM denies that the allegations are a full or complete
5 statement of applicable law. BoNYM denies that the HOA foreclosure extinguished the deed of
6 trust.

7 10. The allegations in paragraph 10 are legal conclusions to which no response is
8 required. To the extent a response is required, BoNYM denies that the allegations are a full or
9 complete statement of applicable law. BoNYM denies that the HOA foreclosure extinguished the
10 deed of trust.

11 11. Admitted.

12 12. BoNYM is without sufficient information or knowledge to admit or deny the
13 allegations in paragraph 12 and therefore denies the same.

14 13. Admitted.

15 14. Admitted.

16 15. BoNYM admits it is the beneficiary under the first deed of trust as evidenced by the
17 assignment recorded as Instrument No. 20110421-0000262 and subsequent corrective assignment
18 recorded as Instrument No. 20140612-0001984. BoNYM denies the remaining allegations.

19 16. BoNYM is without sufficient information or knowledge to admit or deny the
20 allegations in paragraph 16 and therefore denies the same.

21 17. BoNYM admits it claims an interest in the property.

22 18. Upon information and belief, admitted.

23 19. Upon information and belief, admitted.

24 20. BoNYM is without sufficient information or knowledge to admit or deny the
25 allegations in paragraph 20 and therefore denies the same.

26 21. BoNYM admits the HOA recorded a notice of delinquent assessment lien. BoNYM
27 is without sufficient information or knowledge to admit or deny the remaining allegations in
28 paragraph 21 and therefore denies the same.

- 1 22. Admitted.
- 2 23. BoNYM is without sufficient information or knowledge to admit or deny the
3 allegations in paragraph 23 and therefore denies the same.
- 4 24. BoNYM is without sufficient information or knowledge to admit or deny the
5 allegations in paragraph 24 and therefore denies the same.
- 6 25. BoNYM is without sufficient information or knowledge to admit or deny the
7 allegations in paragraph 25 and therefore denies the same.
- 8 26. BoNYM admits that a trustee's deed upon sale was recorded on March 3, 2011 as
9 Instrument No. 201103030003434. BoNYM is without sufficient information or knowledge to
10 admit or deny the remaining allegations in paragraph 26 and therefore denies the same.
- 11 27. BoNYM is without sufficient information or knowledge to admit or deny the
12 allegations in paragraph 27 and therefore denies the same.
- 13 28. Admitted.
- 14 29. Denied.
- 15 30. The allegations in paragraph 30 are legal conclusions to which no response is
16 required. To the extent a response is required, BoNYM is without sufficient information or
17 knowledge to admit or deny the allegations in paragraph 30 and therefore denies the same.
- 18 31. The allegations contained in paragraph 31 are legal conclusions to which no response
19 is required. To the extent a response is required, BoNYM denies the allegations are a full or
20 complete statement of applicable law. BoNYM denies that the HOA foreclosure extinguished the
21 deed of trust.
- 22 32. The allegations contained in paragraph 32 are legal conclusions to which no response
23 is required. To the extent a response is required, BoNYM denies the allegations are a full or
24 complete statement of applicable law. BoNYM denies that the HOA foreclosure extinguished the
25 deed of trust.
- 26 33. BoNYM is without sufficient information or knowledge to admit or deny the
27 allegations in paragraph 33 and therefore denies the same.
- 28

1 34. BoNYM is without sufficient information or knowledge to admit or deny the
2 allegations in paragraph 34 and therefore denies the same.

3 35. BoNYM is without sufficient information or knowledge to admit or deny the
4 allegations in paragraph 35 and therefore denies the same.

5 36. The allegations contained in paragraph 36 are legal conclusions to which no response
6 is required. To the extent a response is required, BoNYM is without sufficient information or
7 knowledge to admit or deny the allegations in paragraph 36 and therefore denies the same.

8 37. The allegations contained in paragraph 37 are legal conclusions to which no response
9 is required. To the extent a response is required, BoNYM is without sufficient information or
10 knowledge to admit or deny the allegations in paragraph 37 and therefore denies the same.

11 38. Admitted.

12 39. BoNYM is without sufficient information or knowledge to admit or deny the
13 allegations in paragraph 39 and therefore denies the same.

14 40. BoNYM is without sufficient information or knowledge to admit or deny the
15 allegations in paragraph 40 and therefore denies the same.

16 41. Denied.

17 42. The allegations contained in paragraph 42 are legal conclusions to which no response
18 is required. To the extent a response is required, BoNYM is without sufficient information or
19 knowledge to admit or deny the allegations in paragraph 42 and therefore denies the same.

20 43. BoNYM is without sufficient information or knowledge to admit or deny the
21 allegations in paragraph 43 and therefore denies the same.

22 44. Denied.

23 45. The allegations contained in paragraph 45 are legal conclusions to which no response
24 is required. To the extent a response is required, BoNYM denies the allegations are a full or
25 complete statement of applicable law. BoNYM denies that the HOA foreclosure extinguished the
26 deed of trust.

27 46. The allegations contained in paragraph 46 are legal conclusions to which no response
28 is required. To the extent a response is required, BoNYM denies the allegations are a full or

1 complete statement of applicable law. BoNYM denies that the HOA foreclosure extinguished the
2 deed of trust.

3 47. BoNYM is without sufficient information or knowledge to admit or deny the
4 allegations in paragraph 47 and therefore denies the same.

5 48. Denied.

6 49. BoNYM is without sufficient information or knowledge to admit or deny the
7 allegations in paragraph 49 and therefore denies the same.

8 50. Denied.

9 51. BoNYM admits a quitclaim deed from the HOA to Las Vegas Development Group
10 was recorded as Instrument No. 201103310003138 on March 31, 2011. BoNYM admits a corrective
11 quitclaim deed was recorded as Instrument No. 201204260000422 on April 26, 2012. BoNYM
12 admits a second corrective quitclaim deed was recorded as Instrument No. 201301280002187 on
13 January 28, 2013. BoNYM is without sufficient information or knowledge to admit or deny the
14 remaining allegations and therefore denies the same.

15 52. BoNYM admits a quitclaim deed from the HOA to Las Vegas Development Group
16 was recorded as Instrument No. 201103310003138 on March 31, 2011. BoNYM admits a corrective
17 quitclaim deed was recorded as Instrument No. 201204260000422 on April 26, 2012. BoNYM
18 admits a second corrective quitclaim deed was recorded as Instrument No. 201301280002187 on
19 January 28, 2013. BoNYM is without sufficient information or knowledge to admit or deny the
20 remaining allegations and therefore denies the same.

21 53. The allegations contained in paragraph 53 are legal conclusions to which no response
22 is required. To the extent a response is required, BoNYM denies the allegations are a full or
23 complete statement of applicable law. BoNYM denies that the HOA foreclosure extinguished the
24 deed of trust.

25 54. The allegations contained in paragraph 54 are legal conclusions to which no response
26 is required. To the extent a response is required, BoNYM denies the allegations are a full or
27 complete statement of applicable law. BoNYM denies that the HOA foreclosure extinguished the
28 deed of trust.

1 55. The allegations contained in paragraph 55 are legal conclusions to which no response
2 is required. To the extent a response is required, BoNYM denies the allegations are a full or
3 complete statement of applicable law. BoNYM denies that the HOA foreclosure extinguished the
4 deed of trust.

5 56. The allegations contained in paragraph 56 are legal conclusions to which no response
6 is required. To the extent a response is required, BoNYM denies the allegations are a full or
7 complete statement of applicable law. BoNYM denies that the HOA foreclosure extinguished the
8 deed of trust.

9 57. Admitted.

10 58. Denied.

FIRST CAUSE OF ACTION

(Quiet Title/Declaratory Relief against all Defendants)

11 59. BoNYM adopts and incorporates by reference all of the preceding paragraphs as if
12 fully set forth herein.

13 60. BoNYM is without sufficient information or knowledge to admit or deny the
14 allegations in paragraph 60 and therefore denies the same.

15 61. Denied.

16 62. BoNYM is without sufficient information or knowledge to admit or deny the
17 allegations in paragraph 62 and therefore denies the same.

18 63. BoNYM is without sufficient information or knowledge to admit or deny the
19 allegations in paragraph 63 and therefore denies the same.

20 64. BoNYM admits it claims an interest in the property.

21 65. Admitted.

22 66. Admitted.

23 67. The allegations contained in paragraph 67 are legal conclusions to which no response
24 is required. To the extent a response is required, BoNYM is without sufficient information or
25 knowledge to admit or deny the allegations in paragraph 67 and therefore denies the same.

26 68. Admitted.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 69. Admitted.
- 70. Denied.
- 71. Denied.
- 72. Denied.
- 73. This paragraph does not call for a response from BoNYM.

AFFIRMATIVE DEFENSES

BoNYM asserts the following affirmative defenses. Discovery and investigation of this case is not yet complete, and BoNYM reserves the right to amend this Answer by adding, deleting, or amending defenses as may be appropriate. Any allegations not specifically admitted are denied. In further answer to the complaint, and by way of additional defenses, BoNYM avers as follows:

- 1. BoNYM alleges that Plaintiff has failed to state facts sufficient to constitute any cause of action against it.
- 2. BoNYM alleges that its title to the property is superior to that of Plaintiff.
- 3. Nevada Revised Statute 116.3116 does not support Plaintiff's position that it has superior title to the property.
- 4. The senior deed of trust beneficiary cannot be deprived of its property interest in violation of the Procedural Due Process Clause of the 14 Amendment of the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.
- 5. BoNYM's priority lien interest is protected from the relief sought by Plaintiff as set forth in the controlling governing documents of the homeowner's association.
- 6. Plaintiff is not a bona fide purchaser.
- 7. The super-priority lien was satisfied prior to the homeowner's association foreclosure under the doctrines of tender, estoppel, laches, or waiver.
- 8. The circumstances of sale of the property violated the homeowner's association's obligation of good faith and duty to act in a commercially reasonable manner.
- 9. BoNYM alleges that Plaintiff's claims are barred in whole or in part because of its failure to take reasonable steps to mitigate its damages, if any.

1 10. BoNYM alleges that the damages complained of, if there were any, were proximately
2 contributed to or caused by the carelessness, negligence, fault or defects resulting from
3 acts/omissions of other persons unknown to BoNYM at this time, and were not caused in any way by
4 BoNYM or by persons for whom BoNYM is legally responsible.

5 11. BoNYM is entitled to have any award against it reduced or eliminated to the extent
6 that the negligence, carelessness, or defect resulted from the acts/omissions or comparative fault of
7 other persons that contributed to Plaintiff's damages, if any.

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

12 13. BoNYM avers the affirmative defense of failure to do equity.

13 14. The HOA foreclosure sale is void for failure to comply with the provisions of NRS
14 Chapter 116, and other provisions of law.

15 15. Chapter 116 of the Nevada Revised Statutes is facially unconstitutional because its
16 "opt-in" notice provisions do not mandate that reasonable and affirmative steps be taken to give
17 actual notice to a record lien holder before depriving that lien holder of its property rights, in
18 violation of the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States
19 Constitution and of the Nevada Constitution.

20 16. The Deed of Trust cannot be extinguished by the HOA foreclosure sale because the
21 Nevada Supreme Court's decision in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408
22 (Nev. 2014) cannot be applied retroactively.

23 17. Pursuant to NRCP Rule 11, BoNYM reserves the right to assert additional affirmative
24 defenses in the event discovery and/or investigation disclose the existence of other affirmative
25 defenses.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, BoNYM prays for the following:
28

1 1. That Plaintiff's complaint be dismissed in its entirety with prejudice and that Plaintiff
2 take nothing by way of its complaint;

3 2. For attorneys' fees and costs of defending this action; and

4 3. For such other and further relief as this Court deems just and proper.

5 **COUNTERCLAIMS AGAINST PLAINTIFF**

6 BoNYM asserts counterclaims against Plaintiff as follows:

7 **GENERAL ALLEGATIONS**

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

11 6. When these assessments are not paid, the homeowners' association may both impose
12 and foreclose on a lien.

13 7. A homeowners' association may impose a lien for "any penalties, fees, charges, late
14 charges, fines and interest charged" under NRS 116.3102(1)(j)-(n). NRS 116.3116(1).

15 8. NRS 116.3116 makes a homeowners' association lien for assessments junior to a first
16 deed of trust beneficiary's secured interest in the property, with one limited exception: a
17 homeowners' association lien is senior to a first deed of trust beneficiary's secured interest "to the
18 extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the
19 extent of the assessments for common expenses based on the periodic budget adopted by the
20 association pursuant to NRS 116.3115 which would have become due in the absence of acceleration
21 during the 9 months immediately preceding institution of an action to enforce the lien[.]" NRS
22 116.3116(2)(c).

23 9. According to the Nevada Supreme Court's recent decision in *SFR Investments Pool I,*
24 *LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014), if a homeowner's association properly forecloses
25 on its super-priority lien, it can extinguish a first deed of trust. However, the HOA's foreclosure in
26 this case did not extinguish BoNYM's deed of trust because the foreclosure did not comply with
27 Nevada law and was commercially unreasonable as a matter of law. To deprive BoNYM of its deed
28 of trust under the circumstances of this case would deprive BoNYM of its due process rights.

THE DEED OF TRUST AND ASSIGNMENT

10. On or about April 10, 2006, Dania V. Hernandez executed a deed of trust in favor of Countywide Home Loans, Inc. securing the repayment of a promissory note in the amount of \$208,000.00 for the real property located at 1524 Highfield Court, Las Vegas, Nevada 89032. The Deed of Trust was recorded on April 19, 2006 as Instrument No. 20060419-0000609. Mortgage Electronic Registration Systems, Inc. was the beneficiary under the deed of trust.

11. The deed of trust was assigned to BoNYM via assignment recorded as Instrument No. 20110421-0000262 and subsequent corrective assignment recorded as Instrument No. 20140612-0001984.

THE HOA LIEN AND FORECLOSURE

12. On June 3, 2009, the HOA, through its agent Alessi & Koenig (**HOA Trustee**), recorded a Notice of Delinquent Assessment Lien against the Property. Per the notice, the amount due to the HOA was \$571.85, which includes assessments, dues, interest, fees and collection costs.

13. On September 2, 2009, the HOA, through the HOA Trustee, recorded a Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien against the Property. Per the notice, the amount due to the HOA was \$1,404.49, but does not delineate what portion is due for assessments as compared to fees and costs. The Notice of Default does not identify the super-priority amount claimed by the HOA and fails to describe the "deficiency in payment" required by NRS 116.31162(1)(b)(1).

14. On August 9, 2010, the HOA, through the HOA Trustee, recorded a Notice of Trustee's Sale, stating that a sale would be conducted on September 8, 2010. Per the notice, the amount due to the HOA was \$2,862.23, but does not delineate what portion is due for assessments as compared to fees and costs. The Notice of Sale does not identify the super-priority amount claimed by the HOA and fails to describe the "deficiency in payment" required by NRS 116.31162(1)(b)(1).

15. These deficiencies notwithstanding, on or about October 20, 2009, in response to the Notice of Default, Bank of America, through its outside counsel at Miles, Bauer, Bergstrom, & Winters LLP (**Miles Bauer**), contacted the HOA Trustee to obtain a payoff ledger detailing the statutory super-priority amount claimed by the HOA and offered to pay the same.

1 16. On or about December 17, 2009, the HOA Trustee provided Miles Bauer a full payoff
2 statement, which includes all fees and costs, as well as fines. The statement stated that assessments
3 were assessed on an annual basis at \$118.00. A true and correct copy of the statement is attached as
4 **Exhibit A.**

5 17. On January 21, 2010, Miles Bauer tendered payment of nine months of assessments,
6 as outlined in the HOA Trustee's payoff statement, in the amount of \$88.50. A true and correct copy
7 of the letter and check are attached as **Exhibit B.**

8 18. On February 4, 2010, the HOA Trustee unjustifiably rejected the tender stating that if
9 it accepted the payment, it "would be left with ... substantial out-of-pocket expenses and fees..." A
10 true and correct copy of the HOA Trustee's letter is attached as **Exhibit C.**

11 19. The HOA did not specify in any of the recorded notices whether it was foreclosing on
12 the super-priority portion of its lien, if any, or on the sub-priority portion of its lien.

13 20. The HOA did not specify in any of the recorded documents that BoNYM's interest in
14 the Property would be extinguished by the HOA foreclosure.

15 21. The HOA and HOA Trustee purportedly foreclosed on the property on or about
16 March 2, 2011, selling the HOA's interest in the Property to the HOA for \$4,310.82. The
17 Foreclosure Deed was recorded on March 3, 2011.

18 22. On March 30, 2011, the HOA transferred its interest in the property to Plaintiff via
19 quitclaim deed recorded as Instrument No. 201103310003138 on March 31, 2011. A corrective
20 quitclaim deed was recorded as Instrument No. 201204260000422 on April 26, 2012 to correct the
21 legal description. A second corrective quitclaim deed was recorded as Instrument No.
22 201301280002187 on January 28, 2013 to correct the grantee's name.

23 23. Upon information and belief, the HOA sold its interest in the Property for a grossly
24 inadequate purchase price that was a fraction of the Property's fair market value.

25 24. The HOA and HOA Trustee's sale of the HOA's interest in the Property for a fraction
26 of the Property's fair market value is commercially unreasonable and not in good faith as required by
27 NRS 116.1113.

28 25. The HOA and HOA Trustee's foreclosure sale was commercially unreasonable

1 because the manner in which the HOA Trustee conducted the sale, including the notices it provided
2 and other circumstances surrounding the sale, was not calculated to attract proper perspective
3 purchasers, and thus could not promote an equitable sales price of the Property.

4 26. The HOA and HOA Trustee's foreclosure sale was invalid, commercially
5 unreasonable, and did not extinguish the Deed of Trust because the HOA and HOA Trustee's
6 wrongful refusal to accept BoNYM's payment of the super-priority amount extinguished any super-
7 priority lien held by the HOA.

8 27. The HOA and HOA Trustee's foreclosure sale did not extinguish the Deed of Trust
9 because the state statute authorizing the sale was facially unconstitutional and violated BoNYM's
10 constitutional due process rights.

11 28. The HOA and HOA Trustee's foreclosure sale did not extinguish the Deed of Trust
12 because BoNYM's tender of the super-priority amount of the HOA's lien prior to the HOA sale
13 redeemed the senior priority of the Deed of Trust.

14 29. The HOA and HOA Trustee's foreclosure sale did not extinguish the first Deed of
15 Trust because Plaintiff is not a *bona fide* purchaser for value. Additionally, Plaintiff is not a *bona*
16 *fide* purchaser for value because of its experience in purchasing properties at HOA foreclosure sales
17 for extremely depressed prices and its knowledge that it was purchasing the Property for a price
18 substantially below the Property's fair market value.

19 **FIRST CAUSE OF ACTION**

20 **(Counterclaim for Quiet Title/Declaratory Relief against Plaintiff)**

21 28. BoNYM repeats and re-alleges the preceding paragraphs as though set forth fully
22 herein and incorporates the same by reference.

23 29. Under NRS 30.010 *et seq.* and NRS 40.010, this Court has the power and authority to
24 declare BoNYM's right and interest in the Property and to resolve Plaintiff's adverse claim in the
25 Property.

26 30. The HOA, through the HOA Trustee, purportedly foreclosed on the HOA's lien on
27 March 2, 2011.

1 31. Plaintiff claims an interest in the Property adverse to BoNYM, in that Plaintiff claims
2 that the HOA's foreclosure sale extinguished the senior Deed of Trust.

3 32. The HOA's foreclosure sale did not extinguish the senior Deed of Trust because the
4 statute authorizing the foreclosure sale, NRS 116, *et seq.*, is facially unconstitutional because it does
5 not mandate that deed of trust beneficiaries receive actual notice of an HOA's foreclosure sale, as
6 required by the Due Process Clause of the United States Constitution.

7 34. The HOA's foreclosure sale did not extinguish the senior Deed of Trust because the
8 recorded notices, even if they were in fact provided, failed to describe the lien in sufficient detail as
9 required by Nevada law and the United States Constitution, including, without limitation: whether
10 the deficiency included a "super-priority" component, the amount of the super-priority component,
11 how the super-priority component was calculated, when payment on the super-priority component
12 was required, where payment was to be made, or the consequences for failure to pay the super-
13 priority component.

14 35. The foreclosure sale did not extinguish the senior Deed of Trust because the sale was
15 commercially unreasonable or otherwise failed to comply with the good faith requirement of NRS
16 116.1113 in several respects, including, without limitation: the lack of sufficient notice, the sale of
17 the Property for a fraction of the fair market value of the Property, a foreclosure that was not
18 calculated to promote an equitable sales price for the Property or to attract proper prospective
19 purchasers, and a foreclosure sale that was designed and/or intended to result in a maximum profit
20 for the HOA and HOA Trustee without regard to the rights and interests of those who have an
21 interest in the loan and made the purchase of the Property possible in the first place.

22 36. The foreclosure sale was invalid and did not extinguish the Deed of Trust because the
23 HOA and HOA Trustee's wrongful refusal to accept BoNYM's payment of the super-priority
24 amount extinguished any super-priority lien held by the HOA.

25 37. The foreclosure sale did not extinguish the Deed of Trust because Plaintiff is not a
26 bona fide purchaser for value.

27 38. The foreclosure sale did not extinguish the Deed of Trust because BoNYM's tender
28 extinguished the super-priority portion of the HOA's lien.

39. Based on the adverse claims being asserted by the parties, a judicial determination is necessary to ascertain the rights, obligations, and duties of the various parties.

40. BoNYM is entitled to a declaration that the HOA sale did not extinguish the senior Deed of Trust, which is superior to any interest acquired by Plaintiff through the HOA foreclosure sale.

41. BoNYM was required to retain an attorney to prosecute this action, and is therefore entitled to collect its reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, BoNYM prays for the following:

1. An order establishing that the Deed of Trust is the senior lien encumbering the property;
2. A declaration establishing that the Deed of Trust is senior and superior to any right, title, interest, lien, equity, or estate of Plaintiff;
3. Monetary damages against Plaintiff in excess of \$10,000;
4. Reasonable attorneys' fees as special damages and the costs of the suit; and
5. For such other and further relief the Court deems proper.

DATED this 15th day of June, 2017.

AKERMAN LLP

/s/Tenesa S. Scaturro

ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
TENESA S. SCATURRO, ESQ.
Nevada Bar No. 12488
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144

*Attorneys for The Bank of New York Mellon
f/k/a The Bank of New York, as Trustee for the
Certificateholders of CWABS, Inc., Asset-
Backed Certificates, Series 2006-7*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 2
- 3
- 4
- 5

6
7
8
9

10
11
12

An employee of AKERMAN LLP

Exhibit A

DAVID ALESSI*

THOMAS BAYARD *

ROBERT KOENIG**

RYAN KERBOW****

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bars

*** Admitted to the Nevada Bar

**** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 100
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA
PHONE: 818- 735-9600

RENO NV
PHONE: 775-626-2323
&
DIAMOND BAR CA
PHONE: 909-843-6590

Nevada Licensed Qualified Collection
Manager

AMANDA LOWER

FACSIMILE COVER LETTER

| | | | |
|-----------------|------------------|---------------|-----------------------------|
| To: | Alexander Bahame | Re: | Escrow #1524 Highfield Ct |
| From: | Thessa Elpidio | Date: | Thursday, December 17, 2009 |
| Fax No.: | | Pages: | 1, including cover |
| | | HO #: | 16246 |

Dear Alexander Bahame:

This cover will serve as an amended demand on behalf of Hidden Canyon Owners Association for the above referenced escrow; property located at 1524 Highfield Ct., N. Las Vegas, NV. The total amount due through January, 1, 2010 is \$1,554.43. The breakdown of fees, interest and costs is as follows:

| | |
|--|-------------------|
| Notice of Delinquent Assessment Lien -- Nevada | \$295.00 |
| Notice of Default | \$395.00 |
| Total | \$690.00 |
| 1. Attorney and/or Trustees fees: | \$690.00 |
| 2. Costs (Notary, Recording, Copies, Mailings, Publication and Posting) | \$200.00 |
| 3. Interest Through December, 17, 2009 | \$0.00 |
| 4. Title Research (10-Day Mailings per NRS 116.31163) | \$285.00 |
| 5. Management Company Audit Fee | \$25.00 |
| 6. Management Document Processing & Transfer Fee | \$0.00 |
| 7. Late Fees Through December, 17, 2009 | \$0.00 |
| 8. Fines Through December, 31, 2009 | \$30.00 |
| 9. Assessments Through January, 1, 2010 @ \$118.00 Annual | \$324.43 |
| 10. Progress Payments: | \$0.00 |
| 12. RPIR-GI Report | \$0.00 |
| Sub-Total: | \$1,554.43 |
| Less Payments Received: | \$0.00 |
| Total Amount Due: | \$1,554.43 |

Please have a check in the amount of \$1,554.43 made payable to the Alessi & Koenig, LLC and mailed to the below listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

JA 0030

Resident Transaction Detail

Active Flag Yes

Void Flag No

HIDDEN CANYON

Account #: 83220

Property Address: 1524 HIGHFIELD CT

| Code | Date | Amount | Balance | Check# | Memo |
|--------|------------|---------|---------|------------|----------------------|
| MA | 1/1/2007 | 118.00 | 118.00 | | |
| LF | 2/28/2007 | 1.77 | 119.77 | | |
| LF | 3/30/2007 | 1.77 | 121.54 | | |
| LF | 4/30/2007 | 1.77 | 123.31 | | |
| LF | 5/30/2007 | 1.77 | 125.08 | | |
| Intent | 6/12/2007 | 50.00 | 175.08 | | INTENT TO LIEN |
| LF | 6/30/2007 | 1.77 | 176.85 | | |
| PMT | 7/9/2007 | -175.08 | 1.77 | 2002130774 | WAL MART MONEY ORDER |
| MA | 1/1/2008 | 118.00 | 119.77 | | Assessment |
| PMT | 1/4/2008 | -119.77 | 0.00 | 2004 | 010408.usb |
| MA | 1/1/2009 | 118.00 | 118.00 | | Assessment |
| LF | 1/30/2009 | 10.00 | 128.00 | | Late Fee Processed |
| LF | 1/30/2009 | 1.77 | 129.77 | | Late Fee Processed |
| Intent | 2/19/2009 | 15.00 | 144.77 | | LATE NOTICE |
| Intent | 3/24/2009 | 50.00 | 194.77 | | INTENT TO LIEN |
| LF | 3/30/2009 | 1.77 | 196.54 | | Late Fee Processed |
| LF | 5/30/2009 | 1.77 | 198.31 | | Late Fee Processed |
| LF | 6/30/2009 | 1.77 | 200.08 | | Late Fee Processed |
| LF | 7/30/2009 | 1.77 | 201.85 | | Late Fee Processed |
| LF | 8/30/2009 | 1.77 | 203.62 | | Late Fee Processed |
| LF | 9/30/2009 | 1.77 | 205.39 | | Late Fee Processed |
| LF | 10/30/2009 | 0.52 | 205.91 | | Late Fee Processed |
| LF | 11/30/2009 | 0.52 | 206.43 | | Late Fee Processed |
| MA | 1/1/2010 | 118.00 | 324.43 | | Assessment |

Count: 1

Total Units: 761

Resident Transaction Detail

Active Flag Yes

Void Flag No

HIDDEN CANYON

Account #: 112126

Property Address: 1524 HIGHFIELD CT

| Code | Date | Amount | Balance Check# | Memo |
|-----------|-----------|--------|----------------|------------------|
| Admin Ltr | 6/19/2009 | 15.00 | 15.00 | Certified Letter |
| Admin Ltr | 8/3/2009 | 15.00 | 30.00 | Certified Letter |

Count: 1

Total Units: 761

Exhibit B

DOUGLAS E. MILES *
Also Admitted in Nevada and Illinois
RICHARD J. BAUER, JR.*
JEREMY T. BERGSTROM
Also Admitted in Arizona
FRED TIMOTHY WINTERS*
KEENAN E. McCLENAHAN*
MARK T. DOMEYER*
Also Admitted in District of
Columbia & Virginia
TAMI S. CROSBY*
MATTHEW D. TOKARZ *
L. BRYANT JAQUEZ *
DANIEL L. CARTER *
BRIAN H. TRAN*
RYAN W. STOCKING *
GINA M. CORENA
ROBIN L. LEWIS
Also Admitted in California
WAYNE A. RASH *
ROCK K. JUNG
VY T. PHAM *
SCOTT B. OLIFANT
Also Admitted in California



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

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

* CALIFORNIA OFFICE
1665 SCENIC AVENUE
SUITE 200
COSTA MESA, CA 92626
PHONE (714) 481-9100
FACSIMILE (714) 481-9141

Of Counsel
JOHN W. LISH
Admitted in Utah

January 21, 2010

ALESSI & KOENIG, LLC
9500 W. FLAMINGO ROAD, SUITE 100
LAS VEGAS, NV 89147

Re: *Property Address:* 1524 Highfield Court
HOA #: 16246
LOAN #: 132544618
MBBW File No. 09-L0716

Dear Sir/Madame:

As you may recall, this firm represents the interests of BAC Home Loans Servicing, LP fka Countrywide Home Loans, Inc. (hereinafter "BAC") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by in regards to the above-referenced address shows a full payoff amount of \$1,554.43 the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...

any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:
 - (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

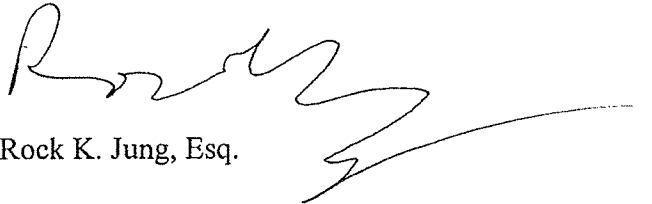
Based on Section 2(b), a portion of your HOA lien is arguably prior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n).

Our client has authorized us to make payment to you in the amount of \$88.50 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$88.50, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BAC's financial obligations towards the HOA in regards to the real property located at 1524 Highfield Court have now been "paid in full".

Thank you for your prompt attention to this matter. If you have any questions or concerns, I may be reached by phone directly at (702) 942-0442.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP

A handwritten signature in black ink, appearing to read 'Rock K. Jung', with a long, sweeping horizontal line extending to the right.

Rock K. Jung, Esq.

Payee: Alessi & Koenig, LLC

Initials: TLC

Date: 1/14/2010 Amount: 88.50

| Inv. Date | Reference # | Description | Inv. Amount | Case # | Matter Description | Cost Amount |
|-----------|-------------|------------------------|-------------|--------|--------------------|-------------|
| 1/14/2010 | #16246 | To Cure HOA Deficiency | 88.50 | | | |

Miles, Bauer, Bergstrom & Winters, LLP
Trust Account
1665 Scenic Avenue - Suite 200
Costa Mesa, CA 92626
Phone: (714) 481-9100

Bank of America
1100 N. Green Valley Parkway
Henderson, NV 89074
16-66/1220
1020
09-L0716
Loan # 132544618

2490

Date: 1/14/2010

Amount \$**** 88.50

Check Void After 90 Days

Pay \$*****Eighty-Eight & 50/100 Dollars

to the
order
of **Alessi & Koenig, LLC**

11 2490 11 1: 1 22400724: 50 1006876973 11

Security Features Included. **Details on back.**

Exhibit C

DAVID ALESSI*
THOMAS BAYARD*
ROBERT KOENIG**
RYAN KERBOW***

* Admitted to the California Bar
** Admitted to the California, Nevada
and Colorado Bar
*** Admitted to the California and Nevada Bar



A Multi-Jurisdictional Law Firm

9500 West Flamingo Road, Suite 100
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES

AGOURA HILLS, CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2323

&
DIAMOND BAR CA
PHONE: 909-843-6590

Nevada Licensed Qualified Collection Manager
AMANDA LOWER

February 4, 2010

Miles, Bauer, Bergstrom & Winters
2200 Paseo Verde Parkway, Suite 250
Henderson, NV 89052

Re: Rejection of Partial Payments

Gentlepersons,

This letter will serve to inform you that we are unable to accept the partial payments offered by your clients as payment in full. While we understand how you read NRS 116.3116 as providing a super priority lien only with respect to 9 months of assessments, case authority exists which provides that the association's lien also includes the reasonable cost of collection of those assessments. (see *Korbel Family Trust v. Spring Mountain Ranch Master Asociation*, Case No. 06-A-523959-C.)

If the association were to accept your offer that only includes assessments, Alessi & Koenig would be left with a lien against the association for our substantial out-of-pocket expenses and fees generated. The association could end up having *lost* money in attempting to collect assessments from the delinquent homeowner.

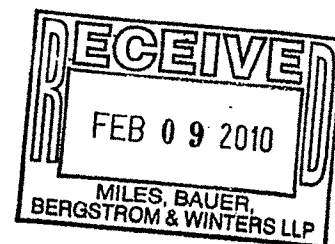
It has come to my attention that our office inadvertently posted some of the checks sent from Miles Bauer that contained only partial payments. We are therefore refunding that money, as our clients have not authorized us to take payments that amount to a small fraction of their total liens. We apologize for an inconvenience this may cause you.

If you would like to discuss these matters further, please do not hesitate to call.

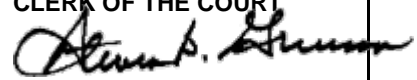
Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Kerbow".

Ryan Kerbow, Esq.



JA 0038



MDSM
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
ROGER P. CROTEAU & ASSOCIATES, LTD.
9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
(702) 254-7775
(702) 228-7719 (facsimile)
croteaulaw@croteaulaw.com
Attorney for Plaintiff
LAS VEGAS DEVELOPMENT GROUP, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)

Plaintiff,)

vs.)

DANIA V. HERNANDEZ, an individual; THE)
BANK OF NEW YORK MELLON f/k/a THE)
BANK OF NEW YORK, AS TRUSTEE FOR)
THE CERTIFICATEHOLDERS OF CWABS,)
INC., ASSET-BACKED CERTIFICATES,)
SERIES 2006-7, a national banking association;)
DOE individuals I through XX; and ROE)
CORPORATIONS I through XX,)

Defendants.)

THE BANK OF NEW YORK MELLON f/k/a)
THE BANK OF NEW YORK, AS TRUSTEE)
FOR THE CERTIFICATEHOLDERS OF)
CWABS, INC., ASSET-BACKED)
CERTIFICATES, SERIES 2006-7,)

Counterclaimant,)

vs.)

LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)

Counterdefendant.)

Case No. A-17-756215-C
Dept. No. XIII

MOTION TO DISMISS
COUNTERCLAIM AND MOTION
FOR SUMMARY JUDGMENT

MOTION TO DISMISS COUNTERCLAIM AND

MOTION FOR SUMMARY JUDGMENT

COMES NOW, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby presents its Motion to Dismiss Counterclaim. In addition, Plaintiff moves for Summary Judgment in its favor on its affirmative claim against the Defendant. This Motion is made and based upon the attached memorandum of points and authorities, all pleadings, papers and documents on file herein, and any oral argument that the Court may entertain at the hearing of this matter.

DATED this 16th day of June, 2017.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda

ROGER P. CROTEAU, ESQ.

Nevada Bar No. 4958

TIMOTHY E. RHODA, ESQ.

Nevada Bar No. 7878

9120 West Post Road, Suite 100

Las Vegas, Nevada 89148

(702) 254-7775

Attorney for Plaintiff

LAS VEGAS DEVELOPMENT GROUP, LLC

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing **MOTION TO DISMISS COUNTERCLAIM** on the **17** day of **JULY**, 2017, at the hour of **9:00 AM** am/pm of said date, or as soon thereafter as counsel may be heard.

DATED this 16th day of June, 2017.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
(702) 254-7775
Attorney for Plaintiff
LAS VEGAS DEVELOPMENT GROUP, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

For the past several years, the purchasers of real properties at homeowners association lien foreclosure sales have been embroiled in litigation with purportedly secured deed of trust holders such as the Defendant herein, THE BANK OF NEW YORK MELLON f/k/a THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2006-7 (“BONY”) regarding the force and effect of NRS §116.3116, which provides an HOA with a superpriority lien on an individual homeowner's property for up to nine months of unpaid HOA dues. In a nutshell, the purchasers of these properties have always asserted that HOA lien foreclosure sales served to extinguish all junior liens, including a first position deed of trust, pursuant to black letter lien law. Deed of trust holders such as BONY incorrectly asserted that their security interests survived the HOA lien foreclosure sales.

For a lengthy period of time, the conflicting positions of the purchasers and the purported secured mortgage holders were the subject of significant dispute. However, on September 18, 2014, the Nevada Supreme Court, in the matter of *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d 408, 2014 WL 4656471 (Adv. Op. No. 75, Sept. 18, 2014), definitively determined that the foreclosure of a HOA’s superpriority lien does indeed extinguish a first deed of trust, stating as follows:

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

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

1 Nevada Supreme Court's decision did little to stem the litigation associated with N.R.S. Chapter
2 116. On the contrary, many deed of trust holders, including BONY, have simply buried their
3 heads in the sand, refusing to acknowledge the Nevada Supreme Court's binding precedent.

4 Pursuant to its decision in *SFR Investments*, the Nevada Supreme Court resolved the
5 divergent opinions that previously existed in the state and federal courts of the State of Nevada
6 regarding the force, effect and interpretation of NRS §116.3116 *et seq.* In doing so, the Nevada
7 Supreme Court clarified that the statute provides a homeowners association with a true
8 superpriority lien over real property that can and does extinguish a first deed of trust when non-
9 judicially foreclosed. *Id.* The Nevada Supreme Court also recognized that a foreclosure deed
10 "reciting compliance with notice provisions of NRS 116.31162 through NRS 116.31168 'is
11 conclusive' as to the recitals 'against the unit's former owner, his or her heirs and assigns and all
12 other persons.'" *See id.* at *3 (citing NRS 116.3116.31166(2)). Moreover, under Nevada law, the
13 HOA foreclosure sale and the resulting foreclosure deed are both presumed valid. NRS
14 47.250(16)-(18) (stating that disputable presumptions exist "that the law has been obeyed"; "that
15 a trustee or other person, whose duty it was to convey real property to a particular person, has
16 actually conveyed to that person, when such presumption is necessary to perfect the title of such
17 person or a successor in interest"; "that private transactions have been fair and regular"; and "that
18 the ordinary course of business has been followed.").

19 At issue herein is real property commonly known as 1524 Highfield Court, North Las
20 Vegas, Nevada 89032, Assessor Parcel No. 139-09-410-021 (*the "Property"*). BONY claims to
21 own a deed of trust recorded against the Property in the Official Records of the Clark County
22 Recorder as Instrument No. 20060419-0000609 (*"First Deed of Trust"*). Counterclaim, ¶10-11.
23 Hidden Canyon Owners Association (*"HOA"*) foreclosed upon the Property at a homeowners
24 association lien foreclosure sale on or about March 2, 2011, at which HOA purchased the
25 Property. Counterclaim, ¶21. On March 3, 2011, a Trustee's Deed Upon Sale (*"HOA*
26 *Foreclosure Deed"*) was recorded, vesting title to the Property in the name of HOA. *Id.* See
27 also Exhibit 1, attached hereto and incorporated herein by reference.

28 On or about March 30, 2011, HOA transferred and sold the Property to the Plaintiff, Las

1 Vegas Development Group, LLC. Counterclaim, ¶22. On March 31, 2011, a Quitclaim Deed
2 was recorded in the Official Records of the Clark County Recorder as Instrument No. 20110331-
3 0003138, transferring all right, title and interest in the Property from HOA to Plaintiff. Said
4 Quitclaim Deed was re-recorded on April 26, 2012, as Instrument No. 20120426-0000422, and
5 on January 28, 2013, as Instrument No. 20130128-0002187. *Id.* A copy of the final corrective
6 Quitclaim Deed is attached hereto and incorporated herein by referenced as Exhibit 2. The Court
7 may take judicial notice of the recorded documents attached hereto because they are public and
8 “[c]apable of accurate and ready determination by resort to sources whose accuracy cannot
9 reasonably be questioned...” NRS 47.130 (2)(b); *see also Lee v. City of Los Angeles*, 250 F.3d
10 668, 689 (9th Cir. 2001) (“court may take judicial notice of matters of public record.”).

11 Pursuant to NRS Chapter 116, as interpreted by the Nevada Supreme Court in the matter
12 of *SFR Investments*, the HOA Foreclosure Sale served to extinguish the then-existing First Deed
13 of Trust pursuant to Nevada law. By way of its Counterclaim, BONY pleads for a different
14 result. However, to the extent that its claims could conceivably have any merit whatsoever,
15 BONY sat on its rights for well over six years. As a result, its claims are time-barred and the
16 instant action must be dismissed.

17 II.

18 STATEMENT OF UNDISPUTED FACTS

19 For purposes of this Motion, the following facts are undisputed:

- 20 1. On or about April 10, 2006, Defendant, Dania Hernandez (“*Former Owner*”), executed
21 the First Deed of Trust in favor of Countrywide Home Loans, Inc., which was recorded
22 against the Property. Counterclaim, ¶10.
- 23 2. BONY is the current beneficiary of the First Deed of Trust by virtue of an Assignment
24 recorded on April 21, 2011, and re-recorded on June 12, 2014. Counterclaim, ¶11.
- 25 3. As a result of the failure of the Former Owner to pay HOA assessments, HOA, by and
26 through its agent, recorded a Notice of Delinquent Assessment Lien (“*HOA Lien*”) on
27 June 3, 2009. Counterclaim, ¶12.
- 28 4. Thereafter, HOA, by and through its agent, recorded a Notice of Default and Election to

Sell Under Notice of Homeowners Association Lien ("*Notice of Default*") on September 2, 2009. Counterclaim, ¶13.

5. After the expiration of 90 days from the recording and mailing of the Notice of Default, HOA, by and through its agent, caused a Notice of Trustee's Sale to be recorded on August 9, 2010. Counterclaim, ¶13.
6. A non-judicial foreclosure sale of the HOA Lien ("*HOA Foreclosure Sale*") occurred on March 2, 2011, at which HOA was the prevailing bidder. Counterclaim, ¶21.
7. On March 3, 2011, the HOA Foreclosure Deed was recorded as Instrument No. 20110303-0003434, vesting title to the Property in the name of HOA. Counterclaim, ¶21. See also Exhibit 1.
8. The instant action was filed on May 31, 2017. See Complaint, generally.
9. BONY filed its Counterclaim on June 15, 2017. See Answer and Counterclaim, generally.
10. More than six years passed between the date of the HOA Foreclosure Sale on March 2, 2011, and the filing of BONY's claims herein on June 15, 2017.

III.

LEGAL ARGUMENT

1. STATEMENT OF THE LAW REGARDING N.R.C.P. 12(B)(5) AND N.R.C.P. 56

N.R.C.P. 12(b) provides as follows:

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) insufficiency of process, (4) insufficiency of service of process, (5) failure to state a claim upon which relief can be granted, (6) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable

1 opportunity to present all material made pertinent to such a motion by Rule 56.

2 A complaint should not be dismissed for insufficiency, for failure to state a cause of
3 action, unless it appears to a certainty that the Plaintiff is entitled to no relief under any set of
4 facts which could be proved in support of the claim. *Zalk-Josephs Co. v. Wells Cargo, Inc.*, 81
5 Nev. 163, 400 P.2d 621 (1965). On a motion to dismiss for failure to state a claim for relief, the
6 trial court, and the Supreme Court must draw every fair intendment in favor of the plaintiff.
7 *Merluzzi v. Larson*, 96 Nev. 409, 610 P.2d 739 (1980), overruled on other grounds, 106 Nev.
8 568, 796 P.2d 592 (1990). When tested by a subdivision (b)(5) motion to dismiss for failure to
9 state a claim upon which relief can be granted the allegations of the complaint must be accepted
10 as true. *Hynds Plumbing & Heating Co. v. Clark County School District*, 94 Nev. 776, 587 P.2d
11 131 (1978). A trial court may dismiss a complaint only if it appears to a certainty that a plaintiff
12 can prove no set of facts which would entitle him to relief; all allegations pled must be accepted
13 as true. *Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993) (Emphasis added).

14 In the event that a motion asserting N.R.C.P. 12(b)(5) presents matters outside the
15 pleadings which are not excluded by the court, the motion shall be treated as one for summary
16 judgment and disposed of as provided in N.R.C.P. 56. See N.R.C.P. 12(b). Pursuant to N.R.C.P.
17 56, two substantive requirements must be met before a Court may grant a motion for summary
18 judgment: (1) there must be no genuine issue as to any material fact; and, (2) the moving party
19 must be entitled to judgment as a matter of law. *Fyssakis v. Knight Equipment Corp.*, 108 Nev.
20 212, 826 P.2d 570 (1992). Summary judgment is appropriate under NRCP 56 when the
21 pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are
22 properly before the court demonstrate that no genuine issue of material fact exists, and the
23 moving party is entitled to judgment as a matter of law. *Wood v. Safeway*, 121 Nev. 724, 731,
24 121 P.3d 1026, 1031 (2005) (citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. at 713, 57 P.3d
25 at 87 (2003)). In deciding whether these requirements have been met, the Court must first
26 determine, in the light most favorable to the non-moving party “whether issues of material fact
27 exist, thus precluding judgment by summary proceeding.” *National Union Fire Ins. Co. of*
28

1 *Pittsburgh v. Pratt & Whitney Canada, Inc.*, 107 Nev. 535, 815 P.2d 601, 602 (1991).

2 The non-moving party is required, by affidavit or otherwise, to set forth specific facts
3 demonstrating the existence of a genuine issue of material fact for trial or have summary
4 judgment entered against it. *See Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 110, 825 P.3d 588,
5 591 (1992) (citing *Collins v. Union Fed. Sav. & Loan*, 99 Nev. 284, 294, 662 P.2d 6710, 618-19
6 (1983)). An issue is “genuine” if the evidence is such that a reasonable jury, applying the
7 applicable quantum of proof, could return a verdict for the non-moving party. *See Anderson v.*
8 *Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986).

9 In determining whether a genuine issue of material fact exists before the trial court, the
10 question is whether a reasonable person could conclude from the facts appearing in the record,
11 and reasonable inferences drawn therefrom, that such issue of fact exists. *Nehls v. Leonard*, 97
12 Nev. 325, 630 P.2d 258 (1981). Whether the fact is “material” depends on substantive case law
13 as to whether its existence is relevant to the outcome of the disputed issue. *Anderson*, 477 U.S.
14 242 at 248. The evidence offered by the non-moving party must be admissible, and he or she “is
15 not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture.”
16 *Collins*, 99 Nev. at 302, 662 P.2d at 621. In other words, the non-moving party must “do more
17 than simply show that there is some metaphysical doubt” as to the operative facts. *Wood*, 121
18 Nev. 724, 121 P.3d at 1031.

19 In this case, BONY is entitled to no relief under any set of circumstances because its
20 claim is time-barred. As a result, its Counterclaim must be dismissed or summary judgment
21 must be entered in favor of the Plaintiff. In addition, because BONY possesses no means to
22 contest the force and effect of the HOA Foreclosure Sale due to its extraordinary delay, summary
23 judgment must be entered in favor of the Plaintiff, confirming that it is the rightful title owner of
24 the Property free and clear of any claimed interest of BONY.

25 **2. THE DEFENDANT’S COUNTERCLAIM IS BARRED BY THE STATUTE OF**
26 **LIMITATIONS**

27 BONY’s Counterclaim, like the Plaintiff’s Complaint, is composed of a single cause of
28

1 action for Quiet Title/Declaratory Relief. Pursuant to NRS 40.010, a quiet title action “may be
2 brought by any person against another who claims an estate or interest in real property, adverse to
3 the person bringing the action, for the purpose of determining such adverse claim.” In a quiet
4 title case, a presumption exists in favor of the record title holder. *Breliant v. Preferred Equities*
5 *Corp.*, 112 Nev. 663, 669 (1996). Thus, a presumption exists in favor of the Plaintiff herein.

6 “A claim for declaratory relief is subject to a statute of limitations generally applicable to
7 civil claims.” *Zuill v. Shanahan*, 80 F.3d 1366, 1369-70 (9th Cir. 1996); *Levald v. City of Palm*
8 *Desert*, 998 F.2d 680, 688 (9th Cir. 1993) (noting that statute of limitations applicable to
9 damages action applies equally to claims for declaratory judgment). When a complaint shows on
10 its face that the cause of action is barred by the statute of limitations, the burden falls upon the
11 plaintiff to demonstrate that the bar does not exist. *Bank of Nevada v. Friedman*, 82 Nev. 417,
12 422, 420 P.2d 1, 4 (1966).

13 NRS 11.080 provides as follows:

14 **Seisin within 5 years; when necessary in action for real property.** No action
15 for the recovery of real property, or for the recovery of the possession thereof
16 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.

17 Similarly, NRS 11.070 provides as follows:

18 **No cause of action effectual unless party or predecessor seized or possessed**
19 **within 5 years.** No cause of action or defense to an action, founded upon the title
20 to real property, or to rents or to services out of the same, shall be effectual, unless
21 it appears that the person prosecuting the action or making the defense, or under
22 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.

23 A quiet title claim is subject to the five-year limitations period of NRS § 11.070. *Nationstar*
24 *Mortg. LLC v. Amber Hills II Homeowners Ass’n*, 2016 U.S. Dist. LEXIS 43592, 9-10 (D. Nev.
25 Mar. 31, 2016). *See also Weeping Hollow Ave. Tr. v. Spencer*, 831 F.3d 1110, 1114 (9th Cir.
26 2016) (emphasis added) (“Under Nevada law, Spencer could have brought claims challenging the
27 HOA foreclosure sale *within five years of the sale.*”); *Scott v. Mortg. Elec. Registration Sys., Inc.*,
28 605 F. App’x 598, 600 (9th Cir. 2015); *Bank of Am., N.A. v. Antelope Homeowners’ Ass’n*, No.

2:16-cv-449, 2017 WL 421652, at *3 (D. Nev. Jan. 30, 2017) (Mahan, J.).

Like the instant case, *Amber Hills II* involved a deed of trust holder's claim that its deed of trust was unaffected by a homeowners association lien foreclosure sale. In *Ambert Hills II*, the defendant asserted that the plaintiff's claims were governed by a 3-year statute of limitations because the claims were based upon liability created by statute. *Id.* The United States District Court for the District of Nevada rejected this assertion, holding that the applicable statute of limitations was five years.

In *Amber Hills II*, the District Court held that a deed of trust holder was neither "seized" nor "possessed" of real property by virtue of a deed of trust. *Id.* However, the Court read NRS 40.010 and NRS 11.070 together, finding that "§ 40.010 allows anyone with an interest in the property to sue to determine adverse claims, and § 11.070 provides the corresponding limitations period for such claims." *Id.* at *10.

It is well settled in Nevada that a cause of action accrues when "the aggrieved party knew, or reasonably should have known, of the facts giving rise to the damage or injury." *Nevada State Bank v. Jamison Partnership*, 106 Nev. 792, 800, 801 P.2d 1377, 1382 (1990). As noted by Judge Jones of the United States District Court:

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

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

1 In reality, Plaintiff's interest in the Property was called into question at the time of
2 the foreclosure sale due to NRS 116.3116(2), which gives priority to that portion
3 of an HOA lien consisting solely of unpaid HOA assessments accrued during the
4 "nine months immediately preceding institution of an action to enforce the lien."
5 It is clear that Plaintiff could have brought its action to quiet title against the HOA
6 at any time following the HOA's foreclosure sale, in order to obtain a declaration
7 that the sale had not extinguished its interest in the Property. Similarly, Plaintiff
8 could have asserted its claims for violation of NRS 116.1113 and wrongful
9 foreclosure as soon as it obtained facts to support a contention that the HOA's sale
10 of the Property was improper. There is no indication in the Complaint that such
11 facts were obtained any later than at the time of foreclosure. Therefore, the Court
12 finds that the statutes of limitations applicable to Plaintiff's claims against the
13 HOA began to run, at the latest, on the date of recordation of the foreclosure
14 deed—February 10, 2011.

15 *U.S. Bank Nat'l Ass'n v. Woodland Vill.*, 2016 U.S. Dist. LEXIS 168460, at *6-8 (D. Nev. Dec. 6,
16 2016).

17 Here, the face of Defendant's Counterclaim proves that the HOA Foreclosure Sale took
18 place on March 2, 2011, and that the HOA Foreclosure Deed was recorded on March 3, 2011.
19 Counterclaim, ¶21. As Judge Jones noted, the statutes of limitations applicable to Plaintiff's
20 claims began to run, at the latest, on the date of recordation of the foreclosure deed. *U.S. Bank*
21 *Nat'l Ass'n v. Woodland Vill.*, 2016 U.S. Dist. LEXIS 168460, at *8. Thus, the 5-year statute
22 commenced running no later than March 3, 2011, and BONY was required to file any claims
23 contesting the force and effect of the HOA Foreclosure Sale no later than March 4, 2016.

24 It is undisputed that neither BONY nor any other party brought any claims contesting the
25 force and effect of the HOA Foreclosure Sale until June 15, 2017 – well over six years after the
26 HOA Foreclosure Sale took place and the HOA Foreclosure Deed was recorded. Under such
27 circumstances, the Defendant's claim for Quiet Title/Declaratory Relief is barred by the statute of
28 limitations and must be dismissed.

3. **THE DEFENDANT'S COUNTERCLAIM IS LIKEWISE BARRED BY THE**
DOCTRINE OF LACHES

Laches is an equitable doctrine which may be invoked when delay by one party works to
the disadvantage of the other, causing a change of circumstances which would make the granting
of relief to the delaying party inequitable. *Erickson v. One Thirty-Three Inc.*, 104 Nev. 755, 766
P.2d 891 (1966). In this case, based upon BONY's extraordinary delay, the doctrine of laches

1 provides an additional basis upon which to deny relief to the Counterclaimant.

2 Based upon the Defendant's Counterclaim, it is readily apparent that BONY or its
3 predecessor-in-interest was well aware of the HOA Foreclosure Sale long before it occurred.
4 Indeed, BONY alleges that its agent, Miles, Bauer, Bergstrom & Winters LLP ("*Miles Bauer*"),
5 contacted the HOA's agent on or about October 20, 2009, to obtain a payoff ledger prior to the
6 HOA Foreclosure Sale. Counterclaim, ¶15. Thus, it is evident that BONY or its agent was fully
7 aware of the foreclosure proceedings at least approximately 1 ½ years prior to the HOA
8 Foreclosure Sale. Miles Bauer thereafter purportedly tendered the sum of \$88.50 to HOA.
9 Counterclaim, ¶17. This was the case although the Notice of Sale specifically stated that the
10 amount claimed due by HOA was \$2,862.23. Counterclaim, ¶14.

11 The HOA's agent specifically rejected the payment that was purportedly tendered by
12 Miles Bauer by way of a letter dated February 4, 2010, stating that said payment was insufficient.
13 Counterclaim, ¶18. Although Miles Bauer was specifically notified that the payment was
14 rejected, BONY or its predecessor-in-interest appears to have thereafter done absolutely nothing
15 for a period of over one year, ultimately sitting on its hands and allowing the HOA Foreclosure
16 Sale to take place of March 2, 2011.

17 Subsequent to the HOA Foreclosure Sale, BONY again appears to have done absolutely
18 nothing for a period of over 6 years. During this time period, the Property was sold to the
19 Plaintiff, a bona fide purchaser for value. BONY not only failed to take any action to enjoin the
20 HOA Foreclosure Sale but also failed to take any action whatsoever to provide notice to third
21 parties of any dispute that may have existed between it and the HOA. This failure resulted in
22 Plaintiff's purchase of the Property.

23 It is undisputed that the HOA Foreclosure Sale took place on March 2, 2011. It is
24 undisputed that BONY or its predecessor-in-interest possessed actual notice of the foreclosure
25 proceedings well over a year prior to the date of the HOA Foreclosure Sale. It is undisputed that
26 BONY did nothing to enjoin the HOA Foreclosure Sale despite its actual knowledge that its
27 purported tender of \$88.50 in satisfaction of a lien claimed in the amount of at least \$2,862.23
28

1 was rejected by the HOA and/or its agent. It is undisputed that BONY did nothing whatsoever to
2 contest the force and effect of the HOA Foreclosure Sale for a period of over 6 years after the
3 HOA Foreclosure Sale took place. This astonishing delay in and of itself is sufficient to bar the
4 Defendant's claim aside from the fact that it is time-barred by the statute of limitations.

5 **4. FOR THE SAME REASONS THAT THE DEFENDANT'S COUNTERCLAIM**
6 **MUST BE DISMISSED, SUMMARY JUDGMENT MUST BE ENTERED IN**
7 **FAVOR OF THE PLAINTIFF**

8 Pursuant to *SFR Investments*, the Nevada Supreme Court has determined that the non-
9 judicial foreclosure of an HOA lien extinguishes a first deed of trust. Plaintiff is unquestionably
10 the owner of the Property. Pursuant to its Complaint, the Plaintiff seeks a judgment from this
11 Court that it owns the Property free and clear of any claimed interest of the Defendants.
12 Pursuant to BONY's Counterclaim, it asserts that it continues to maintain an interest in the
13 Property. However, as discussed at length above, BONY delayed prosecuting its claim for over
14 six years.

15 Both the Plaintiff and BONY assert a claim for Quiet Title/Declaratory Relief. Pursuant
16 to NRS 40.010, a quiet title action "may be brought by any person against another who claims an
17 estate or interest in real property, adverse to the person bringing the action, for the purpose of
18 determining such adverse claim." In a quiet title case, a presumption exists in favor of the record
19 title holder. *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669 (1996). Thus, a
20 presumption exists in favor of LVDG. Furthermore, Nevada law provides that the HOA
21 Foreclosure Sale and the resulting HOA Foreclosure Deed are both presumed valid. N.R.S.
22 47.250(16)-(18) (stating that there are disputable presumptions "that the law has been obeyed";
23 "that a trustee or other person, whose duty it was to convey real property to a particular person,
24 has actually conveyed to that person, when such presumption is necessary to perfect the title of
25 such person or a successor in interest"; "that private transactions have been fair and regular"; and
26 "that the ordinary course of business has been followed."). A presumption not only fixes the
27 burden of going forward with evidence, but it also shifts the burden of proof. *Yeager v. Harrah's*
28

1 *Club, Inc.*, 111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995) (citing *Vancheri v. GNLV Corp.*, 105
2 Nev. 417, 421, 777 P.2d 366, 368 (1989).) These presumptions impose on the party against
3 whom they are directed the burden of proving that the nonexistence of the presumed fact is more
4 probable than its existence. *Id.* (citing N.R.S. 47.180.).

5 BONY must overcome the presumptions that exist in favor of the Plaintiff – something
6 that it is woefully unable to do because it has allowed the statutory time period in which it could
7 contest the force and effect of the HOA Foreclosure Sale to lapse. Because BONY possesses no
8 means to contest the force and effect of the HOA Foreclosure Sale, summary judgment must be
9 entered in favor of the Plaintiff.

10 IV.

11 CONCLUSION

12 For the reasons set forth herein, the Defendant’s Counterclaim must be dismissed with
13 prejudice. Even if the Defendant’s claims had merit, its claims are barred by the 5-year statute of
14 limitations of NRS 11.070 and NRS 11.080. BONY was required to commence its claims no
15 later than March 4, 2016, if at all. BONY failed to do so and its Counterclaim thus fails to state a
16 claim upon which relief may be granted and must be dismissed.

17 Because BONY no longer possesses any right nor means to contest the force and effect of
18 the HOA Foreclosure Sale, summary judgment must be entered in favor of the Plaintiff. BONY

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

1 cannot rebut the various presumptions that exist in favor of the Plaintiff because its claims are
2 time-barred. Judgment must be entered in favor of the Plaintiff, confirming that it is the owner
3 of the Property free and clear of any claimed interest of BONY.

4 DATED this 16th day of June, 2017.

5 ROGER P. CROTEAU & ASSOCIATES, LTD.

6
7 /s/ Timothy E. Rhoda

8 ROGER P. CROTEAU, ESQ.

9 Nevada Bar No. 4958

10 TIMOTHY E. RHODA, ESQ.

11 Nevada Bar No. 7878

12 9120 West Post Road, Suite 100

13 Las Vegas, Nevada 89148

14 (702) 254-7775

15 *Attorney for Plaintiff*

16 **LAS VEGAS DEVELOPMENT GROUP, LLC**
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 16th day of June, 2017, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-file and serve system.

Ariel E. Stern
Tenesa S. Scaturro
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
(702) 634-5000
(702) 380-8572 Facsimile
ariel.stern@akerman.com
tenesa.scaturro@akerman.com
Attorneys for Defendant
THE BANK OF NEW YORK

____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

____ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

____ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda
An employee of ROGER P. CROTEAU &
ASSOCIATES, LTD

EXHIBIT 1

EXHIBIT 1

Inst #: 201103030003434

Fees: \$14.00 N/C Fee: \$0.00

RPTT: \$22.95 Ex: #

03/03/2011 01:17:31 PM

Receipt #: 694972

Requestor:

CAMCO

Recorded By: JRV Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
Hidden Canyon HOA
C/O CAMCO
PO Box 12117
N. Las Vegas, NV 89112

A.P.N. No.139-09-410-021

Trustee Sale No. 16246-1524 Space above for Recorder's Use

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was Foreclosing Beneficiary: **Hidden Canyon HOA**
The amount of unpaid debt together with costs (Real Property Transfer Tax Value): **\$4,310.82**
The amount paid by the Grantee (Buyer) at the Trustee's Sale: **\$4,310.82**
The Documentary Transfer Tax: **\$22.95**
Property address: **1524 Highfield Ct., N. Las Vegas, NV 89032**
Said property is in [] unincorporated area: City of N. Las Vegas
Tristor (Former Owner that was foreclosed on): **Dania Hernandez**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded June 3, 2009 as instrument number 03607, in Clark County, does hereby grant, without warranty expressed or implied to: **Hidden Canyon Owners Association (Grantee)**, all its right, title and interest in the property legally described as: **Lot 32, as per map recorded in Book 61, Pages 61 as shown in the Office of the County Recorder of Clark County Nevada.**

TRUSTEE STATES THAT:

This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **March 02, 2011** at the place indicated on the Notice of Trustee's Sale.

Branko Jetic
Signature of AUTHORIZED AGENT for Alessi&Koenig, LLC

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me March 3, 2011

WITNESS my hand and official seal.

(Seal)



(Signature)

JA 0057

1. Assessor Parcel Number(s)

b. _____
c. _____
d. _____

a. ☐ Vacant Land b. ☒ Single Fam. Res.

c. ☐ Condo/Twnhse d. ☐ 2-4 Plex

e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l

g. ☐ Agricultural h. ☐ Mobile Home

☐ Other

Notes:

| | |
|-------------|--|
| \$ 4,310.82 | |
| (| |
| \$ 4,310.82 | |
| \$ \$22.95 | |

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

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

Capacity: Grantee

Capacity: _____

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Hidden Canyon OA
Address: PO Box 12117
City: Las Vegas
State: NV Zip: 89112

Print Name: CAMCO
Address: PO Box 12117
City: Las Vegas

State: NV Zip: 89112

JA 0058

EXHIBIT 2

EXHIBIT 2

Inst #: 201301280002187
Fees: \$19.00 N/C Fee: \$0.00
RPTT: \$0.00 Ex: #003
01/28/2013 11:30:08 AM
Receipt #: 1474401
Requestor:
ABSOLUTE COLLECTION SERVICE
Recorded By: MSH Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 139-09-410-021

WHEN RECORDED MAIL DEED AND
TAX STATEMENTS TO:

Las Vegas Development Group, LLC
397 3rd Ave, Ste A
Chula Vista CA 91910

SPACE ABOVE THIS LINE FOR RECORDER'S USE

(corrective deed 201204260000422; Grantor Name)

QUITCLAIM DEED

THIS QUITCLAIM DEED made on **March 30, 2011**, between **Hidden Canyon Owners Association c/o Absolute Collection Services, LLC**, 6440 Sky Pointe Dr, Box 140-154, Las Vegas, NV 89131 and Las Vegas Development Group, LLC, 397 3rd Ave, Ste A, Chula Vista CA 91910

That for and in the consideration of the sum of FOUR THOUSAND FIVE HUNDRED DOLLARS AND 00/100 CENTS (\$4,500.00) the receipt of which is hereby acknowledged, **Hidden Canyon Owners Association** does hereby release, remise and forever quitclaim unto **Las Vegas Development Group, LLC** all of his interest, if any, in that certain real property commonly known as:

1524 Highfield Ct, N Las Vegas NV 89032

Legally described as follows:

Lot **32** as per map recorded in Book **61**, Page **61**, Unit **3** as shown in the Office of the County Recorder of Clark County Nevada

Together with all the tenements, hereditaments, and appurtenances thereunto belonging, and the reversions, remainders, rents, issues, and profits thereof. To have and to hold, all and singular the premises, with the

appurtenances, unto **Las Vegas Development Group, LLC** and his/her heirs and assigns forever.

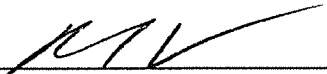
In witness whereof, **Hidden Canyon Owners Association** has hereunto this 30th day of March and 2011 as set forth above.

State of Nevada)ss

County of Clark)ss

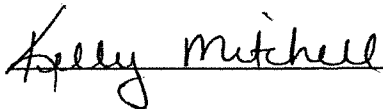
I, Richard Kaye , being first duly sworn, deposes and says:

That I am the authorized representative of **Hidden Canyon Owners Association** in the above-entitled action: that I have read the foregoing and know the contents thereof, and that the same is true of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.



Richard Kaye, Agent for Hidden Canyon Owners Association

Subscribed and sworn to before me this 24th DAY OF January , 2013.



Kelly Mitchell, Notary Public

My Commission Expires: 7/10/16

Certificate No: 08-7504-1

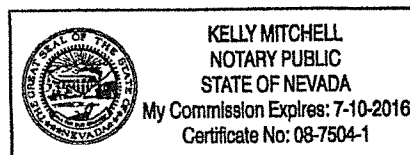


EXHIBIT A

LOT THIRTY TWO (32) OF HIDDEN CANYON HORIZONS
PREMIER UNIT 3 AS SHOWN BY MAP THEREOF ON FILE IN
BOOK 61 OF PLATS, PAGE 61 IN THE OFFICE OF THE COUNTY
RECORDER OF CLARK COUNTY, NEVADA

ASSESSOR'S COPY

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

- a. 139-09-410-021
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3.a. Total Value/Sales Price of Property

\$ 4,500.00

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

c. Transfer Tax Value: \$ 0.00

d. Real Property Transfer Tax Due \$ 0.00

4. **If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section 03

b. Explain Reason for Exemption: Re-recording deed to correct Grantor information

201204260000422

5. Partial Interest: Percentage being transferred: _____ %

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

Signature Kelly Mitchell Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: Hidden Canyon Owners Assoc.

Address: PO Box 12117

City: Las Vegas

State: NV Zip: 89112

BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: Las Vegas Development Group LLC

Address: 397 3rd Ave, Ste A

City: Chula Vista

State: CA Zip: 91910

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

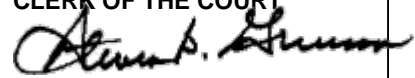
Print Name: Absolute Collection Services LLC Escrow # n/a-foreclosure buyback

Address: 6440 Sky Pointe Dr. Box 140-154

City: Las Vegas State: NV Zip: 89131

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

JA 0063



ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
TENESA S. SCATURRO, ESQ.
Nevada Bar No. 12488
AKERMAN LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: ariel.stern@akerman.com
Email: tenesa.scaturro@akerman.com

*Attorneys for The Bank of New York Mellon f/k/a
The Bank of New York, as Trustee for the
Certificateholders of CWABS, Inc., Asset-Backed
Certificates, Series 2006-7*

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC,
a Nevada limited liability company,

Plaintiff,

vs.

DANIA V. HERNANDEZ, an individual; THE
BANK OF NEW YORK MELLON F/K/A THE
BANK OF NEW YORK, AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF CWABS,
INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-7, a national banking association;
DOE individuals I through XX; and ROE
CORPORATIONS I through XX,

Defendants.

THE BANK OF NEW YORK MELLON F/K/A
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF
CWABS, INC., ASSET-BACKED
CERTIFICATES, SERIES 2006-7,

Counterclaimant,

vs.

LAS VEGAS DEVELOPMENT GROUP, LLC,
a Nevada limited liability company,

Counterdefendant.

Case No.: A-17-756215-C
Dept. No.: XIII

**THE BANK OF NEW YORK MELLON,
AS TRUSTEE'S OPPOSITION TO LAS
VEGAS DEVELOPMENT GROUP, LLC'S
MOTION TO DISMISS AND MOTION
FOR SUMMARY JUDGMENT**

Hearing Date: August 10, 2017
Hearing Time: 9:00 a.m.

AKERMAN LLP

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

1 The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the
2 Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-7 (**BoNYM**) opposes
3 Las Vegas Development Group, LLC's motion to dismiss and motion for summary judgment.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION**

6 LVDG asks the Court to dismiss BoNYM's complaint because, LVDG argues, it is barred by
7 the five-year statute of limitations on quiet title claims. LVDG's motion should be denied. First, the
8 Nevada statutes on which LVDG relies do not apply to BoNYM's claim: NRS 11.070 and 11.080
9 govern claims to title, not lienholders' claims for declaratory relief concerning the enforceability of
10 their liens. Second, even if NRS 11.070 and 11.080 do apply to BoNYM's claim, they did not begin
11 running on foreclosure, but rather on the date when BoNYM's grantors lost or abandoned possession
12 of the property. Third and finally, LVDG cannot rely on NRS 11.070 and 11.080 because it cannot
13 satisfy the requirements of adverse possession under Nevada law.

14 **II. STATEMENT OF UNDISPUTED FACTS**

15 For purposes of the present motion, BoNYM accepts LVDG's account of the undisputed
16 facts, except as follows:

17 Statement of Undisputed Fact 5: "After the expiration of 90 days from the recording and
18 mailing of the Notice of Default...": Discovery has not opened and there is no evidence or
19 allegation that the HOA mailed the Notice of Default to anyone.

20 **III. LEGAL STANDARD**

21 In deciding a motion to dismiss under NRCP 12(b)(5), the court must accept all allegations as
22 true and draw all inferences in favor of the non-moving party. *Breliant v. Preferred Equities Corp.*,
23 858 P.2d 1258, 1260 (Nev. 1993) (quotation omitted). "A complaint should not be dismissed unless
24 it appears to a certainty that the plaintiff could prove no set of facts that would entitle him or her to
25 relief." *Cohen v. Mirage Resorts, Inc.*, 62 P.3d 720, 734 (Nev. 2003).

26 A motion for summary judgment should be granted "when the pleadings and other evidence
27 on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party
28 is entitled to judgment as a matter of law.'" *Wood v. Safeway*, 121 Nev. 724, 729; 121 P.3d 1026,

1 1029 (2005); NRCPC 56(c). Materiality is dependent on the underlying substantive law, and includes
2 only those factual disputes that could change the outcome of a case. *Id.*

3
4 **IV. ARGUMENT**

5 **A. NRS 11.070 and 11.080 do not apply.**

6 LVDG's argument that the quiet title claim is time-barred rests on two Nevada statutes: NRS
7 11.070 and NRS 11.080. Mot. at 9-12. But neither of these statutes sets a single statute of
8 limitations period for all quiet title actions—neither statute actually mentions "quiet title actions" as
9 such. Instead, NRS 11.080 governs suits "for the recovery of real property," and NRS 11.070
10 governs any "cause of action or defense to an action, founded upon the title to real property." Neither
11 section applies here. This cannot be a suit "for the recovery of real property," because BoNYM has
12 never possessed the property or claimed title to it.

13 LVDG argues this Court should "read NRS 40.010 and NRS 11.070 together" and conclude
14 that the statute of limitations in NRS 11.070 applies to all quiet title actions brought under NRS
15 40.010. But the text of the two sections rules out any such "reading together." NRS 40.010 allows
16 suits by anyone who claims "an estate *or interest*" in the property. NRS 11.070, on the other hand,
17 establishes a statute of limitations only for actions "founded upon *title*." The broader word "interest"
18 does not appear in the statute. Unsurprisingly, given this difference, the Nevada Supreme Court has
19 never interpreted NRS 11.070 to apply to suits by mortgagees related to the enforceability of their
20 mortgage.

21 BoNYM claims a beneficial interest in the deed of trust encumbering it—exactly the sort of
22 "interest" to which NRS 11.070 and NRS 11.080 **do not apply**. BoNYM's complaint prays not for
23 title per se, but for a declaratory judgment that BoNYM may legally enforce its deed of trust.

24 LVDG's reliance on *Weeping Hollow Ave. Tr. v. Spencer* is misplaced. In *Weeping Hollow*,
25 the court examined NRS 11.070 in the context of a *homeowner's* claims against an HOA foreclosure
26 purchaser. Notably, the beneficiary of the deed of trust was also a party to that case and the court
27 made no such finding as to its claims against the HOA foreclosure purchaser. This makes sense
28 considering NRS 11.070 establishes limitations for actions founded upon title, which would apply to

1 a homeowner. Similarly, *Scott v. Mortg. Elec. Registration Sys., Inc.*, also involves a *homeowner's*
2 claim to title against their mortgage company. Again, the homeowners, unlike BoNYM, have a
3 claim founded upon title.

4 It is the substance of an asserted claim for declaratory relief that dictates the relevant statute
5 of limitations. *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 688 (9th Cir. 1993). The
6 declaratory judgment claim cannot be time-barred until enforcement of the contract itself (the deed
7 of trust) would be time-barred, and LVDG has not even attempted to argue any time bar would
8 preclude its enforcement of the deed of trust. *See Algrant v. Evergreen Nurseries, Ltd.*, 126 F.3d
9 173, 181 (3rd Cir. 1997) (action for declaratory relief barred only if the limitation applicable to the
10 substantive claim would be barred); *Clary v. Stack and Supply Co.*, 611 P.2d 80, 83 (Alaska 1980)
11 (declaratory judgment claim regarding rights under contract barred when action to enforce the
12 contract is barred); *118 East 60th Owners, Inc. v. Bonner Properties, Inc.*, 677 F.2d 200, 202 (2nd Cir.
13 1982) ("[W]hen the declaratory judgment sought by a plaintiff would declare his entitlement to some
14 affirmative relief, his suit is time-barred if the applicable limitations period has run on a direct claim
15 to obtain such relief."). As long as the affirmative relief sought by plaintiff, the ability to enforce the
16 underlying contract, is not time-barred, an action seeking a declaration regarding the enforceability
17 of that contract is likewise not time-barred.

18 **B. NRS 11.070 and 11.080 do not begin running on foreclosure**

19 LVDG claims the statute of limitations on BoNYM's claim ran in February 2016, five
20 months before this suit was filed. But this assumes the five-year statute began running in February
21 2011, at the time of the HOA foreclosure sale. This assumption is plainly contradicted by the text of
22 the statutes LVDG relies on.

23 Even if they apply here, which they clearly do not, the time limits in both NRS 11.070 and
24 NRS 11.080 begin running on loss of possession. NRS 11.070 bars certain actions unless "the person
25 prosecuting the action . . . or the ancestor, predecessor, or grantor of such person, was seized *or*
26 *possessed* of the premises in question within 5 years before the committing of the act in respect to
27 which said action is prosecuted." NRS 11.070 (emphasis added). NRS 11.080 bars certain actions
28 unless "the plaintiff or the plaintiff's ancestor, predecessor or grantor was seized *or possessed* of the

1 premises in question, within 5 years before the commencement thereof." NRS 11.080 (emphasis
2 added). The operative date in each statute is not some event like an HOA foreclosure, but rather the
3 date on which the party or its predecessor bringing the action lost or relinquished possession of the
4 property at issue.

5 BoNYM has never been "seized or possessed of the premises in question" here, illustrating
6 the non-applicability of these statutes. The five-year period established by 11.070 and 11.080 could
7 not begin running until the date Hernandez lost or relinquished possession of the property. That date
8 does not appear in BoNYM's complaint, in LVDG's statement of undisputed facts or—to BoNYM's
9 knowledge—in any evidence produced in this case through discovery.

10 LVDG may argue that, because the HOA foreclosed on March 2, 2011, Hernandez must have
11 lost possession of the property in March 2011. But foreclosure, if effective, deprives an owner of
12 title, not of possession. If the Hernandez contested the foreclosure sale, sought to negotiate a new
13 arrangement with the foreclosing HOA, or simply refused to leave the property, she may have
14 retained possession for many months after foreclosure.

15 For purposes of LVDG's motion for dismissal or summary judgment, these questions must be
16 resolved in favor of the non-moving party, BoNYM. *Cahill v. Liberty Mut'l Ins. Co.*, 80 F.3d 336,
17 337–38 (9th Cir. 1996) ("All allegations of material fact are . . . construed in the light most favorable
18 to the non-moving party [for purposes of a 12(b)(6) motion]."); *Zetwick v. County of Yolo*, 850 F.3d
19 436, 440 (9th Cir. 2017) ("Summary judgment is appropriate when, viewing the evidence in the light
20 most favorable to the nonmoving party, there is no genuine dispute as to any material fact."). For
21 purposes of this motion, the Court must assume Hernandez was in possession, and that BoNYM's
22 suit is timely, even if these inapplicable statutes were erroneously applied to this case. If LVDG
23 wishes to argue that the Hernandez was not in possession it should be required to produce evidence
24 of that fact.

25 **C. LVDG has not satisfied the requirements for adverse possession**

26 NRS 11.070 and NRS 11.080 are not ordinary statutes of limitations. Instead, they are part of
27 Nevada's law of adverse possession. *See Lombardo Turquoise Mill & Mining Co. v. Hemanes*, 430
28 F. Supp. 429, 438 (D. Nev. 1977) ("The regular statute pertaining to adverse possession of real

1 property requires adverse possession for five years. (*N.R.S. 11.070*).\" (emphasis added)); *Lanigir v.*
2 *Arden*, 409 P.2d 891, 896 (Nev. 1966) (discussing the possibility of an adverse possession claim
3 \"under . . . NRS 11.070\"); *see also* NRS 11.070, 11.080 (West) (West's annotations for each section
4 include \"Adverse Possession\").

5 Adverse possession is the legal process through which a party in possession of property, like
6 LVDG in this case, defeats rival claimants not through superiority of title but by the application of a
7 statute of limitations. *See* *Wex Legal Dictionary and Encyclopedia, Adverse Possession* (last updated
8 August 2016) (\"Adverse possession is a doctrine under which a person in possession of land owned
9 by someone else may acquire valid title to it, so long as . . . the adverse possessor is in possession for
10 a sufficient period of time, *as defined by a statute of limitations*.\" (emphasis added)),
11 https://www.law.cornell.edu/wex/adverse_possession. But Nevada law puts more requirements on an
12 adverse possessor like LVDG than simply the passage of the statutory period.

13 To begin with, LVDG must satisfy the standard common-law requirements: possession must
14 be actual, open and notorious, hostile under an exclusive claim of right, and continuous and
15 uninterrupted for five years. *Howard v. Wright*, 143 P. 1184, 1186 (Nev. 1914). LVDG has not
16 attempted to satisfy these requirements, and it probably cannot satisfy them. In particular, because
17 BoNYM and its predecessors have never claimed a right to possess the property, LVDG's possession
18 has not been hostile to BoNYM's claimed interest. LVDG's possession became hostile, at the
19 earliest, on the date when LVDG informed BoNYM that it did not recognize the validity of the deed
20 of trust. That date is not in the complaint or in the motion for summary judgment. For purposes of
21 LVDG's dispositive motion, the Court must resolve the question in BoNYM's favor and conclude
22 LVDG's possession has not been hostile for the full statutory period.

23 Further, an adverse possessor like LVDG must satisfy multiple statutory requirements. Under
24 NRS 11.150, an adverse possessor cannot prevail unless it can show \"that the land has been occupied
25 and claimed for the period of 5 years, continuously\" and that it has \"paid all taxes, state, county and
26 municipal, which may have been levied and assessed against the land for the period mentioned.\"\n27 Nothing in the complaint or the summary judgment record indicates that LVDG and its predecessors
28 have possessed the property continuously for five years, and nothing indicates that they have paid all

1 property taxes accruing in that period. For purposes of this motion, the Court must resolve these
2 questions in BoNYM's favor, so LVDG has not satisfied the requirements of Nevada's adverse
3 possession law. LVDG's dispositive motion based on the statute of limitations should be denied.

4 **D. BoNYM's claims are not barred by laches**

5 "Laches is more than mere delay in seeking to enforce one's rights, it is delay that works a
6 disadvantage to another." *Home Savings Ass'n v. Bigelow*, 105 Nev. 494, 496, 779 P.2d 85, 86
7 (1989). "The condition of the party asserting laches must become so changed that he cannot be
8 restored to his former state." *Id.* Laches is an affirmative defense requiring "*proof* of (1) lack of
9 diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting
10 the defense." *In re Beaty*, 306 F.3d 914, 926 (9th Cir. 2002) (emphasis added). Laches is an issue of
11 fact. *See In Re Master of Harrison Living Trust*, 121 Nev. Adv. Op. 24 at fn. 17.

12 LVDG's motion is premised upon a number of facts not supported by any evidence, for
13 example: "BONY again appears to have done absolutely nothing for a period of over 6 years" Mot.
14 at 13:17-18; "Plaintiff [is] a bona fide purchaser for value;" Mot. at 13:18-19. These issues cannot
15 be resolved by a motion to dismiss where BoNYM's allegations are taken as true, and LVDG
16 provides *no evidence* to support summary judgment in its favor on these issues. LVDG's motion
17 should be denied

18 **E. The Nevada Supreme Court rejects LVDG's deed recitals argument.**

19 LVDG argues that *SFR Investments* mandates dismissal of BoNYM's counterclaim. Mot. at
20 14:8-9. But *SFR Investments* is clear: only a *proper* foreclosure can extinguish a deed of trust. *SFR*
21 *Investments Pool 1, LLC v. U.S. Bank*, 334 P.3d 408, 419 (Nev. 2014). Whether the foreclosure sale
22 was proper is a question of fact that cannot be determined at the motion to dismiss stage.

23 LVDG also claims the deed recitals are conclusive, even though the Nevada Supreme Court
24 has squarely rejected this argument. Mot. at 14-15. In *Shadow Wood*, the court noted the deed
25 recitals outlined in NRS 116.3116 concern only "default, notice, and publication of the" notice of
26 sale, and thus do not provide any presumption regarding other aspects of the foreclosure, such tender
27 and the commercial reasonableness of the sale. *Shadow Wood Homeowners Assoc., Inc. v. New York*
28 *Cnty. Bancorp, Inc.*, 366 P.3d 1105, 1110 (Nev. 2016). The court held the recitals do not even

conclusively establish the matters recited, such as whether the homeowner was in default. *Id.* As the court explained, "while it is possible to read a conclusive recital statute like NRS 116.31166 as conclusively establishing a default justifying a foreclosure when, in fact, no default occurred, such a reading would be breathtakingly broad and is probably legislatively unintended." *Id.* at 1110. The court concluded Nevada courts "retain the power to grant equitable relief from a defective foreclosure sale when appropriate." *Id.* at 1110-11. At the pleading stage, it is premature to conclude that that the sale complied with Nevada law. *See, e.g. Centeno v. Mortg. Elec. Reg. Sys., Inc.*, 2016 WL 3486378, Case No. 64998, Order of Affirmance (Nev. June 23, 2016) (appellants failed to establish compliance with the deed recitals *with evidence*).

III. CONCLUSION

NRS 11.070 and 11.080 do not apply. Instead, the Court should apply the statute of limitations governing declaratory relief, which is the statute of limitations governing enforcement of the deed of trust. Even if NRS 11.070 and 11.080 apply, they first began to run when Hernandez lost or abandoned possession of the property, and for present purposes the Court must assume the Hernandez lost or abandoned the property within the five-year limitations period. Finally, even if NRS 11.070 and 11.080 do apply, they do not bar BoNYM's claim because LVDG cannot satisfy Nevada law's requirements for adverse possession. Finally, LVDG has provided no evidence supporting its laches defense or that the sale was proper and in compliance with Nevada law. LVDG's motion should be denied.

DATED this 25th day of July, 2017.

AKERMAN LLP

/s/Tenesa S. Scaturro

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

TENESA S. SCATURRO, ESQ.

Nevada Bar No. 12488

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

*Attorneys for The Bank of New York Mellon
f/k/a The Bank of New York, as Trustee for the
Certificateholders of CWABS, Inc., Asset-
Backed Certificates, Series 2006-7*

CERTIFICATE OF SERVICE

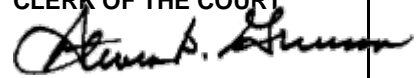
I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 25th day of July, 2017, I caused to be served a true and correct copy of the foregoing **THE BANK OF NEW YORK MELLON, AS TRUSTEE'S OPPOSITION TO LAS VEGAS DEVELOPMENT GROUP, LLC'S MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

Roger P. Croteau
croteaulaw@croteaulaw.com
Roger P. Croteau & Associates, Ltd.
9120 West Post Road Suite 100 Las Vegas, 89148
(702) 254-7775

/s/Jill Sallade

An employee of AKERMAN LLP



RPLY
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
ROGER P. CROTEAU & ASSOCIATES, LTD.
9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
(702) 254-7775
(702) 228-7719 (facsimile)
croteaulaw@croteaulaw.com
Attorney for Plaintiff
LAS VEGAS DEVELOPMENT GROUP, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)

Plaintiff,)

vs.)

DANIA V. HERNANDEZ, an individual; THE)
BANK OF NEW YORK MELLON f/k/a THE)
BANK OF NEW YORK, AS TRUSTEE FOR)
THE CERTIFICATEHOLDERS OF CWABS,)
INC., ASSET-BACKED CERTIFICATES,)
SERIES 2006-7, a national banking association;)
DOE individuals I through XX; and ROE)
CORPORATIONS I through XX,)

Defendants.)

THE BANK OF NEW YORK MELLON f/k/a)
THE BANK OF NEW YORK, AS TRUSTEE)
FOR THE CERTIFICATEHOLDERS OF)
CWABS, INC., ASSET-BACKED)
CERTIFICATES, SERIES 2006-7,)

Counterclaimant,)

vs.)

LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)

Counterdefendant.)

Case No. A-17-756215-C
Dept. No. XIII

REPLY TO OPPOSITION TO
MOTION TO DISMISS
COUNTERCLAIM AND MOTION
FOR SUMMARY JUDGMENT

Date of Hearing: August 10, 2017
Time of Hearing: 9:00 a.m.

REPLY TO OPPOSITION TO MOTION TO DISMISS COUNTERCLAIM AND
MOTION FOR SUMMARY JUDGMENT

COMES NOW, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby presents its Reply to Bank of New York Mellon, as Trustee's, Opposition to Motion to Dismiss and Motion for Summary Judgment. This Reply is made and based upon the attached memorandum of points and authorities, all pleadings, papers and documents on file herein, and any oral argument that the Court may entertain at the hearing of this matter.

DATED this 4th day of August, 2017.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda

ROGER P. CROTEAU, ESQ.

Nevada Bar No. 4958

TIMOTHY E. RHODA, ESQ.

Nevada Bar No. 7878

9120 West Post Road, Suite 100

Las Vegas, Nevada 89148

(702) 254-7775

Attorney for Plaintiff

LAS VEGAS DEVELOPMENT GROUP, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF THE FACTS

At issue herein is real property commonly known as 1524 Highfield Court, North Las Vegas, Nevada 89032, Assessor Parcel No. 139-09-410-021 (*the "Property"*). BONY claims to own a deed of trust recorded against the Property in the Official Records of the Clark County Recorder as Instrument No. 20060419-0000609 (*"First Deed of Trust"*). Counterclaim, ¶10-11. Specifically, BONY claims to be the beneficiary of the First Deed of Trust by virtue of an Assignment recorded on April 21, 2011, and re-recorded on June 12, 2014. Counterclaim, ¶11.

The Property was the subject of a homeowners association lien foreclosure sale (*"HOA Foreclosure Sale"*) conducted on behalf of Hidden Canyon Owners Association (*"HOA"*) on or about March 2, 2011 – prior to the date on which BONY was assigned the First Deed of Trust. It is undisputed that neither BONY or any predecessor-in-interest did anything at all to contest the force and effect of the HOA Foreclosure Sale for a period of well over six years after it took place.

II.

LEGAL ARGUMENT

1. THE PLAINTIFF'S QUIET TITLE CLAIM IS GOVERNED BY NOT LONGER THAN A 5 YEAR STATUTE OF LIMITATIONS

As discussed in the instant Motion, a claim for Quiet Title is governed by a statute of limitations not longer than 5 years. Plaintiff does not necessarily agree that the limitations period is 5 years rather than 3 years or 4 years; however, it is most certainly not longer than 5 years. BONY argues otherwise in its Opposition, stating that NRS 11.070 and NRS 11.080 do not apply. Instead, BONY seems to effectively argue that no statute of limitations applies.

As set forth in Plaintiff's Motion, numerous courts have held that a quiet title claim is subject to the five-year limitations period of NRS § 11.070. *Nationstar Mortg. LLC v. Amber Hills II Homeowners Ass'n*, 2016 U.S. Dist. LEXIS 43592, 9-10 (D. Nev. Mar. 31, 2016). *See also Weeping Hollow Ave. Tr. v. Spencer*, 831 F.3d 1110, 1114 (9th Cir. 2016) (emphasis added)

1 (“Under Nevada law, Spencer could have brought claims challenging the HOA foreclosure sale
2 *within five years of the sale.*”); *Scott v. Mortg. Elec. Registration Sys., Inc.*, 605 F. App’x 598,
3 600 (9th Cir. 2015); *Bank of Am., N.A. v. Antelope Homeowners’ Ass’n*, No. 2:16-cv-449, 2017
4 WL 421652, at *3 (D. Nev. Jan. 30, 2017) (Mahan, J.). Rather than follow these authorities –
5 which are obviously not favorable to it – the Defendant asserts that its claims cannot be time-
6 barred until such time that the enforcement of its contract would be time-barred. See Opposition,
7 p. 4. Unfortunately, under this analysis, the Defendant’s claims are also barred because the
8 Defendant possessed only 6 months after the HOA Foreclosure Sale in which to pursue a
9 deficiency action against its borrower.

10 N.R.S. §40.455, as it existed in 2011, provided in pertinent part as follows:

11 1. Except as otherwise provided in subsection 3, upon application of the judgment
12 creditor or the beneficiary of the deed of trust **within 6 months after the date of**
13 **the foreclosure sale or the trustee’s sale held pursuant to NRS 107.080,**
14 respectively, and after the required hearing, the court shall award a deficiency
15 judgment to the judgment creditor or the beneficiary of the deed of trust if it
16 appears from the sheriff’s return or the recital of consideration in the trustee’s deed
17 that there is a deficiency of the proceeds of the sale and a balance remaining due
18 to the judgment creditor or the beneficiary of the deed of trust, respectively.

19 Nev. Rev. Stat. §40.455 (2011) (Emphasis added). N.R.S. §40.4632 provided that the term
20 “foreclosure sale” has the meaning ascribed to it in NRS 40.462. Nev. Rev. Stat. §40.4632
21 (2011). N.R.S. §40.462 provided as follows:

22 4. As used in this section, foreclosure sale means the sale of real property to
23 enforce an obligation secured by a mortgage **or lien on the property**, including
24 the exercise of a trustee’s power of sale pursuant to NRS 107.080.

25 Nev. Rev. Stat. §40.462 (2011) (Emphasis added). It is noteworthy that the term “foreclosure
26 sale” encompasses not only the foreclosure of a mortgage but also other liens on the property.

27 The HOA Foreclosure Sale that took place on March 2, 2011, served to enforce a lien on
28 the property. Thus, it was a “foreclosure sale” as defined by N.R.S. §40.4632 and §40.462.
Pursuant to N.R.S. §40.455, in order to enforce the debt that was previously secured by the
Property, BONY was required to make application for a deficiency judgment within 6 months
after the date of the foreclosure sale. It did not. Indeed, BONY didn’t do anything for over 6
years after the date of the foreclosure sale. Even under its interpretation of the law, BONY’s

claim is time-barred.

**2. THE STATUTE OF LIMITATIONS COMMENCED RUNNING AT THE TIME
OF THE FORECLOSURE SALE**

Plaintiff next argues that NRS 11.070 and NRS 11.080 do not begin running on foreclosure but instead only “upon loss of possession.” As set forth in Plaintiff’s Motion, this argument has been summarily dispatched by Judge Jones in the matter of *U.S. Bank Nat’l Ass’n v. Woodland Village*:

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

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

In reality, Plaintiff’s interest in the Property was called into question at the time of the foreclosure sale due to NRS 116.3116(2), which gives priority to that portion of an HOA lien consisting solely of unpaid HOA assessments accrued during the “nine months immediately preceding institution of an action to enforce the lien.” It is clear that Plaintiff could have brought its action to quiet title against the HOA at any time following the HOA’s foreclosure sale, in order to obtain a declaration that the sale had not extinguished its interest in the Property. Similarly, Plaintiff could have asserted its claims for violation of NRS 116.1113 and wrongful foreclosure as soon as it obtained facts to support a contention that the HOA’s sale of the Property was improper. There is no indication in the Complaint that such facts were obtained any later than at the time of foreclosure. Therefore, the Court finds that the statutes of limitations applicable to Plaintiff’s claims against the HOA began to run, at the latest, on the date of recordation of the foreclosure deed—February 10, 2011.

U.S. Bank Nat’l Ass’n v. Woodland Vill., 2016 U.S. Dist. LEXIS 168460, at *6-8 (D. Nev. Dec. 6, 2016).

1 As in *U.S. Bank Nat'l Ass'n v. Woodland Village*, BONY has conceded that its claim has
2 accrued by virtue of the fact that it has brought an action. As Judge Jones noted, if BONY
3 believed that its action had not accrued, it would not have filed its Counterclaim at this time.
4 The fact that it did so proves without a doubt that it believes that its cause of action had accrued.
5 The alternative would be that its cause of action has been filed in bad faith.

6 It is very clear that BONY was on notice of its claims no later than the date on which the
7 HOA Foreclosure Sale was held and the HOA Foreclosure Deed was recorded – March, 2011.
8 The Plaintiff was required to bring its claims within not longer than 5 years thereafter. It failed
9 to do so and its claims became time-barred by operation of law.

10 **3. NO PARTY HEREIN HAS BROUGHT ANY CLAIM FOR ADVERSE**
11 **POSSESSION HEREIN**

12 Plaintiff's next argument is premised upon an assertion that Plaintiff has not satisfied the
13 requirements for adverse possession." It appears that BONY is unaware of the claims that are at
14 issue herein. Indeed, no party has filed any claim for adverse possession herein. On the contrary,
15 both parties have brought claims for Quiet Title/Declaratory Relief.

16 Plaintiff attempts to place a burden of proof upon Plaintiff, asserting that "LVDG must
17 satisfy the standard common-law requirements [of adverse possession]." Opposition, p. 6, ll. 13-
18 14. Plaintiff is required to do nothing of the sort. Plaintiff does not claim title based upon
19 adverse possession. Indeed, Plaintiff has held **legal record title** to the Property since March 30,
20 2011 – the date on which the Quitclaim Deed was recorded in the Official Records of the Clark
21 County Recorder which transferred all right, title and interest in the Property from HOA to
22 Plaintiff in exchange for good and valuable consideration.

23 The Plaintiff is not a squatter who seeks to obtain title to the Property by way of adverse
24 possession. It has no need to do so because, quite simply, it already owns the Property and it has
25 owned the Property since March 30, 2011. There is no dispute that the Plaintiff has been the
26 owner of the Property for well over six years. It is difficult to conceive of a more open and
27 notorious claim than the actual holding of legal recorded title.

28 BONY possessed notice of its claim not later than the date of the HOA Foreclosure Sale

1 and recording of the HOA Foreclosure Deed. It was required to bring its claims in a timely
2 manner thereafter. Because BONY chose not to prosecute such claims for more than 6 years,
3 they became time-barred by operation of law.

4 **4. BONY'S EXTRAORDINARY DELAY BARS IT FROM CONTESTING THE**
5 **PROPRIETY OF THE HOA FORECLOSURE SALE**

6 In closing, BONY argues that "only a proper foreclosure can extinguish a deed of trust.
7 Opposition, p. 7, ll. 20. BONY goes on to argue that whether the HOA Foreclosure Sale was
8 proper is a question of fact that bars summary judgment. BONY does not understand that its
9 extraordinary delay of over 6 years served to waive any defects that may have conceivably
10 existed in the foreclosure proceedings.

11 BONY's arguments are similar to those that an individual injured in a car accident.
12 While such an individual might suffer grave injuries as a result of another's negligence, he or she
13 is still required to timely bring claims in order to recover any alleged damages. The failure to
14 timely file a claim results in the claim being forever barred – regardless of its merit.

15 In this case, BONY has presented no evidence whatsoever indicating that any defect
16 existed in the HOA Foreclosure Sale. However, like the hypothetical personal injury plaintiff,
17 any defect that may have conceivably existed in the sale proceedings is not irrelevant. Because
18 BONY failed to do anything to enforce a claim for over 6 years, its claims are time-barred as a
19 matter of law. As set forth in Plaintiff's Motion, BONY is unable to overcome the presumptions
20 that exist in favor of the Plaintiff because it has waived any and all claims due to the passage of
21 time.

22 **III.**

23 **CONCLUSION**

24 For the reasons set forth herein, the Defendant's Counterclaim must be dismissed with
25 prejudice. Even if the Defendant's claims had merit (which they do not), its claims are barred by
26 the 5-year statute of limitations of NRS 11.070 and NRS 11.080. BONY was required to
27 commence its claims no later than March 4, 2016, if at all. BONY failed to do so and its
28 Counterclaim thus fails to state a claim upon which relief may be granted and must be dismissed.

1 Because BONY no longer possesses any right nor means to contest the force and effect of
2 the HOA Foreclosure Sale, summary judgment must be entered in favor of the Plaintiff. BONY
3 cannot rebut the various presumptions that exist in favor of the Plaintiff because its claims are
4 time-barred. Judgment must be entered in favor of the Plaintiff, confirming that it is the owner
5 of the Property free and clear of any claimed interest of BONY.

6 DATED this 7th day of August, 2017.

7 ROGER P. CROTEAU & ASSOCIATES, LTD.

8
9 /s/ Timothy E. Rhoda

10 ROGER P. CROTEAU, ESQ.

11 Nevada Bar No. 4958

12 TIMOTHY E. RHODA, ESQ.

13 Nevada Bar No. 7878

14 9120 West Post Road, Suite 100

15 Las Vegas, Nevada 89148

16 (702) 254-7775

17 *Attorney for Plaintiff*

18 **LAS VEGAS DEVELOPMENT GROUP, LLC**
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 7th day of August, 2017, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-file and serve system.

Ariel E. Stern
Tenesa S. Scaturro
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
(702) 634-5000
(702) 380-8572 Facsimile
ariel.stern@akerman.com
tenesa.scaturro@akerman.com
Attorneys for Defendant
THE BANK OF NEW YORK

— VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

— VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

— VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda
An employee of ROGER P. CROTEAU &
ASSOCIATES, LTD



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT
GROUP, LLC,

Plaintiff,

vs.

DANIA HERNANDEZ,

Defendant.

CASE NO. A-17-756215-C

DEPT. XIII

BEFORE THE HONORABLE MARK R. DENTON,
DISTRICT COURT JUDGE

THURSDAY, AUGUST 10, 2017

TRANSCRIPT OF HEARING:
PLAINTIFF'S MOTION TO DISMISS COUNTERCLAIM AND MOTION
FOR SUMMARY JUDGMENT

APPEARANCES:

For the Plaintiff:

ROGER P. CROTEAU, ESQ.

For the Defendant:

THERA A. COOPER, ESQ.

RECORDED BY: JENNIFER GERALD, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Las Vegas, Nevada, Thursday, August 10, 2017

[Case called at 9:10 a.m.]

THE COURT: All right. On page 1, I've got -- what's that?

THE CLERK: Mr. Croteau is running late.

Mr. Croteau is running late.

THE COURT: Oh, okay. Relative to page 1, Las Vegas Development Group, LLC, versus Hernandez, apparently Mr. Croteau is -- asked that we trail it.

[Matter trailed at 9:10 a.m.]

[Matter recalled at 10:01 a.m.]

THE COURT: Let me go now to page 1, Las Vegas Development Group versus Dania Hernandez.

MR. CROTEAU: Good morning, Your Honor. Roger Croteau for Las Vegas Development Group and Plaintiff and Counterdefendant.

MS. COOPER: Good morning, Your Honor. Thera Cooper on behalf of Bank of New York Mellon, Bar Number 13468.

THE COURT: It's Plaintiff's Motion to Dismiss Counterclaim and Motion for Summary Judgment.

MR. CROTEAU: Yes --

THE COURT: Is the Motion for Summary Judgment on the same point as the Motion to Dismiss? I'm trying to --

MR. CROTEAU: It is.

THE COURT: Yeah.

1 MR. CROTEAU: It is.

2 THE COURT: Right.

3 MR. CROTEAU: But really it addresses the counterclaim,
4 so in any event -- well actually, it addresses the Motion to Dismiss
5 on the Complaint because it's going to be heard as a summary
6 judgment motion on the papers.

7 THE COURT: So, you're saying I should treat it as a
8 summary judgment motion.

9 MR. CROTEAU: Exactly. Your Honor --

10 THE COURT: The case is pretty new, isn't it?

11 MR. CROTEAU: I'm sorry?

12 THE COURT: Just filed in May as I recall, right?

13 MR. CROTEAU: Well, that's -- you're right. Well, it's --
14 that's part of the problem. I mean, this case was ripened as of
15 March the 2nd, 2011. And that's the entire problem with the case.

16 If we go back to, I don't know, state of the law and what's
17 gone in this case and what's gone on generally in HOA litigation,
18 there's been a lot of suits filed, as the Court's aware. There's been
19 a series of cases where people came in to preserve their assets, the
20 foreclosure sale would happen, either the buyer or the bank would
21 come in and try and stay whatever actions were being taken. This
22 series of litigation have been going through the court system for
23 years.

24 Well, in this particular case, however, they didn't file this
25 case until -- well we filed this case on 5/31 of '17. They filed a

1 counterclaim on 6/15 of '17. And the whole point of this is very
2 simple. Pursuant to the -- pretty much most of the case law that's
3 been decided, heard, so on -- Amber Hills, for example, II, various
4 other cases that we've cited, the case would have ripened upon, at
5 the latest, at the latest, the recording of the foreclosure deed from
6 the foreclosing HOA and in this particular case, the HOA bought it
7 back in -- it was the successful bidder and then transferred it to my
8 client some days later.

9 So there's basically on 3/2 of '11 is the foreclosure sale.
10 The foreclosure sale gets recorded the next day. On 3/30 of '11, the
11 HOA sells the property to my client and my client has been in
12 possession ever since.

13 Now, the bank has made some frankly strange arguments
14 because we're stuck with basically it's 11.070 where it's talked
15 about them being seized of the property and their seising is their
16 loan that would have been against the property. That's their only
17 potential possession possibility. That seising is a five-year statute
18 of limitations. Quite frankly, we're not even sure we agree with
19 that. From our point of view, we think it's possibly covered under
20 the three-year statute because it's based upon a statute under 116.

21 But the courts and there have been courts -- the several
22 courts that we cite in those decisions, at the federal level at least, in
23 our district who have said no, it's going to be a five-year statute.
24 Even giving the bank the benefit of the doubt, the five-year statute
25 ran last year -- March of last year. They don't have a claim. They

1 can't bring a claim.

2 Miles Bauer even wrote a letter before the HOA
3 foreclosure sale where the predecessor in interest prior to the
4 current bank was involved in the foreclosure issues and then also
5 had knowledge of the sale. There's no issue of knowledge. They
6 were involved, the prior bank. They went through the process, they
7 did absolutely nothing. The sale occurs on 3/2 of '11 and that's it.
8 You've got a bona fide purchaser with value that comes in after the
9 fact, buys from the HOA --

10 THE COURT: And let me ask you this. Then the Plaintiff
11 waited until just before he contends the statute was going to run to
12 file its case, right? So it's within --

13 MR. CROTEAU: No.

14 THE COURT: -- the statute?

15 MR. CROTEAU: No, no, no, no.

16 THE COURT: Seeking quiet title, right?

17 MR. CROTEAU: Your Honor, I don't need to do anything.
18 The Plaintiff doesn't need to do anything.

19 THE COURT: Except you filed the case.

20 MR. CROTEAU: Only to just get a judgment so that we
21 can now clean up the title.

22 THE COURT: Seeking quiet title, right?

23 MR. CROTEAU: But, Your Honor, with all due respect, if
24 you will, okay? Can't get title insurance until we get a quiet title
25 filed and finished. Whether we take it --

1 THE COURT: No, what I'm saying is that the action was
2 filed when, May of 2017?

3 MR. CROTEAU: Correct.

4 THE COURT: Your client acquired the property, what was
5 it, 2011?

6 MR. CROTEAU: '11.

7 THE COURT: Right. And then waited until 2017, to file its
8 action.

9 MR. CROTEAU: Sure.

10 THE COURT: Right?

11 MR. CROTEAU: Sure.

12 THE COURT: Just before the statute would run on -- when
13 you contend the statute would run on it --

14 MR. CROTEAU: No, the statute was run on us too. We
15 are the owner though. Hold up, just --

16 THE COURT: You're seeking quiet title though. Your --

17 MR. CROTEAU: No, but Your Honor --

18 THE COURT: An action -- you're saying a statute of
19 limitations applies to an action that's filed, right?

20 MR. CROTEAU: No, sir. Bear with me. I -- with all due
21 respect, Your Honor, I think you're missing this, all right? Their
22 action, on their counterclaim, right, is an action against my client --

23 THE COURT: It's a compulsory counterclaim probably,
24 right?

25 MR. CROTEAU: It is not.

1 THE COURT: You don't think so?

2 MR. CROTEAU: No.

3 THE COURT: Okay.

4 MR. CROTEAU: They should have filed their own action.

5 THE COURT: Oh, okay.

6 MR. CROTEAU: You can't bootstrap statute. You can't

7 bootstrap a statute of limitations. Let me give you a hypothetical.

8 Let's assume that we're going to have a car accident case. The car

9 accident case, the statute of limitations is done, yet they're going to

10 sue my client for recovery of contribution or something like that to

11 get some money back as a result of the accident. They're all time-

12 barred. You can't make one make the other one alive, all right?

13 My action is timely, I'm in possession of the property. All

14 we tried to do --

15 THE COURT: Would it ever be untimely, ever? Your

16 action?

17 MR. CROTEAU: Mine?

18 THE COURT: Right.

19 MR. CROTEAU: To quiet my title?

20 THE COURT: Right.

21 MR. CROTEAU: To clear the title?

22 THE COURT: Is there a statute of limitations that applies

23 to your claim?

24 MR. CROTEAU: Not in -- no.

25 THE COURT: No?

1 MR. CROTEAU: Well --

2 THE COURT: Okay.

3 MR. CROTEAU: -- bear with me.

4 I am in possession. All I'm asking you for is to clear the
5 title on my property so I can get title insurance, okay?

6 THE COURT: Uh-huh.

7 MR. CROTEAU: That's all I'm asking you for. I own the
8 property. My client owns it. Has owned it. Is seised of it, okay?
9 Is in possession of it. The bank lost their seising, lost their
10 possession, lost any claims to the property, 3/3 of '11, the day after
11 the sale, right? Done. They do not have possession.

12 I have possession. The only reason my claim is timely is
13 because I own the property, all the statute of limitations are gone
14 from any claims against the property. We need to get a quiet title
15 action to get title insurance.

16 THE COURT: Okay.

17 MR. CROTEAU: That's the only purpose for filing. So
18 when we talk about this, it's just from our point of view, our statute
19 in that sense doesn't run. Any counterclaims against us are all
20 time-barred. They are --

21 THE COURT: Well, I understand --

22 MR. CROTEAU: -- finished.

23 THE COURT: -- that the bank is not maintaining that it has
24 title to the property but it's seeking to have its deed of trust
25 protected, right, from -- in this action.

1 MR. CROTEAU: Your Honor, if deed of trust was
2 extinguished pursuant to *SFR* and it was extinguished pursuant to
3 *SFR* on 3/3 of 2011 --

4 THE COURT: I see, uh-huh.

5 MR. CROTEAU: -- and there is no way around that; with
6 any analysis, there is no way around it. They had to bring a claim,
7 they were aware of, they had actual notice, the deed recitals
8 provide that they got notice. We know they had actual notice
9 because Miles Bauer had sent letters and so forth early on in the
10 case before even the foreclosure sale. There is no issue of
11 knowledge, there is not issue --

12 THE COURT: I guess --

13 MR. CROTEAU: -- there is no issue as to whether --

14 THE COURT: I guess down the road the contention will be
15 that there was a tender, right? That in effect --

16 MR. CROTEAU: They should have done something --
17 hang on.

18 THE COURT: -- in effect precluded -- I mean, I'm just
19 saying what the contention is.

20 MR. CROTEAU: No, I --

21 THE COURT: I'm not trying the case now, I'm just
22 saying --

23 MR. CROTEAU: Respectfully --

24 THE COURT: -- the contention --

25 MR. CROTEAU: -- I understand but hear the --

1 THE COURT: Yeah.

2 MR. CROTEAU: -- point. Who cares? Because if they
3 had --

4 THE COURT: Well I think they care.

5 MR. CROTEAU: -- a tender -- well, Your Honor, let me tell
6 you why. Let me explain why.

7 THE COURT: Okay.

8 MR. CROTEAU: All right. If they had a tender issue, that
9 is a defense, is it not? If it's a defense, you have to have a case time
10 filed barred in the timeframe that you have to file a case to raise a
11 defense. It is impossible to sit here and say well, I have a defense
12 so that tolls something.

13 THE COURT: I think what happens is they come in and
14 maintain that the foreclosure was just on the subpriority portion of
15 the lien, not the superpriority because they made a tender, it
16 amounted to payment, and therefore the only thing that the
17 foreclosure could be on was the subpriority portion of the lien. I
18 think that's down the road what the contention is.

19 MR. CROTEAU: But Your Honor, they should have filed it
20 within the period of the sale. That's the problem.

21 THE COURT: Fair enough.

22 MR. CROTEAU: And with all due respect, if Your Honor's
23 going to go in that direction --

24 THE COURT: I don't know if that they're --

25 MR. CROTEAU: -- I'd like it certified.

1 THE COURT: -- saying they should have filed anything. I
2 think they're saying that's what the status was, and you filed suit
3 and they have a counterclaim now.

4 MR. CROTEAU: That is -- with all respect --

5 THE COURT: Yeah.

6 MR. CROTEAU: -- if you look at the federal cases and I
7 know they're not binding on the Court --

8 THE COURT: No.

9 MR. CROTEAU: And I mean, I think the analysis, quite
10 frankly, is excellent. It's *U.S. National Bank Association versus*
11 *Woodland Village*. And it's a federal district court case. I know it's
12 not binding on this court, but I think this is instructive. And I cite it
13 on page 5 of the Reply Brief, but it says: In reality, Plaintiff's
14 interest in the property was called into question at the time of the
15 foreclosure sale due to 116.3116(2), which gives priority to that of
16 the HOA lien consisting solely of unpaid HOA assessments accruing
17 during the nine months immediately preceding the institution of an
18 action to enforce a lien. It is clear that Plaintiff could have brought
19 its action of quiet title against the HOA at any time following the
20 HOA foreclosure sale in order to obtain a declaration that that sale
21 had not extinguished its interest in the property, meaning the bank.

22 Similarly, Plaintiff could have asserted its claim for
23 violations of 116.1113 and wrongful foreclosure as soon as it
24 obtained facts to support its contention of deed to a sale of the
25 property was improper. There is no indication in the Complaint that

1 such facts were obtained any later than at the time of the actual
2 foreclosure. Therefore, the Court finds that the statute of
3 limitations applicable to Plaintiff's claims against the HOA began to
4 run at the latest on the date of the recordation of the foreclosure
5 deed in this particular case.

6 And there are many cases, we don't have a Supreme
7 Court case but there are many cases --

8 THE COURT: What was the context of the -- of that case --
9 what was the procedural context of it at the time that decision was
10 made? Was it on a motion -- what kind of a motion was it -- was it a
11 motion --

12 MR. CROTEAU: Motion to Dismiss. It was the same kind
13 of thing that --

14 THE COURT: Motion to Dismiss.

15 MR. CROTEAU: Essentially, it's the same thing we're
16 doing today.

17 THE COURT: Was it a Motion to Dismiss or a Motion for
18 Summary Judgment?

19 MR. CROTEAU: Motion for Summary Judgment.

20 THE COURT: Summary Judgment?

21 MR. CROTEAU: Yeah.

22 THE COURT: Okay.

23 MR. CROTEAU: So. But it's the same issues that we're
24 talking about today. Look -- and I want to parse this. I
25 understand -- look, I do a lot of this, a ton in front of you.

1 THE COURT: Me too.

2 MR. CROTEAU: No, I understand what you're saying.

3 But when you talk to me about a defense, and you say
4 well they can raise this issue and this is their defense, you have to
5 have a claim that is still alive to bring a defense. The problem is
6 you have to file that within the time period.

7 Your Honor, our procedural rules are very simple. When
8 we file claims and if they bring a counterclaim past the statute of
9 limitations, we don't bootstrap that back into the case, unless
10 there's some sort of lack of knowledge or something that's been
11 discovered and it's that kind of case. But in this particular case, it's
12 a bright-line. There's a recording of a deed. You can't get any
13 more bright-line than when the deed is recorded in the Clark County
14 Recorder's Office that says, we take legal title to this property; that
15 starts the clock. There is no other date.

16 THE COURT: All right.

17 MR. CROTEAU: And in that particular case, the statute
18 runs.

19 THE COURT: Okay. Thank you. I've got to move on here,
20 so.

21 MR. CROTEAU: Very well, sir.

22 MS. COOPER: Your Honor, I think you hit the nail right on
23 the head in that there's a statute of limitations. One, I'll say we
24 don't fill it so it still applies, but it is a compulsory counterclaim to
25 the extent that Plaintiff wants to yell and scream and jump and

1 shout about the fact that the statute of limitations run on our claim,
2 you hit the nail on the head, there's a statute of limitations that also
3 applies to his claim as well.

4 There's a case that recently came out, *Saticoy Bay*, and I
5 don't know what the rest of the series LLC is or if it's JP Morgan
6 Chase or Mr. Haddad sued for quiet title and the Nevada Supreme
7 Court found that there was a buyer statute of limitations on Mr.
8 Haddad's claims. That said, Your Honor, we're not here to dispute
9 whether or not Mr. Croteau can maintain his action for quiet title.
10 What we are here to discuss though, Your Honor, is whether or not
11 the bank can bring their compulsory quiet -- their compulsory
12 counterclaim.

13 As it relates to Plaintiff's arguments regarding the Miles
14 Bauer letters and what the bank knew and when they knew it, none
15 of that is in his moving papers. There's no evidence, there's no
16 Miles Bauer tender letters, there's no anything. And he wants the
17 Court to just very easily -- which I mean, it's nice, it's great, it's a
18 very easy-sounding and comfortable thing to do just to believe that,
19 you know, *SFR* completely disposed of all these issues and now
20 there's nothing left to do.

21 But I think the volume of HOA litigation that's pending
22 before this court and all the courts in this district, the state even,
23 let's us know that in 2014, the Nevada Supreme Court did not
24 decide the issue once and for all in terms of how HOA litigation will
25 go.

1 As it relates to the statute of limitations issue, the two
2 statutes that Plaintiff relies on are NRS 11.070 and NRS 11.080.
3 First off, the first one deals with possession of property and the
4 other one deals with actions to recover real property, which neither
5 one of these are. Bank of America never had possession. He said
6 that our deed of trust is our seisin. The Bank of America never had
7 a seisin or possession of the property --

8 THE COURT: Was there a livery of it? Was there a livery
9 of seisin? No.

10 MS. COOPER: No.

11 THE COURT: Just go ahead.

12 MS. COOPER: What is this bundle of sticks you get with
13 your property rights?

14 We never had possession of the property. We have a
15 security interest. We have a deed of trust and we have a lien.
16 That's all we have. So neither of those statutes apply to our claim.
17 I understand that he, you know, quoted something that this court
18 could definitely consider persuasive from the Nevada -- from the
19 federal court that is not binding precedent on this court. There is
20 no binding precedent as to when the bank's claims run.

21 And to the extent that there is binding precedent of when
22 his claims begin to run, he doesn't get to now say well, my claim --
23 and actually he said -- he said the statutes run on us too. So he
24 doesn't get to complain about the statute running on him -- on us,
25 allegedly when he's filed a claim after his statute is run.

1 As it relates to other things, we agree that they -- we don't
2 believe that they begin to run at foreclosure. To the extent that he's
3 saying that it would be when we have possession of the property,
4 there's no allegation as to when the prior homeowner left the
5 property. We don't know when that was. Prior homeowner could
6 still be living there now for all we know because there's no
7 evidence.

8 THE COURT: All right.

9 MS. COOPER: There's been no evidence that was
10 presented.

11 And as it relates to his laches argument, he hasn't made
12 any argument that he was harmed in any way. He brought this
13 action and sued the bank understanding, because he does this type
14 of litigation, that there were going to be defenses, and there are
15 going to be things that the bank was going to say and possibly he
16 might not get title free and clear of the property. He may end up
17 with a subpriority which the -- his client will still have the property,
18 it would just be subject to our deed of trust. That's a risk you take
19 when you file a quiet tile action in a Nevada HOA litigation.

20 And so there's been no prejudice in us bringing this
21 counterclaim because it's something he had every reason to know
22 was going to happen --

23 THE COURT: All right.

24 MS. COOPER: -- when he filed the claim.

25 THE COURT: Thank you. I got to move on here so briefly,

1 last --

2 MR. CROTEAU: Two seconds --

3 THE COURT: -- word.

4 MR. CROTEAU: -- Your Honor.

5 THE COURT: Uh-huh.

6 MR. CROTEAU: Can somebody tell me what the statute is.
7 I hear Counsel talking, but I don't even hear that there's a statute of
8 limitations that even comes about. We have no privity of contract,
9 we are not in contractual relationships whatsoever, so there is no
10 six-year statute.

11 If they want to really argue, then 116 is a statute and it will
12 be governed by a three-year statute. But the federal courts have
13 said no, that's kind of too small, we're going to go with the five-year
14 statute of limitations. That's the longest it could be. We don't
15 agree with that but that's the longest it could be.

16 And I've cited you a number of cases for this -- for that
17 proposition that the Court can look at if it ever desired to but there's
18 the *Nationstar Mortgage LLC versus Amber Hills II Homeowners*
19 *Association*. There's *Weeping Willows Avenue and Trust versus*
20 *Spencer*. There is *Scott versus Mortgage Electrical Registration*
21 *Systems, Inc.* All of these are cited in my brief --

22 THE COURT: Okay.

23 MR. CROTEAU: -- in terms of saying the statute runs from
24 the recording of the HOA foreclosure deed. And that's the statute,
25 that's the operative timeframe.

1 Counsel is very confused because she's saying I don't
2 have a statute of limitations for me. Well, I still own the property.
3 I'm coming to you with my property and I'm saying Your Honor, my
4 property is clouded, would you please correct this? That's all I'm
5 saying, all right? I still have it. I own the property. I am seized of it,
6 I own it, I have possession. And I'm saying clean my title. All I'm
7 saying is any claims they have, forget compulsory, you can't put
8 boots on them and bring them out to the farm. They would have
9 had to have been ready and filed on their own within the six years --
10 or five years. They didn't.

11 All I'm saying is their claims are time barred because they
12 lost seising, they lost possession, they've never had it, they have
13 no contractual rights. And if they want to argue it's under the three-
14 year rule, they're way out on that one because that's a statute of
15 limitations based on a statute -- that's 116 would be the statute,
16 right?

17 The other one that's kind of curious, they don't even talk
18 about, we have NRS 40.455, which we all know is the deficiency
19 statute. The bank has six months in which to file suit. And in that
20 particular case, again, based on *SFR*, they've been extinguished as
21 of 3/2 -- or 3/3 if you want to go according to the deed, of 2011.

22 Your Honor, with all the best maneuverings, all right, if we
23 wanted to go research what a compulsory counterclaim can be
24 done, you cannot bring a compulsory counterclaim that's beyond
25 the statute of limitations. It just doesn't fly. I don't care what you

1 do.

2 Now, they could argue it as a defense, possibly, but there
3 is no claim that they can bring. That's the whole point. There is no
4 case.

5 THE COURT: All right. Thank you. Here's what I'm going
6 to do. You make some good points, Mr. Croteau, but I'm not going
7 to treat this as a Motion for Summary Judgment, I'm treating it as a
8 Motion to Dismiss under 12(b)(5). I'm determining, based on that
9 that I cannot tell from the face of the counterclaim that it fails to
10 state a claim on which relief can be granted relative to the statute of
11 limitations.

12 And accordingly, I'm denying it as a Motion to Dismiss.
13 That's without prejudice to a Motion for Summary Judgment to be
14 brought after there's been an opportunity for some discovery in this
15 case, okay?

16 MR. CROTEAU: Yes, sir.

17 THE COURT: So that's the ruling. I need a proposed
18 order. Who will submit it?

19 MS. COOPER: We'll draft it, Your Honor.

20 THE COURT: Would you run it by Mr. Croteau?

21 MS. COOPER: Yes.

22 THE COURT: Thank you.

23 ///

24 ///

25 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. CROTEAU: Thank you, Your Honor.

THE COURT: Thank you.

[Hearing concluded at 10:20 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Brittany Mangelson
Independent Transcriber

IN THE SUPREME COURT OF THE STATE OF NEVADA

| | | |
|-------------------------------|---|-----------------------------|
| LAS VEGAS DEVELOPMENT |) | |
| GROUP, LLC, A NEVADA LIMITED |) | |
| LIABILITY COMPANY, |) | |
| |) | Supreme Court No. 81961 |
| Appellant, |) | |
| vs. |) | Consolidated with No. 82266 |
| |) | |
| THE BANK OF NEW YORK |) | |
| MELLON, F/K/A THE BANK OF NEW |) | |
| YORK, AS TRUSTEE FOR THE |) | |
| CERTIFICATEHOLDERS OF CWABS, |) | |
| INC., ASSET-BACKED |) | |
| CERTIFICATES, SERIES 2006-7, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

APPEAL

From the Eighth Judicial District Court,
The Honorable Mark R. Denton, District Court Judge
District Court Case No. A-17-756215-C

JOINT APPENDIX - VOLUME 2

Roger P. Croteau, Esq.
Nevada Bar No. 4958
Timothy E. Rhoda, Esq.
Nevada Bar No. 7878
ROGER P. CROTEAU AND ASSOCIATES, LTD
2810 West Charleston Boulevard, Suite 75
Las Vegas, Nevada 89102
Telephone: (702) 254-7775
Facsimile: (702) 228-7719
Attorneys for Plaintiff/Appellant Las Vegas Development Group, LLC

INDEX OF APPENDIX - CHRONOLOGICAL

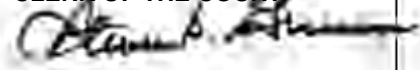
| DOCUMENT | PAGE |
|--|-------------|
| VOLUME 1 | |
| First Amended Complaint | 0001 - 0010 |
| Acceptance of Service | 0011 - 0012 |
| Answer to Complaint and Counterclaim | 0013 - 0038 |
| LVDG Motion to Dismiss Counterclaim and Motion for Summary Judgment | 0039 - 0063 |
| Opposition to Motion to Dismiss and Motion for Summary Judgment | 0064 - 0072 |
| Reply to Opposition to Motion to Dismiss and Motion for Summary Judgment | 0073 - 0081 |
| Transcript of Hearing 8-10-17 | 0082 - 0101 |
| VOLUME 2 | |
| BONY Motion for Summary Judgment | 0102 - 0231 |
| VOLUME 3 | |
| LVDG Opposition to Motion for Summary Judgment | 0232 - 0334 |
| Reply to Opposition to Motion for Summary Judgment | 0335 - 0367 |
| Order Denying Motion for Summary Judgment | 0368 - 0369 |
| Notice of Entry of Order Denying Motion for Summary Judgment | 0370 - 0373 |
| Answer to Counterclaim | 0374 - 0381 |
| Findings of Fact, Conclusions of Law and Judgment | 0382 - 0399 |
| VOLUME 4 | |
| BONY Memorandum of Costs and Disbursements | 0400 - 0475 |
| Notice of Entry of FFCL | 0476 - 0497 |
| Voluntary Dismissal of Hernandez | 0498 - 0500 |
| Notice of Appeal (Trial Court Judgment) | 0501 - 0503 |
| BONY Motion for Attorneys' Fees and Costs | 0504 - 0610 |
| Opposition to Motion for Attorneys' Fees and Costs | 0611 - 0621 |
| Reply in Support of Motion for Attorneys' Fees and Costs | 0622 - 0626 |

[illegible]

INDEX OF APPENDIX - ALPHABETICAL

| DOCUMENT | VOLUME : PAGE |
|--|----------------------|
| Acceptance of Service | 1:0011 |
| Answer to Complaint and Counterclaim | 1:0013 |
| Answer to Counterclaim | 3:0374 |
| Bench Trial Transcript - Day 1 | 5:0648 |
| Bench Trial Transcript - Day 2 | 5:0741 |
| BONY Memorandum of Costs and Disbursements | 4:0400 |
| BONY Motion for Attorneys' Fees and Costs | 4:0504 |
| BONY Motion for Summary Judgment | 2:0102 |
| Decision | 4:0627 |
| Findings of Fact, Conclusions of Law and Judgment | 3:0382 |
| First Amended Complaint | 1:0001 |
| LVDG Motion to Dismiss Counterclaim and Motion for Summary Judgment | 1:0039 |
| LVDG Opposition to Motion for Summary Judgment | 3:0232 |
| Notice of Appeal (Order Granting Attorney' Fees and Costs) | 4:0645 |
| Notice of Appeal (Trial Court Judgment) | 4:0501 |
| Notice of Entry of FFCL | 4:0476 |
| Notice of Entry of Order Denying Motion for Summary Judgment | 3:0370 |
| Notice of Entry of Order Granting Motion for Attorneys' Fees and Costs in Part | 4:0636 |
| Opposition to Motion for Attorneys' Fees and Costs | 4:0611 |
| Opposition to Motion to Dismiss and Motion for Summary Judgment | 1:0064 |
| Order Denying Motion for Summary Judgment | 3:0368 |
| Order Granting Motion for Attorneys' Fees and Costs in Part | 4:0631 |
| Reply in Support of Motion for Attorneys' Fees and Costs | 4:0622 |
| Reply to Opposition to Motion for Summary Judgment | 3:0335 |

[illegible]



1 ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
2 TENESA POWELL, ESQ.
Nevada Bar No. 12488
3 AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
4 Telephone: (702) 634-5000
Facsimile: (702) 380-8572
5 Email: ariel.stern@akerman.com
Email: tenesa.powell@akerman.com
6

7 *Attorneys for The Bank of New York Mellon f/k/a The*
8 *Bank of New York, as Trustee for the*
9 *Certificateholders of CWABS, Inc., Asset-Backed*
10 *Certificates, Series 2006-7*

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

13 LAS VEGAS DEVELOPMENT GROUP, LLC,
14 a Nevada limited liability company,

15 Plaintiff,

16 vs.

17 DANIA V. HERNANDEZ, an individual; THE
18 BANK OF NEW YORK MELLON F/K/A THE
19 BANK OF NEW YORK, AS TRUSTEE FOR
20 THE CERTIFICATEHOLDERS OF CWABS,
21 INC., ASSET-BACKED CERTIFICATES,
22 SERIES 2006-7, a national banking association;
23 DOE individuals I through XX; and ROE
24 CORPORATIONS I through XX,

25 Defendants.

26 THE BANK OF NEW YORK MELLON F/K/A
27 THE BANK OF NEW YORK, AS TRUSTEE
28 FOR THE CERTIFICATEHOLDERS OF
CWABS, INC., ASSET-BACKED
CERTIFICATES, SERIES 2006-7,

Counterclaimant,

vs.

LAS VEGAS DEVELOPMENT GROUP, LLC,
a Nevada limited liability company,

Counterdefendant.

Case No.: A-17-756215-C
Dept. No.: XIII

(HEARING REQUESTED)

MOTION FOR SUMMARY JUDGMENT

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the
2 Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-7 (**BoNYM**) moves for
3 summary judgment pursuant to NRCP 56.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 BAC tendered the superpriority prior to the HOA's foreclosure sale, preserving the deed of
6 trust by operation of law. As a result, the HOA could only foreclose on the interest that remained – a
7 subpriority lien. LVDG's interest in subject to BoNYM's deed of trust. The court should enter
8 judgment for BoNYM.

9 **I. STATEMENT OF UNDISPUTED FACTS**

10 **A. The Deed of Trust**

11 1. On April 10, 2006 Dania Hernandez purchased the property located at 1524 Highfield
12 Court, Las Vegas, Nevada. Hernandez financed the purchase with a loan from Countrywide Home
13 Loans, Inc. in the amount of \$208,000.00. The loan was evidenced by a note and secured by a deed
14 of trust recorded against the property on April 19, 2006. **Exhibit 1**, BoNYM75-99.

15 2. The deed of trust was assigned to BoNYM via an assignment of deed of trust. **Exhibit**
16 **2**, BoNYM128-129.

17 **B. The HOA Foreclosure**

18 3. The property is located in the Hidden Canyon Owners Association (**HOA**) and is
19 subject to the HOA's covenants, conditions, and restrictions (CC&Rs). **Exhibit 3**.

20 4. Hernandez failed to pay the HOA all amounts due to it. The HOA, through its agent,
21 Alessi & Koenig, recorded a notice of delinquent assessment lien on June 3, 2009. **Exhibit 4**,
22 BoNYM118. Per the notice, the amount due to HOA was \$571.85. *Id.*

23 5. The HOA, through its agent Alessi, recorded a notice of lien on September 2, 2009.
24 **Exhibit 5**, BoNYM119-120. The notice states the amount due to HOA was \$1,404.49, but does not
25 specify whether it includes dues, interest, fees and collection costs in addition to assessments. *Id.*

26 6. On October 20, 2009, BAC Home Loans Servcing, LP, as then-servicer of the loan,
27 requested a ledger from HOA, through its agent Alessi, identifying the superpriority amount allegedly
28 owed to HOA. **Exhibit 6**, BoNYM2154-72.

7. Alessi provided a full account statement in response. *Id.* at BoNYM2164-166. According to the account statement, at the time the lien was recorded, Hernandez was delinquent for six months of assessments. *Id.* For 2009, the HOA charged assessments for common expenses of \$118 annually, or \$9.83 monthly. *Id.*

8. Six months of assessments at \$9.83 monthly is \$58.98.

9. There were no charges for nuisance or abatement maintenance assessed against Hernandez's account. *Id.* at BoNYM2164-166.

10. On January 21, 2010, BAC, through its counsel, tendered \$88.50, in excess of the amount of assessments delinquent at the time the HOA recorded the lien. *Id.* at BoNYM2168-2170. Alessi refused BAC's payment. *Id.*

11. The HOA, through its agent Alessi, recorded a notice of trustee's sale on August 9, 2010. **Exhibit 7**, BoNYM121. The notice states the amount due to HOA was \$2,862.23. *Id.*

12. The HOA did not record a new notice of lien at any point after it rejected BAC's tender.

C. The Foreclosure Sale

13. Alessi, on behalf of the HOA, foreclosed on the property on March 2, 2011. **Exhibit 8**, BoNYM123-24. A foreclosure deed in favor of the HOA was recorded March 3, 2011.

14. On March 30, 2011, the HOA quitclaimed its interest to LVDG in exchange for \$4,500. **Exhibit 9**, BoNYM125-127.

15. At the time of the foreclosure sale, the fair market value was \$76,000. **Exhibit 10**.

II. LEGAL STANDARD

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

III. ARGUMENT

A. BAC's tender preserved the deed of trust.

1. BAC is entitled to satisfy the superpriority to protect the lien.

The Nevada supreme court acknowledged a lender may preserve its interest by determining "the precise super priority amount" and tendering it "in advance of the sale." *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d at 418. The Nevada Real Estate Division agrees. It confirmed as much in its 2012 advisory opinion, relying upon UCOIA, upon which NRS 116 is based. December 12, 2012 NRED Advisory Opinion No. 13-01, at 11. UCIOA § 3-116's commentary acknowledges the superpriority concept is "a significant departure from existing practice," but "strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity of protecting the priority of the security interest of lenders." *Id.* at 9. Therefore, "as a practical matter, secured lenders will most likely pay the 6 months' assessments demanded by the association rather than having the association foreclose on the unit." *Id.* "Payment of [the super-priority charges] relieves their super-priority status." *Id.* at 11 (emphasis added).

2. BAC preserved the priority of the deed of trust.

Tender of the superpriority lien prior to the HOA's foreclosure sale preserves the deed of trust by operation of law. *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113 (Sept. 13, 2018) (amended Nov. 13, 2018) (**Diamond Spur**).

Diamond Spur holds "the superpriority portion of an HOA lien includes only charges for maintenance and nuisance abatement, and nine months of unpaid assessments."¹ *Id.* at 117. In *Diamond Spur*, Bank of America tendered \$720, which according to the HOA's ledger equaled nine months of assessments. *Id.* at 118. Maintenance or nuisance abatement charges were not at issue. *Id.* The *Diamond Spur* court found "this was the full superpriority amount." *Id.* The HOA rejected Bank of America's payment. *Id.* The court concluded "[b]ecause Bank of America's valid tender discharged the superpriority portion of the HOA's lien, the HOA's foreclosure on the entire lien resulted in a void sale as to the superpriority portion." *Id.* at 121. The court also found that "[a] party's status as a BFP is irrelevant when a defect in the foreclosure proceeding renders the sale void." *Id.* The *Diamond*

¹ The court referred to the pre-2015 version of NRS 116.3116(2).

1 *Spur* court held the purchaser's interest was subject to the deed of trust as a result of Bank of America's
2 tender. *Id.* at 121. Here, BAC tendered in excess of the full superpriority amount to the HOA,
3 preserving the deed of trust by operation of law. Ex. 6.

4 "A foreclosure sale by a junior mortgagee has no effect on the rights of senior lienholders
5 because the purchaser of a junior mortgage takes subject to the rights of all senior liens and
6 encumbrances." *In re Del Gizzo*, 5 B.R. 446, 448 (Bankr. D.R.I. 1980) (citing *Brunette v. Myette*, 40
7 R.I. 546, 102 A. 520 (1918)). BAC's tender left the subpriority portion as the sole portion of the HOA's
8 lien and the deed of trust remains a valid encumbrance on the property.

9 **B. The sales price was inadequate and the sale was unfair and oppressive.**

10 If this court finds the HOA's sale included the superpriority despite BAC's tender, the sale was
11 unfair and oppressive. The sale of the property for approximately six percent of its fair market value
12 is grossly inadequate and the sale can be set aside because BoNYM has established evidence of fraud,
13 unfairness, or oppression.

14 The Nevada supreme court confirmed an HOA foreclosure sale is void where the party
15 challenging the sale can show an inadequate sales price and additional "proof of some element of
16 fraud, unfairness, or oppression [that] accounts for and brings about the inadequacy of price."
17 *Nationstar Mortg. LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon (Shadow Canyon)*, 405 P.3d
18 641 (Nev. 2017). In *Shadow Canyon*, the court rejected an argument that a sales price of under twenty-
19 percent of the fair market value renders the sale *per se* void, instead finding the court should engage
20 in more of a sliding scale analysis. *Id.* at 643 (quoting *Golden v. Tomiyasu*, 387 P.2d 989, 995 (1963)
21 ("While mere inadequacy of price has rarely been held sufficient in itself to justify setting aside a
22 judicial sale of property, courts are not slow to seize upon other circumstances impeaching the fairness
23 of the transaction as a cause for vacating it, especially if the inadequacy be so gross as to shock the
24 conscience.")). Specifically, where there is a wide disparity in price, a party challenging the sale "may
25 require less evidence of fraud, unfairness, or oppression to justify setting aside the sale." *Id.* at 643-
26 44 (citing *Golden v. Tomiyasu*, 79 Nev. at 515-16.) Here, not only is the sales price grossly inadequate,
27 but BoNYM produced evidence of fraud, unfairness, or oppression. Thus, the court should hold the
28 sale did not extinguish BoNYM's senior deed of trust.

1 1. The sales price is inadequate.

2 The undisputed evidence shows that the property had a fair market value of \$76,000.00 as of
3 the date of the foreclosure. Ex. 10. LVDG purchased the property for \$4,500.00. Ex. 9. The sales price
4 was approximately six percent of the fair market value and a grossly inadequate price.

5 2. BoNYM can show evidence of unfairness or oppression.

6 When a sale price is demonstrably inadequate, the court may invalidate a sale upon a showing
7 of a defect in the sale. *Ballentyne v. Smith*, 205 U.S. 285, 290 (1907) ("if there be great inadequacy,
8 slight circumstances of unfairness in the conduct of the party benefitted by the sale will be sufficient
9 to justify setting it aside. It is difficult to formulate any rule more definite than this, and each case must
10 stand on its own particular facts."); *Shadow Canyon*, 405 P.3d at 648-49 (quoting *Golden v. Tomiyasu*,
11 387 P.2d 989, 995 (1963) ("While mere inadequacy of price has rarely been held sufficient in itself to
12 justify setting aside a judicial sale of property, courts are not slow to seize upon other circumstances
13 impeaching the fairness of the transaction as a cause for vacating it, especially if the inadequacy be so
14 gross as to shock the conscience.")).

15 As described above, BAC tendered in excess of the full superpriority. To the extent the court
16 finds any deficiency with BAC's tender, it should find as a matter of equity that the deed of trust
17 remains a valid encumbrance.

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1 **IV. CONCLUSION**

2 BAC's tender preserved the deed of trust by operation of law. LVDG's interest is subject to
3 the deed of trust and the court should grant judgment in BoNYM's favor.

4 Dated: March 18, 2019.

5 **AKERMAN LLP**

6 */s/ Tenesa S. Powell*

7 ARIEL E. STERN, ESQ.

8 Nevada Bar No. 8276

9 TENESA POWELL, ESQ.

10 Nevada Bar No. 12488

11 1635 Village Center Circle, Suite 200

12 Las Vegas, Nevada 89134

13 *Attorneys for The Bank of New York Mellon f/k/a The*
14 *Bank of New York, as Trustee for the Certificateholders*
15 *of CWABS, Inc., Asset-Backed Certificates, Series 2006-*
16 *7*

17 **CERTIFICATE OF SERVICE**

18 I HEREBY CERTIFY that on this 18th day of March, 2019 and pursuant to NRCP 5(b), I served
19 via the Clark County electronic filing system a true and correct copy of the foregoing **MOTION FOR**
20 **SUMMARY JUDGMENT**, addressed to:

21 **Roger P. Croteau & Associates, Ltd.**

22 Roger P. Croteau croteaulaw@croteaulaw.com

23 Croteau Admin receptionist@croteaulaw.com

24 */s/Jill Sallade*

25 An employee of AKERMAN LLP

EXHIBIT 1

EXHIBIT 1

25

20060419-0000609

Assessor's Parcel Number:
13909410021
After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.

Fee: \$38.00
N/C Fee: \$0.00
04/19/2006 09:01:35
T20060069285

Requestor:
NEVADA TITLE COMPANY

Frances Deane JKA
Clark County Recorder Pas: 25

MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423
Prepared By:
NANCY GONZALES
~~Recording Requested By:~~
I. Sandler

COUNTRYWIDE HOME LOANS, INC.

30

5613 DTC PARKWAY, SUITE 700
GREENWOOD VILLAGE
CO 80111

06-03-1011-MSE

[Space Above This Line For Recording Data]

HERNANDEZ 00013254461804006
[Escrow/Closing #] [Doc ID #]

DEED OF TRUST

MIN 1000157-0006486545-0

DEFINITIONS

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

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

Page 1 of 16

VMP -6A(NV) (0507) CHL (11/05)(d)

VMP Mortgage Solutions, Inc.

Form 3029 1/01



* 2 3 9 9 1 *



* 1 3 2 5 4 4 6 1 8 0 0 0 0 1 0 0 6 A *

(A) "Security Instrument" means this document, which is dated APRIL 10, 2006, together with all Riders to this document.

(B) "Borrower" is

DANTA V HERNANDEZ, A SINGLE WOMAN

Borrower is the trustor under this Security Instrument.

(C) "Lender" is

COUNTRYWIDE HOME LOANS, INC.

Lender is a

CORPORATION

organized and existing under the laws of NEW YORK
4500 Park Granada MSN# SVB-314

Lender's address is

Calabasas, CA 91302-1613

(D) "Trustee" is

RECON TRUST CO

225 W HILLCREST DR

THOUSAND OAKS, CA 91360

(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 APRIL 10, 2006.

The Note states that Borrower owes Lender

TWO HUNDRED EIGHT THOUSAND and 00/100

Dollars (U.S. \$ 208,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than MAY 01, 2036.

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

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

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

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

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

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

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

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

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

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

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

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

DOC ID #: 00013254461804006

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

[Type of Recording Jurisdiction]

CLARK

:

[Name of Recording Jurisdiction]

LOT THIRTY TWO (32) OF HIDDEN CANYON HORIZONS PREMIER UNIT 3,
AS SHOWN BY MAP THEREOF ON FILE IN BOOK 61, OF PLATS, PAGE
61, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY,
NEVADA.

which currently has the address of

1524 HIGHFIELD COURT, LAS VEGAS

[Street/City]

Nevada 89032 ("Property Address"):

[Zip Code]

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

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

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

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

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

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

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

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

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

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

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.

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. \$ 300.00 .

DOC ID #: 00013254461804006

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.

Dania V Hernandez (Seal)
DANIA V. HERNANDEZ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower



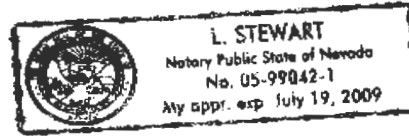
STATE OF NEVADA
COUNTY OF CLARK

This instrument was acknowledged before me on April 12, 2006 by
DANIA V Hernandez

L Stewart
L Stewart

Mail Tax Statements To:
TAX DEPARTMENT SV3-24

450 American Street
Simi Valley CA, 93065



INTEREST ONLY ADJUSTABLE RATE RIDER
(LIBOR Index - Rate Caps)

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423
PARCEL ID #:
13909410021

Prepared By:
NANCY GONZALES

HERNANDEZ
[Escrow/Closing #]

132544610
[Loan #]

MULTISTATE INTEREST ONLY ADJUSTABLE RATE RIDER - LIBOR INDEX

•BC - Interest Only ARM Rider

Initials: DH

1E120-XX (02/04)(d)

Page 1 of 5



* 2 3 9 9 1 *



* 1 3 2 5 4 4 6 1 8 0 0 0 0 1 E 1 2 0 *

LOAN #: 132544618

THIS INTEREST ONLY ADJUSTABLE RATE RIDER is made this TENTH day of APRIL, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Deed to Secure Debt (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to COUNTRYWIDE HOME LOANS, INC. (the "Lender") of the same date and covering the property described in the Security Instrument and located at: 1524 HIGHFIELD COURT, LAS VEGAS, NV 89032 [Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE THE 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. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 8.100 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of MAY, 2008, and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my 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 date 45 days before each Change Date is called the "Current Index."

Initials: DH

•BC - Interest Only ARM Rider
1E120-XX (02/04)

Page 2 of 5

BoNYM 0092 JA 0127

LOAN #: 132544618

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 SEVEN & 10/100 percentage point(s) (7.100 %) 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 9.600 % or less than 8.100 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than ONE & ONE-HALF percentage point(s) (1.500 %) from the rate of interest I have been paying for the preceding six months. My interest rate will never be greater than 15.100 % or less than 8.100 %.

(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 interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given 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 the Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment date after the ~~first Change Date~~ ^{sixtieth (60) scheduled monthly payment}

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

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

Initials: DH

• BC - Interest Only ARM Rider
1E120-XX (02/04)

LOAN #: 132544618

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 a 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 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

Initials: DH

LOAN #: 132544618

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 Interest Only Adjustable Rate Rider.

Dania V. Hernandez (Seal)
DANIA V. HERNANDEZ - Borrower

____ (Seal)
- Borrower

____ (Seal)
- Borrower

____ (Seal)
- Borrower

PLANNED UNIT DEVELOPMENT RIDER

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

PARCEL ID #:
13909410021

Prepared By:
NANCY GONZALES

HERNANDEZ 00013254461804006
[Escrow/Closing #] [Doc ID #]

THIS PLANNED UNIT DEVELOPMENT RIDER is made this Tenth day of
APRIL, 2006, and is incorporated into and shall be deemed to amend and supplement the
Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the

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

VMP -7R (0411)

CHL (11/04)(d)

Page 1 of 4

Initials: DA

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

Form 3150 1/01



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

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

1524 HIGHFIELD COURT
LAS VEGAS, NV 89032
[Property Address]

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

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

[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: () Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly
premium installments for property insurance on the Property; and (ii) Borrower's obligation under
Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent
that the required coverage is provided by the Owners Association policy.

Initials: DL

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

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

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

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

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

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

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

Initials: DL

DOC ID #: 00013254461804006

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

Dania V. Hernandez (Seal)
DANIA V. HERNANDEZ - Borrower

____ (Seal)
- Borrower

____ (Seal)
- Borrower

____ (Seal)
- Borrower

EXHIBIT 2

EXHIBIT 2

FIDELITY NATIONAL TITLE
RECORDING REQUESTED BY:
RECONTRUST COMPANY
AND WHEN RECORDED MAIL DOCUMENT TO:
BAC Home Loans Servicing, LP
400 National way SIMI VALLEY, CA 93065

Inst #: 201104210000262
Fees: \$14.00
N/C Fee: \$0.00
04/21/2011 08:02:23 AM
Receipt #: 747765
Requestor:
LSI TITLE AGENCY INC.
Recorded By: BRT Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

TS No. 08-0078530
TITLE ORDER#: G851871
APN:139-09-410-021

CORPORATION ASSIGNMENT OF DEED OF TRUST NEVADA

FOR VALUE RECEIVED, THE UNDERSIGNED HEREBY GRANTS, ASSIGNS AND TRANSFER TO:
**THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDER S CWABS,
INC. ASSET-BACKED CERTIFICATES,SERIES 2006-7**

ALL BENEFICIAL INTEREST UNDER THAT CERTAIN DEED OF TRUST DATED 04/10/2006,
EXECUTED BY: DANIA V HERNANDEZ, A SINGLE WOMAN,TRUSTOR: TO RECON TRUST
CO, TRUSTEE AND RECORDED AS INSTRUMENT NO. 0000609 ON 04/19/2006, IN BOOK
20060419, OF OFFICIAL RECORDS IN THE COUNTY RECORDER'S OFFICE OF CLARK
COUNTY, IN THE STATE OF NEVADA.

DESCRIBING THE LAND THEREIN: AS MORE FULLY DESCRIBED IN SAID DEED OF TRUST.

TOGETHER WITH THE NOTE OR NOTES THEREIN DESCRIBED OR REFERRED TO, THE
MONEY DUE AND TO BECOME DUE THEREON WITH INTEREST, AND ALL RIGHTS
ACCRUED OR TO ACCRUE UNDER SAID DEED OF TRUST/MORTGAGE.

DATED: April 19, 2011

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
INC.

State of: TEXAS

County of: TARRANT

BY:

J-V 7 4-19-11

APR 19 2011

Jorge Valadez Jorge .. Valadez, Assistant Secretary
On Asst. Sec before me Elsie E. Kroussakis, personally appeared Jorge Valadez
I know to me (or proved to me on the oath of _____ or through
J.D.D.C.) to be the person whose name is subscribed to the foregoing instrument and
acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.
Witness my hand and official seal.

Elsie E. Kroussakis
Notary Public's Signature



EXHIBIT 3

EXHIBIT 3

APN 139-09-210-002

When Recorded Return to:

Law Offices of Bruce I. Flammey
10711 Pappas Lane #203
Las Vegas, Nevada 89144

(31)

20050809-0002460

Fee: \$44.00

N/C Fee: \$25.00

08/09/2005

10:53:54

T20050144687

Requestor:

LAW OFFICES OF BRUCE I FLAMMEY

Frances Deane

BGN

Clark County Recorder

Pgs: 31

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF

CHEYENNE RIDGE ASSOCIATION

(HIDDEN CANYON OWNERS ASSOCIATION)

APN 139-09-111-014 THRU 043
139-09-112-001 THRU 046
139-09-113-001 THRU 038
139-09-114-012 THRU 036
139-09-115-001 THRU 015
139-09-201-002 AND 003
139-09-211-001 THRU 011
139-09-212-001 THRU 006
139-09-213-001 THRU 017
139-09-214-001 THRU 048
139-09-215-001 THRU 089
139-09-216-001 THRU 010
139-09-217-001 THRU 101
139-09-218-001 THRU 031
139-09-219-001 AND 002
139-09-310-001 THRU 082
139-09-311-001 THRU 057
139-09-312-001 THRU 039
139-09-410-001 THRU 032
139-09-411-001 THRU 057

**RESTATED DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF CHEYANNE RIDGE ASSOCIATION**

**THIS RESTATED DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS (the "Declaration") is made by Cheyenne Ridge Association
("Association")**

RECITALS

**REFERENCE IS MADE to that certain Declaration of covenants, Conditions
and Restrictions ("Original Declaration") recorded by Becker Group, a Nevada
general partnership ("Declarant"), on May 2 1992 in Book 950502 as Instrument
0359, in the Office of the County Recorder, Clark County, Nevada, and
encumbering that certain real property located in the County of Clark, State of
Nevada, which is more particularly described in Exhibit A (the Properties") of the
Original Declaration and incorporated here by this reference.**

**Whereas, in 1999 the Nevada Uniform Common Interest Ownership Act,
Chapter 116 of the Nevada Revised Statutes (the "Act") was amended by Senate Bill
451, and:**

**Whereas, an Editor's note to NRS 116.31065 did require that any post
January 1992 declarations of common-interest communities conform to the
provisions of the Act, as amended by Senate Bill 451, and:**

**Whereas, the Association wishes to comply with provisions of the Act by
executing this Restated Declaration to conform the Original Declaration to the Act;**

**NOW THEREFORE, the Original Declaration is hereby RESTATED in
order to conform to the Act, and the Association declares that all of the Properties
shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied
and improved subject to the limitations, restrictions, rights, easements, conditions
and covenants herein shall run with and burden the Properties and shall be binding
on and for benefit of all of the Properties and all Persons having or acquiring and
right, title or interest therein, or in any part thereof, their heirs, successive owners
and assigns, shall inure to the benefit of every portion of the Properties and any
interest therein; and shall inure to the benefit of and be binding upon the Declarant
and its successor owners or assigns, and each Owner and his respective successors in
interest; and my be enforceable by any Owner or by the Association.**

TABLE OF CONTENTS

| <u>Section</u> | <u>Page</u> |
|---|-------------|
| ARTICLE I | |
| Definitions | 1 - 2 |
| ARTICLE II - PROPERTY SUBJECT TO THIS DECLARATION - ADDITIONS THERE TO | |
| Section 1: Property | 3 |
| Section 2: Additional Properties | 3 |
| Section 3: The Common Area | 3 |
| ARTICLE III - PROPERTY RIGHTS | |
| Section 1: Encroachments | 3 |
| Section 2: Enforcement of these Declarations | 3 |
| Section 3: Landscape Planter Easement | 4 |
| Section 4: Common Area Easement | 4 |
| ARTICLE IV - COVENANTS AND USE RESTRICTIONS | |
| Section 1: Residential Use | 4 |
| Section 2: Improvements | 5 |
| Section 3: Prohibited Uses | 5 - 8 |
| ARTICLE V - ARCHITECTURAL CONTROL | |
| Section 1: Architectural Control Committee | 8 |
| Section 2: Approval of Committee | 9 |
| Section 3: Liability | 9 |
| Section 4: Exemptions | 10 |
| ARTICLE VI - MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION | |
| Section 1: Membership | 10 |
| Section 2: Voting Rights | 10 - 11 |

ARTICLE VII COVENANT FOR MAINTENANCE ASSESSMENTS TO
ASSOCIATION

| | |
|--|---------|
| Section 1: Covenant to Pay Assessments | 11 - 12 |
| Section 2: Purpose of Assessment | 12 |
| Section 3: Regular Assessments | 12 |
| Section 4: Special Assessments | 12 |
| Section 5: Membership Approval | 13 |
| Section 6: Uniform Rate | 13 |
| Section 7: Annual Average Liability for Common Expenses | 13 |
| Section 8: Date of Commencement of Annual Assessments, Due Dates | 13 |
| Section 9: Enforcement by Lien | 14 - 15 |
| Section 10: Foreclosure | 15 |
| Section 11: Assessment Liens, Exercise of Power of Sale | 15 - 16 |
| Section 12: Subordinate to First Mortgage | 16 |
| Section 13: Assessment for Taxes | 16 |
| Section 14: Enforcement by Suit | 16 |
| Section 15: Assessment Certificate | 16 |
| Section 16: Subsidy Agreements | 17 |

ARTICLE VIII ANNEXATION, DE-ANNEXATION AND ATTORNEY'S FEES

| | |
|--|----|
| Section 1: Annexation of Additional Property | 17 |
| Section 2: De-Annexation | 17 |
| Section 3: Attorney's Fees | 17 |

ARTICLE IX POWERS AND OBLIGATIONS OF THE ASSOCIATION

| | |
|---|---------|
| Section 1: Elect Officers | 18 |
| Section 2: Management and Control | 18 |
| Section 3: Principal Office | 18 |
| Section 4: Incur Indebtedness | 18 |
| Section 5: Obtaining Insurance | 18 - 19 |
| Section 6: Notice of Cancellation of Insurance or Fidelity Bond | 19 |
| Section 7: Utilities | 19 |
| Section 8: Landscape Planter Areas and Greenbelt | 19 |
| Section 9: Perimeter Walls | 20 |
| Section 10: Enforcement | 20 |
| Section 11: Services and Supplies | 20 |
| Section 12: Employment of Professional Manager | 20 |

| | |
|---|----|
| Section 13: Maintenance Contract | 20 |
| Section 14: Taxes | 20 |
| Section 15: Discipline | 20 |
| Section 16: Budget | 21 |
| Section 17: Notice of Default | 21 |
| Section 18: Notice of Damage | 21 |
| Section 19: Defense | 21 |
| Section 20: Delegation of Powers | 22 |
| Section 21: Rules | 22 |
| Section 22: Right of Grant Easements | 22 |
| Section 23: Availability of Documentation | 22 |

ARTICLE X GENERAL PROVISIONS

| | |
|--|---------|
| Section 1: Severability | 22 |
| Section 2: Amendments | 23 |
| Section 3: Material Amendments | 23 |
| Section 4: Limitation of Restrictions on Developer | 23 – 24 |
| Section 5: Owners' Compliance | 24 |
| Section 6: Captions | 24 |
| Section 7: Liability Limit | 25 |
| Section 8: Conflicting Provisions | 25 |
| Section 9: Singular Includes Plural | 25 |
| Section 10: Agreements | 25 |
| Section 11: No Impairment of Liens | 25 |
| Section 12: Veterans Affairs and FHIA Approval | 25 |
| Section 13: Construction | 25 |

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

ARTICLE I

DEFINITIONS

Section 1 The following words when used in this Declaration or any supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to HIDDEN CANYON OWNERS ASSOCIATION, its successors and assigns
- (b) "The Properties" shall mean and refer to the real property referred to in Article II and such additions thereto as may hereafter be brought within the terms of this Declaration.
- (c) "Developer" shall mean and refer to Becker Group, a Nevada general partnership; and Nexsur Insurance Agency, Inc., a Nevada corporation, their successors and assigns. "Developer" and "Declarant" may be used interchangeably to refer to Becker Group, a Nevada general partnership and Nexsur Insurance Agency, Inc., a Nevada corporation
- (d) "Lot" shall mean and refer to any plot of land intended for residential development shown upon any recorded subdivision map of The Properties with the exception of the greenbelt area and the planter areas as herein defined.
- (e) "Owner" shall mean and refer to the record Owner, other than developer or a Merchant Developer, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Properties, including contract sellers, but shall not mean or refer to the mortgagee or beneficiary under a Deed of Trust, unless and until such person or entity has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure
- (f) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article VI hereof
- (g) "Mortgage" shall include "deed of Trust" and shall mean the conveyance of an interest in any Lot or other portion of The Properties to secure the performance of an obligation, which conveyance shall be void upon the due performance of said obligation

- (h) "Mortgagee" shall include "Beneficiary" and shall mean a person or entity to which a Mortgage is made.
- (i) "Institutional Lenders" shall mean a savings and loan, bank, insurance company, real estate trust, mortgage, pension trust, savings and mutual banks, pension funds and other similar institutions.
- (j) "Mortgagor" shall include Trustor and shall mean a person or entity who mortgages his or its property to another, i.e., maker of a Mortgage.
- (k) Wherever the words "Deed of Trust" are used herein, it shall mean and be synonymous with the word "Mortgage", and the same may be used interchangeably with the same meaning, and likewise the words "Trustor", "Mortgagor", "Mortgagee" and "Beneficiary."
- (l) "Sale" shall mean the recordation of a Grant, Bargain and Sale deed to convey title to an owner.
- (m) "Assessment Period" shall mean the initial term and the subsequent periods as set forth in Article VII of this instrument.
- (n) "Landscape Planter" shall mean and refer to the 3-foot by 5-foot insets along the specified project roadways.
- (o) "Landscape Planter easement" shall mean and refer to the irrevocable easement granted to the Association by each owner of a lot abutting a landscape planter.
- (p) "Greenbelt Area" shall mean the area depicted at Exhibit "C".
- (q) "Rules" shall mean rules adopted by the Association's Board of Directors for regulation of the Park Area as they may be amended from time to time.
- (r) "Governing Documents" shall mean the Association's Articles of Incorporation, the Association's By-Laws, the Association's Rules, and this Declaration.
- (s) "Merchant Developer" shall mean one or more developers other than the Becker Group and/or Nevsur Insurance Agency, Inc., which developer purchases one or more units of improved or undeveloped real property in the Hidden Canyon project.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO

Section 1 – Property The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the County of Clark, State of Nevada, and is more particularly depicted in Exhibit "A" as Unit 1A, 1B and Unit 3. Each Unit may be developed in one or more phases or phases within a phase. Stated otherwise, a Merchant Developer may annex lots in any Unit in the same quantity as the lots are financed for construction or submitted for a master certificate of reasonable value.

Section 2 – Additional Properties The real property described at Exhibit B, pages 1 and 2, is the property subject to annexation by Developer, consisting of Units 2A, 2B, 4A, 4B, 4C and 4D. In addition, Developer may, in its sole discretion, annex additional real property lying south of Gowan Road to Cheyenne Avenue between Martin Luther King Boulevard and Clayton Street

Section 3 – The Common Area The Common Area will consist of the greenbelt area depicted at Exhibit C. The Common Area will be conveyed to the Association by Developer free and clear of all encumbrances and liens, (excepting utility easements, covenants, conditions and reservations then of record, including those set forth in this Declaration) prior to the sale of the first improved lot with residence in Unit 1A, 1B or Unit 3 to an Owner

ARTICLE III

PROPERTY RIGHTS

Section 1 – Encroachments If any Lot shall encroach upon any other Lot as a result of the construction of a building, engineering errors, or as a result of settling or shifting of a building, a valid easement for the encroachment and for its maintenance shall exist so long as the encroachment remains. In the event a building, or any adjoining structure shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, any resulting encroachment of any Lot upon any other Lot shall be permitted, and a valid easement for such encroachment and for its maintenance shall exist so long as the encroachment remains.

Section 2 – Enforcement of these Declarations The Association, the Developer or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restriction, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any

Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter

Section 3 – Landscape Planter Easement The Developer and Owners of lots in the Hidden Canyon project which abut Clayton Street, Scott Robinson Boulevard and Martin Luther King Boulevard and Gowan Road, as shows on the recorded final maps of Hidden Canyon grant to the Hidden Canyon Owners Association an irrevocable five (5) foot easement to enter upon, over and under the easement area for the purpose of designing, developing, constructing, altering, repairing and maintaining the landscape planters which face Clayton Street, Scott Robinson Boulevard and Martin Luther King Boulevard and Gowan Road. The easement will be five (5) feet width and extend over the entire length of the lots, which abut the aforementioned roadways

The Owners of said lots shall not build on or construct any permanent improvement nor alter or change the easement area in a manner which would interfere with the Association's maintenance, installation, repair and replacement of utility lines servicing the landscape planters. The surface of the easement area excepting the actual landscape planters shall be maintained by the lot Owner.

Section 4 – Common Area Easement Every Owner of a lot shall have a right and easement of ingress, egress and of enjoyment in and to the greenbelt area, which easement shall be appurtenant to and shall pass with the title to every such lot, subject to the following provisions.

- (a) The right of the Association to establish uniform rules and regulations pertaining to the use of the subject property;
- (b) The right of the Association to suspend the voting rights and right to use of any recreational facilities by an Owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations after reasonable written notice and an opportunity for a hearing

ARTICLE IV

COVENANTS AND USE RESTRICTIONS

Section 1 – Residential Use Except as provided in Articles V and X, each lot shall be used for private, one-family residence purposes exclusively and no part of the Project shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other non-residential purposes

Section 2 - Improvements No structure whatsoever, other than a one-family private residence may be erected or maintained on any lot. No building, structure or other improvement of any kind shall be erected, constructed, altered or maintained on any lot in excess of two and one-half stores, or more than thirty-two (32) feet in height at its highest point. Every single-family dwelling erected upon a lot shall contain not less than 775 square feet floor space, exclusive of porches, patios and garages. No garage shall be used for a living area or used for other purposes other than those uses normally attendant a garage. All lavatories and toilets shall be built indoors and connected with sewer systems.

Section 3 - Prohibited Uses

A Oil, Water and Mineral Exploration and Removal. No derrick or other structure designed for use in boring for oil, gas or other kindred substance or designed for use in boring for water, shall hereafter be erected or placed upon said realty, and no owner of any said lots shall ever consent to the use of the surface of the said realty or any portion of the subsurface thereof, by any person or persons whomsoever for the purpose of exploration, mining or operating for oil, gas, mineral or other hydrocarbon substances and the taking, storing, removing and disposing of same.

B Structure. No trailer, mobile home, basement, tent, shack, garage, barn or other out-building erected on any lot shall at any time be used at a resident temporarily, or permanently, nor shall any structure of a temporary character be used as a residence.

C Landscaping. No rubbish, brush, weeds, undergrowth, or debris of any kind or character shall ever be placed or permitted to accumulate upon any lot or any portion thereof so as to render said premises a fire hazard, unsanitary, unsightly, offensive, or detrimental to any other real property in the vicinity or the occupants thereof. The Owner of each lot, for himself, his successors and assigns agrees to care for, cultivate, prune and maintain in good condition any and all trees, lawns and shrubs growing on said realty and should an Owner or his successors or assigns fail to do so, or fail to keep his lot free from rubbish, brush, weeds, undergrowth or debris of any character, the Association may, at any time: (i) initiate legal proceedings to enforce compliance with this Section or, (ii) upon thirty (30) days' written notice to such Owner or his successors and assigns, of its intention so to do, enter upon said Lot and remove such rubbish, brush, weeds, undergrowth or debris and assess said Owner or his successors or assigns for the cost thereof. In the event such person or persons fails to reimburse the Association for its costs and expenses, and such charges shall constitute a lien on that Owner's Lot.

D Animals. Not more than four (4) dogs or four (4) cats, or any combination thereof [four (4) animals total], shall be kept on any lot, provided that they are not kept, or maintained for any breeding or commercial purposes.

E. Offensive Acts. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No activity that by any law of this state or local

jurisdiction (including but not limited to this county and/or city) requires a license may be conducted without such a license upon this property

F. Laws and Insurance Requirements. Nothing shall be done or kept on any Lot or any Improvements thereon that might increase the rate of, or cause the cancellation of, insurance for the Project, or any portion of the Project without the prior written consent of the Association. No owner shall permit anything to be done or kept on his Lot or any Improvements thereon that violates any law, ordinance, statute, rule, or regulation of any local, county, state or federal body

G. Ground Cover Requirement. If Developer or Merchant Developer has not provided for a lawn for a particular Lot, then the Owner of said Lot shall have installed thereon, within sixty (60) days from the date of conveyance of title to said Lot or the date of occupancy thereof, whichever occurs first, a lawn or a ground cover acceptable to the Association over the portion of the lot which faces the public street.

H. Nuisances. No odors shall be permitted to arise therefrom so as to render any Lot unsanitary, unsightly, offensive or detrimental to any other Lot; and no nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot or to the Owner thereof, without limiting the generality of the foregoing provision, no external speakers, horns, whistles, bells or other sound devices, except devices used exclusively for security purposes, shall be located, used or placed upon any Lot; no Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects, and no noxious or offensive trade or activity shall be done thereon which is or may become an annoyance or nuisance to the Project.

I. Repair of Improvements. No improvements (including but not limited to dwelling units, garages, carports, walls and fences) shall be permitted to fall into disrepair and (subject to Section M of this Article) all Improvements shall be kept at all times in good condition and repair and, if appropriate, painted or otherwise finished. Any and all repairs, redecorations, modifications or additions, interior or exterior, shall fully comply with all applicable building code requirements, rules and restrictions and the requirements of the Architectural Control Committee. Roof ventilators, if any, shall be painted within three (3) months of installation to match the color of the roof to which it is or will be attached.

J. Signs. No billboards, signs or advertising of any kind, excepting a traditional "for sale" or "for rent" sign not larger than two feet by two feet shall be erected or maintained upon any Lot without the prior written consent of the Architectural Control Committee, except that this restriction shall not apply to Developer or Merchant Developer.

K. Perimeter Block Walls. There are block walls around the Project, which were constructed or are to be constructed by Developer or Merchant Developer, which walls are subject to this Declaration. It shall be the duty of every Owner of a Lot to maintain and repair said walls and, if necessary, replace said walls as originally

constructed, which maintenance and repairs shall at all times conform to criteria established by the Architectural Control Committee. No changes or alterations shall be made to said walls. In the event the need for repair of said walls is caused through the willful or negligent acts of a Member or his family, guests, lessees or invitees, the Member shall be liable for the cost of repair. It shall be the duty of each Owner of a Lot on which a block wall is located to maintain that wall and to obtain and maintain in force property and casualty insurance on a current replacement cost basis on such block walls. Any insurance proceeds an Owner may receive for any damage or destruction to the block wall located on his Lot shall be paid to the Association which shall as promptly as practicable and in a lawful and workmanlike manner restore and repair the block wall to its former condition. If an owner fails to pay to the Association any such insurance proceeds, then the Association shall have the right to file a lien upon the Lot of such Owner in an amount equal to such insurance proceeds. The Association is hereby granted a right and easement over, under, upon and across each Lot wherein the aforesaid perimeter block wall is located for the purpose of repairing and, if necessary, replacing said walls as originally constructed.

No fence, wall, hedge, construction or obstruction shall be installed upon any Lot in said project except the residence, garage or other out building permitted to be erected under the provisions of these restrictions, unless such fence, hedge, wall, construction or obstruction was originally constructed by Developer or Merchant Developer, nor shall any such fence, wall, hedge, construction or obstruction be installed or erected unless prior to the commencement thereof complete working plans and specifications therefor have first been submitted to the Architectural Control Committee for the approval or rejection thereof by the Architectural Control Committee, and that Committee shall have given its written approval.

I. Provision for Architectural Approvals. Except as to construction of improvements by Developer and Merchant Developer in any phase of the Project, no building, fence, wall or other structure shall be commenced, erected or maintained on any Lot; nor shall any exterior addition or change or alteration in any such structures on any Lot be made, (including the following by way of illustration but not limitation, solar or heating systems; pools, spas, ponds, fountains, front yard landscaping, stonework, or concrete work, related mechanical, plumbing or electrical facilities, awnings and patio covers), until the plans and specifications showing the nature, kind, shape, materials, and location of the same have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee. Whenever in this Declaration the Prior consent or approval of the association is required as a condition to any action by an Owner affecting any alternations, changes, additions or modifications, the Association through the Board may delegate to the Architectural Control Committee the right and duty to grant or withhold such consent or approval. Merchant Developer must obtain architectural, model and elevation approvals from Developer prior to construction

M. Painting. No building, including without limitation, garages, shall be painted or repainted other than its original colors until the new color has been approved by the Architectural Control Committee.

N. Clotheslines. No clotheslines shall be placed nor shall any clothes be hung in any manner whatsoever on any Lot in a location, including but not limited to the garage door, visible from a public street.

O. Campers; Boats. No mobile home, commercial van, truck or other vehicle, or recreational vehicle, including but not limited to boats, trailers, campers or motorhomes, may be parked for more than twenty-four (24) hours on any street. No mobile home, commercial van, truck or other vehicle, or recreational vehicle, including but not limited to boats, trailers, campers or motorhomes, may be parked for more than twenty-four (24) hours on any Lot unless such mobile home, including but not limited to, boats, trailers, campers or motorhomes, is screened to minimize its view from streets and adjacent properties.

P. Set Back Lines. No building structure shall be located on any lot nearer than the minimum building set back lines shown on the recorded plat, or as required by any governmental authority.

Q. Drainage. Each owner of a lot agrees for himself, his heirs, assigns or successors in interest that he will permit free access by the Association to maintain surface water, drainage for the protection and use of property other than the lot on which the drainage way is located. Each owner of a lot also agrees for himself and his assigns that he will not in any way interfere with the established drainage pattern over his lot from adjoining or other lots in said tract, or that he will make adequate provisions for proper drainage in the event it is necessary to change the established drainage over his lot. For the purposes hereof, "established" drainage is defined as the drainage which occurred at the time the overall grading, including the landscaping of each lot, was completed by the Declarant. All Owner planters and patios shall be constructed to prevent the drainage of water upon adjacent lots.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. The Developer shall appoint all of the original members of the Architectural Committee consisting of not less than three (3) nor more than five (5) members, the initial members of which shall be ERNEST A BECKER, JR., 50 South Jones Blvd #100, Las Vegas, Nevada, 89107, BARRY W BECKER, 50 South Jones Blvd #101 Las Vegas, Nevada, 89107; and ROGER NIX, 2800 W. Sahara Avenue #E-8, Las Vegas, Nevada, 89102. A majority of the Committee may designate a representative to act for it. Any member shall have the right to resign at

any time. Neither the members of the committee nor its designated representative shall be entitled to any compensation for services performed under this provision. So long as the Developer is engaged in the development of the Hidden Canyon project, the Developer shall have the right to appoint, remove and replace, from time to time, any one or all of the members of the Architectural Control Committee, provided however, that Developer may at any time release to the Association's Board of Directors its right to appoint the members thereof.

At such time as Developer determines it no longer desires to control the appointment or removal of the members of the Architectural Control Committee, the Developer shall send written notice by first class mail to each Director notifying the Directors that it will no longer appoint or remove the members of the Architectural Control Committee. The notice shall further state the time and place for a special meeting of the Board of Directors, to be held not less than four (4) nor more than thirty (30) days following the date the notice is deposited in the mail. A majority of the Directors then in office shall select three (3) individuals to serve on the Architectural Control Committee. The Board may also establish such rules and regulations, as it deems necessary to control the activities of the Architectural Control Committee, including the appointment and removal of its members.

Section 2. Approval of Committee. The Architectural Control Committee's approval or disapproval as required in this Declaration shall be in writing. The method of submission shall be by the mailing of a first class United States Mail Return Receipt Requested letter to the Architectural Control Committee c/o the Association at the Association's then current address. In the event the Architectural Control Committee or its designated representative(s) fails to approve or disapprove a submission within thirty (30) days after receipt of the proposed plans and specifications has been acknowledged in writing by the Architectural Control Committee or its representative(s) (unless such thirty [30] day period is extended in writing within such period by the Architectural Control Committee or its representative), Article IV, Section 3, Paragraph M will be deemed to have been complied with in full, provided that such compliance shall not be deemed to constitute an approval of plans and specifications or work in violation of any other term or provision of this Declaration.

Section 3. Liability. Neither Developer, Merchant Developer(s), the Association, the Association Board of Directors, the Association officers nor any member of the Architectural Control Committee shall be liable for damages to anyone submitting plans and specifications to it for approval or to any Owner, occupant or guest, by reason of a mistake in judgment, negligence or nonfeasance arising in connection with the approval or disapproval of any plans and specifications.

The approval of plans and specifications by the Architectural Control Committee shall not be deemed to constitute an approval of the actual work or acceptance by the Architectural Control Committee or the Association for any liability in connection with such plans and specifications or work (for example, liability arising in connection with

defective design or defective work), but is merely an acknowledgement that the proposed work is architecturally and aesthetically compatible with the guidelines established by the Architectural Control Committee for the Project

Anyone who submits plans and specifications to the Architectural Control Committee shall be deemed to have agreed by submission of such plans and specifications, and every Owner and occupant of any Lot or any part of the Real Property agrees, by acquiring title and/or possessory rights thereto, that he will not bring any action or suit against Developer, merchant Developer, the Association, the Board of Directors, the Association officers or any member of the Architectural Control Committee or its designated representative for the recovery of damages by reason of any such approval or disapproval.

Section 4 Exemptions. Neither Developer nor Merchant Developer shall be required to seek the approval of the Architectural Control Committee

ARTICLE VI

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 1 Membership. Subject to the provisions of Article VI, the Developer, every Merchant Developer and every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot to which it is appurtenant, and then only to the purchaser of such Lot. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchaser of his Lot, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

Section 2 – Voting Rights. The Association shall have three (3) classes of voting membership:

CLASS A: Class A members shall be all lot owners, with the exception of Developer, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person owns a Lot, all such persons shall be members. The vote for such Lot shall be exercised as they amongst themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Merchant Developers shall be Class A members entitled to one (1) vote for each lot owned by the Merchant Developers, which lot is subject to an assessment (Article VII) by the Association.

CLASS B: Class B membership shall be Developer and shall, upon the recordation of this Declaration, be entitled to four (4) votes for every Lot owned. The Class B

membership shall cease and be converted to Class A membership upon the earliest of the following to occur

- a. When the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership; or
- b. Ten (10) years from the date this Declaration is recorded; or
- c. Upon written notice by Developer to the Association.

CLASS C. The Class C member shall be Developer. The Class C membership shall not be considered a part of the voting power of the Association and Developer shall not be entitled to exercise any Class C vote except for the purpose of electing Directors. The Class C member shall be entitled to solely elect a majority of the members of the Board of Directors until such time as the Class C member no longer owns any parcel in the properties in the annexable area or the tenth (10th) anniversary of the Recordation of this Declaration, whichever occurs first. The annexable area shall mean and refer to the property described at Exhibit B as well as the property lying south of Gowan Road to Cheyenne Avenue between Martin Luther King Boulevard and Clayton Street. The Class B vote may be reinstated at Developer's option by the annexation of additional property.

ARTICLE VII

COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 1 - Covenant to Pay Assessments. Subject to the provisions of Sections 3 and 4 of this Article VII, the Developer and Merchant Developer for each Lot owned within the Project, hereby covenants and agrees, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in said deed, is deemed to covenant and agree to pay to the Association (1) regular and special assessments for capital improvements and such other purposes as set forth herein, such assessments to be established and collected as hereinafter provided. The special assessments, plus interest, costs, including attorneys' fees and penalties, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment, plus interest, costs, including attorneys' fees and penalties, shall also be the personal obligation of the person or persons who were the Owner(s) of such Lot at the time when the assessment fell due. Each Owner shall be responsible for (i) notifying the Association of any pending change or transfer of title to his Lot, and (ii) interests, costs, penalties and attorneys' fees related thereto, if any, levied against his Lot prior to and/or concurrent with any such transference of title. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner of a Lot may exempt himself from liability for his contribution toward the Association by abandonment of his Lot.

The Association is specifically authorized to enter Subsidy Agreements (as described in Article VII, Section 16) with Developer or other entities for the payment of some portion of the Association expenses, provided, however, the Veterans Administration shall be advised of and approve any form of Subsidy Agreement entered into between the Developer and the Association

Section 2 – Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire Project, and for the improvement and maintenance of the Association property for the common good of the Project

Section 3 – Regular Assessments Until November 1st of the year immediately following conveyance of the first Lot to an Owner, the maximum annual regular assessment shall be \$180.00 per Lot. If approved by the Association and at the election of the Owner, the annual assessment may be paid in the form of an annuity

- (i) The regular assessment shall be based upon the annual budget adopted by the Association
- (ii) From and after November 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual regular assessment may be increased each year by not more than fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership of the Association
- (iii) From and after November 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual regular assessment may be increased more than fifteen percent (15%) above the maximum assessment for the previous year by the vote or written assent of Members representing fifty-one percent (51%) or more of the voting power of each class of Members of the Association; provided, however, in the event the Class B membership has been converted to Class A membership, then fifty-one percent (51%) of the votes of Members other than Developer shall then be necessary

The Board may fix the annual regular assessment at an amount not in excess of the maximum

Section 4 – Special Assessments In addition to the annual regular assessments authorized above, the Association may levy, in any fiscal year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of (i) any action or undertaking on behalf of the Association which exceeds the budgeting gross expenses of the Association for that fiscal year, provided that any such assessment shall have the written assent of Members representing fifty-one percent (51%) or more of the voting power of each class of Members of the Association, provided, however, in the event the Class B membership has been converted to Class A membership, then fifty-one

(51%) OR MORE OF THE TOTAL VOTING POWER OF THE Association comprised of at least fifty-one (51%) of the votes of Members other than Developer shall then be necessary

Section 5 – Membership Approval Any action authorized under Section 3 or 4 above shall be taken at a meeting called for that purpose, written notice of which shall be given to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting, provided, however, if notice is given by mail and the notice is not mailed by first class, registered or certified mail, then notice shall be given not less than fifteen (15) days before the meeting. A quorum for such meeting shall be a majority of the voting power of the membership of the Association. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the voting power of the membership of the Association; provided, however, if (i) the meeting so adjourned is an annual meeting, and (ii) the adjourned annual meeting is actually attended, in person or by proxy, by less than thirty-three and one-third percent (33 1/3%) of the voting power of the membership of the Association, then the only matters which may be voted on there at are matters notice of the general nature of which duly given. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite fifty-one percent (51%). Members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting

Section 6 – Uniform Rate. Both regular assessments and special assessments shall be fixed at a uniform rate for all Lots. Such assessments may be collected annually in advance or otherwise as determined by the Board. Any assessment not paid within thirty (30) days after the due date shall be delinquent and shall bear interest at the rate of ten percent (10%) per annum from the due date until paid. A late charge may not be imposed more than once on any delinquent payment, shall not eliminate or supersede any charges imposed on prior delinquent payments, and shall constitute full compensation to the Association for any additional bookkeeping, billing, or other administrative costs resulting from the delinquent payment. The late charge may be increased annually by the Board of Directors of the Association in proportion to any increase in the published consumer price index.

Section 7 – Annual Average Liability for Common Expenses In no event will an Owner's or Developer's annual average liability for common expenses exceed \$500.00 per year per lot as adjusted by N.R.S. 116.1115.

Section 8 – Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots in each phase of the project on the first day of the month following the conveyance of the first Lot in each phase to an Owner. The annual assessments as to all Lots in the remaining phases, if any, of the Project shall commence on the first day of the month following the conveyance of the first Lot in each phase to an Owner. "Phase" means the Lots which are annexed for construction or submitted for a master certificate of reasonable value

The Board shall determine and fix the amount of the annual regular assessment against each Lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9 – Enforcement by Lien. At any time after one or more assessments levied by the Association affecting any Lot have become delinquent, the Board may file a notice of assessment as to such Lot, which notice shall state the amount of the assessment(s) which have become delinquent with respect to such Lot and the costs (including attorneys' fees and penalties) and interest which have accrued thereon; the amount of any assessments relating to such Lot which is due and payable although not delinquent, a description of the Lot with respect to which the delinquent assessments are owed, and the name of the record or reputed owner of such Lot. Such notice shall be signed by an authorized representative of the Association. In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Lot, together with all costs (including attorneys' fees) and interest which have accrued on such amounts are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Declaration, the Board shall record a further notice, similarly signed, stating the satisfaction and releasing of such lien. Immediately upon recording any notice of assessment pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such notice, together with the costs (including attorneys' fees) and interest accruing thereon, shall be and become a lien upon the Lot described therein, which lien shall also secure all other payments and/or assessments which shall become due and payable with respect to said Lot following such recording, and all costs (including attorneys' fees and penalties) and interest accruing thereon. Unless sooner satisfied or released or its enforcement initiated, said lien shall continue for a period of three (3) years from the date of recordation of the notice of assessment. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Lot, prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any first mortgage of record.

Notwithstanding any provision herein to the contrary, a monetary penalty imposed by the Association as a disciplinary measure for failure of an owner to comply with the Governing Documents, shall not be treated as an assessment which may become a lien against the Owner's Lot. The foregoing shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments, which shall be treated as an assessment which may become a lien against the Owner's Lot enforceable by a sale of the Lot.

Any monetary penalty imposed by the Association as a disciplinary measure for failure of an Owner to comply with the Governing Documents and for costs reasonably incurred (including attorneys' fees) in connection therewith shall be the personal obligation of the Owner against whom such penalty or charge was imposed enforceable by any remedy provided therefor by law.

The association may not foreclose a lien by sale for the assessment of a fine for a violation of the declaration, bylaws, rules or regulations of the association, unless the violation is of a type that threatens the health, safety or welfare of the residents of the common-interest community.

Section 10. Foreclosure. A power of sale is conferred in the Association for the enforcement of any assessment lien. Each assessment lien may be enforced by sale by the Association, its agent or attorney after failure of the Owner to pay the assessment in accordance with its terms or in any manner permitted by law. Unless otherwise provided by agreement, the Association may purchase the Lot at foreclosure sale and hold, lease, mortgage and convey it. Suit to recover a monetary judgment for unpaid assessments, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 11. Assessment Liens; Exercise of Power of Sale. The power of sale conferred in Article VII, Section 9 may not be exercised until:

- (a) The Association, its agent or attorney has first executed and caused to be recorded a notice of default and election to sell the property or cause its sale to satisfy the assessment lien; and
- (b) The property owner or his successor in interest has failed to pay the amount of the lien including costs, fees and expenses incident to its enforcement for a period of sixty (60) days. The 60-day period commences on the first day following the latter of the day upon which the notice of default and election to sell is recorded or the day upon which a copy of the notice is mailed by certified mail with postage prepaid to the property owner or to his successor in interest at his address if the address is known, otherwise to the address of the property. The notice must describe the deficiency in payment. The Association, its agent or attorney shall, after expiration of the 60-day period and before selling the property, give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the notice of sale must be mailed on or before the first publication or posting by certified mail with postage prepaid to the property owner or to his successor in interest at his address if that address is known, otherwise to the address of the property. The sale itself may be made at the office of the Association if the notice so provided, whether the property is located within the same county as the

office of the Association or not. Every sale made under the declaration vests in the purchaser the title of the property owner without equity or right of redemption.

Section 12 - Subordinate to First Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage upon a Lot. Sale or transfer of a Lot shall not affect the assessment lien thereon. However, the sale or transfer of any Lot as the result of the exercise of a power of sale or a judicial foreclosure involving a default under the first Mortgage thereon shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title to the same as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the association expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer.

Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Lots, including the Lot of such acquirer.

Section 13 - Assessment for Taxes. In the event that any taxes are assessed against the personal property of the Association, rather than against the individual Lot, said taxes shall be added to the annual regular assessments and, if necessary, a special assessment may be levied against the Lot in an amount equal to said taxes, to be paid in two (2) installments.

Assessments levied under this Section shall not be subject to the limitations of sections 3 or 4 of Article VII of this Declaration.

Section 14 - Enforcement by Suit. The Board may cause an action at law to be commenced and maintained in the name of the Association in any court of competent jurisdiction, including, but not limited to, an action in a small claims court, to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of ten percent (10%) per annum from the date of delinquency, court costs, and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Owner (including Declarant).

Section 15 - Assessment Certificate. A certificate executed under penalty of perjury by any two (2) members of the Board and acknowledged shall be conclusive upon the Association and the Owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any Owner (including Developer) shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his Lot (or the fact that all assessments due are paid if such is the case) within ten (10) days after demand and upon payment of a reasonable fee, not to exceed Ten Dollars (\$10.00), which may be fixed by the Board.

Section 16 – Subsidy Agreements The Association may enter into an agreement (a “Subsidy Agreement”) with the Developer under which the Developer provides services which are expenses of the Association in exchange for a temporary suspension of regular assessments, provided that any such Subsidy Agreement shall provide that it may be terminated upon the vote of sixty-seven percent (67%) of the Owners other than the Developer, in which event all Owners, including Developer, shall be liable for the full amount of the regular assessments in accordance with Article VII, Section 3.

ARTICLE VIII

ANNEXATION, DE-ANNEXATION AND ATTORNEYS FEES

Section 1 – Annexation of Additional Property Any portion or the whole of the additional property described at Exhibit B (Units 1B, 2A, 2B, 4A, 4B and 4C) or any portion or the whole of the property lying south of Gowan Road to Cheyenne Avenue between Martin Luther King Boulevard and Clayton Street may, from time to time, be annexed by the Developer or Merchant Developer, as the case may be, in the Developer’s sole discretion without the consent of the Association or any Owner. Developer shall be under no obligation to develop or annex such additional property. If Developer elects to annex and develop additional property, the development will be in accordance with the previously submitted and approved plan for the project. All Owners of Lots in the annexed area shall automatically become members of the HIDDEN CANYON OWNERS ASSOCIATION. Thereafter, the rights and obligations of the Owners of Lots located in the annexed property shall be the same as the rights and obligations of the Owners of Lots affected in this Declaration.

Section 2 – De-Annexation Developer may delete all or any portion of a phase of development “Phase” from coverage of this Declaration and the jurisdiction of the Association, so long as Developer is the Owner of all such phases of development and provided that (a) a draft of the Notice of De-Annexation is submitted to and approved by the VA prior to the recordation; (b) the Notice of De-Annexation is recorded in the same manner as the applicable Declaration of Annexation was recorded; (c) Developer has not exercised any Association vote with respect to any portion of such Phase; (d) assessments have not yet commenced with respect to any portion of such Phase, and (e) no Lot has been sold in said Phase to a member of the general public, and (f) the Association has not made any expenditures or any obligation respecting any portion of said Phase.

Section 3 – Attorney’s Fees Should any action be brought by any party to enforce any term, provision, covenant, condition or restriction herein contained, the prevailing party shall be entitled to recover reasonable attorneys fees and the costs of such action.

ARTICLE IX

POWERS AND OBLIGATIONS OF THE ASSOCIATION

Subject to other provisions of this Declaration and to the limitations of the Articles and the By-Laws as to action to be authorized or approved by the Members, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Association shall be controlled by, the Board. Without prejudice to such general powers but subject to the same limitations, it is hereby expressly declared that the Directors shall have the following powers:

Section 1. Elect Officers. To select and remove all the officers, agents and employees of the Association prescribe such powers and duties for them as may not be inconsistent with law, the Articles, the By-Laws or this Declaration.

Section 2. Management and Control. To conduct, manage and control the affairs and business of the Association, and to make such rules and regulations therefor not inconsistent with law, the Articles, the By-Laws and this Declaration as they deem best

Section 3 - Principal Office. To change the principal office for the transaction of the business of the Association from one location to another within the same County and to designate a place reasonably convenient to the owners within the County of Clark, State of Nevada, for the holding of any membership meeting or meetings.

Section 4. Incur Indebtedness. To borrow money and incur indebtedness for the purposes of the Association, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor, with the vote or written assent of two-thirds (2/3) of the voting power of each class of Members of the Association.

Section 5 - Obtaining Insurance. To obtain and maintain in force the following policies of insurance:

- (1) Bodily injury liability insurance, with limits of not less than \$200,000.00 per person and \$1,000,000.00 per occurrence, and property damage liability insurance with a deductible of not more than \$1,500.00 and a limit of not less than \$500,000.00 per accident, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction.
- (2) Fidelity insurance in the form of a bond in an amount equal to one hundred and fifty percent (150%) of the Association's annual assessments including reserves which names the Association as obligee and protects against misuse and misappropriation of Association property by members

of the Board, officers, trustees and employees of the Association, and any management agent and its officers, agents and employees whether or not such persons are compensated for their services.

- (3) Workers' Compensation Insurance covering any employee of the Association.
- (4) Such other insurance, such as property or casualty insurance, including errors and omissions coverage for Officers' and Directors' indemnity and other bonds, as the Board shall deem necessary or expedient to carry out the Association functions as set forth in this Declaration, the Articles and the By-Laws

The liability insurance referred to above shall name as separately protected insured Developer, the Association, the Board and their representatives, members and employees, and the Association members (as a class), with respect to any liability arising out of the maintenance or use of the Association's property. Such policy or policies shall protect each of the insureds as if each were separately insured under separate policies; provided, however, that such policy or policies shall not require the insurers to pay any amount in excess of the maximum limits stated therein.

Every policy of insurance obtained by the Association, whether or not required to be obtained pursuant to the provisions of this Declaration, shall expressly waive any and all rights of subrogation against Developer, Merchant Developer, its representatives and employees, and all Members.

The insurance premium on the policies provided by the Association shall be an Association expense to be included in the regular assessments levied by the Association.

Section 6 – Notice of Cancellation of Insurance or Fidelity Bond. Upon written request to the Association identifying (i) the name and address of the holder, insurer or governmental guarantor of any first Mortgage encumbering any Lot and (ii) the number or address of such Lot, to notify the same in writing at least ten (10) days prior to any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

Section 7. Utilities. To pay all charges for water, electricity, gas and other utility services for the Landscape Planter areas

Section 8. Landscape Planter Areas and Greenbelt. To manage, operate, maintain and repair the Landscape Planter Areas and greenbelt area, and all improvements located thereon, including the restoration and replacement of any or all of the improvements which are part of the Areas at any time and from time to time as the Board may determine desirable or necessary; and to make capital expenditures for and on behalf of the Association with the vote or written assent of a majority of the voting power of each class of Members of the Association

Section 9 – Perimeter Walls. To maintain and keep free from graffiti and similar unsightly appearance, the exteriors of all perimeter block walls in the Project

Section 10 – Enforcement To enforce the provisions of the Declaration, the Articles and By-Laws of the Association, the rules and regulations adopted by the Board and the provisions of any agreement to which the Association is a party

Section 11 – Services and Supplies. To contract and pay for maintenance, gardening, utilities, materials, supplies and services, and to employ personnel necessary for the operation and maintenance of the same, including legal and accounting services, provided, however, that the terms of any contract with a third person for supplying goods or services for the Association shall not exceed a term of one (1) year unless a longer term is approved by a majority of the voting power of each class of Members of the Association, except that (a) a contract with a public utility company for materials or services the rates for which are regulated by the Nevada Public Service Commission may exceed a term of one (1) year so long as it does not exceed the shortest term for which the public utility will contract at the regulated rate, (b) a contract for prepaid casualty and/or liability insurance policies may be for a term of not to exceed three (3) years, provided that the policy permits short rate cancellation by the Association, and (c) a management contract, the terms of which have been approved by the Veterans Administration may exceed a term of one (1) year. The foregoing is not intended to limit Developer's rights contained in Section 16, Article VII, of this Declaration. No contract with the Association negotiated by Developer, excluding any Subsidy Agreement approved by the Veterans Administration, shall exceed a term of one (1) year.

Section 12 – Employment of Professional Manager. To employ the services of any person or corporation as manager, and other employees, to manage and conduct the business of the Association, and to the extent not inconsistent with the laws of the State and upon such conditions as are otherwise deemed advisable by the Association, to delegate to the manager any of its powers provided that any agreement for management or person hired as manager shall not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods and shall be terminable by the Association for cause upon thirty (30) days' written notice.

Section 13 – Maintenance Contract. To enter into a maintenance service contract with any person, corporation or other entity for the maintenance of the Association property, provided that any such contract shall be for a period of one (1) year, renewable by agreement of the parties for successive one (1) year periods and any such contract shall be terminable by the Association for cause upon thirty (30) days' written notice.

Section 14 – Taxes. To pay any taxes and governmental special assessments, which are or could become a lien on the association property.

Section 15 – Discipline. To initiate and execute disciplinary proceedings against Members of the association for violations of the provisions of the Governing Documents.

Section 16 – Budget. To prepare budgets and financial statements for the association as provided by the By-Laws. The budget shall contain two parts. The first part shall be for operating expenses and shall include at least the following information.

- (a) Estimated revenue and expenses on an accrual basis.
- (b) The amount of the total cash reserves of the Association currently available for replacement or major repair of the Association property and for contingencies
- (c) An itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement or additions to major components of the Association property and facilities for which the association is responsible.
- (d) A general statement setting forth the procedure used by the governing body in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Association property and facilities for which the Association is responsible. The second part shall include reserves for items of repair and maintenance that are accumulated each year to insure sufficient funds when these repairs and maintenance are necessary

The board shall maintain the integrity of the budget by maintaining reserves for the items set out above and these reserves shall not be used for operating expenses nor shall operating funds be used to pay for an expenditure covered by a reserve. Reserves for a specific item shall only be expended for that particular item.

Section 17 – Notice of Default. Upon the written request of an Eligible Holder or an Eligible Insurer, to notify the same in writing of any default by the Owner of such Lot in the performance of the Owner's obligations under the By-Laws or this Declaration which is not cured within thirty (30) days.

Section 18 – Notice of Damage. Upon the written request of an Eligible Holder or an Eligible Insurer, to give timely written notice to the same of any substantial damage to or destruction of any Lot or any portion of the Association property and, if any Lot, is made the subject of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, to give timely written notice to the same of any such proceeding or proposed acquisition.

Section 19 – Defense. To prosecute or defend, in the name of the Association, any action affecting or relating to the Association property, and any action in which all or substantially all of the Owners have an interest

Section 20 - Delegation of Powers. To delegate any of its powers hereunder to others, including committees, officers and employees, and including without limitation the Architectural Control Committee

Section 21 - Rules. To adopt, amend, repeal, and enforce rules and regulations known as the "Rules", governing the Association property.

A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be given to each Member and, upon written request therefor, to all first Mortgagees either personally or mailed by first class, registered or certified mail, postage prepaid to his address appearing on the books of the Association or supplied by him to the Association. If no address is supplied, a copy of the Rules shall be deemed given if mailed to the address of the Lot owned by such Member. Copies of such Rules shall be circulated to each Member in the manner set forth above not less than ten (10) days and not more than sixty (60) days before the rules may be deemed to be in full force and effect. A copy of the Rules, as adopted, amended or repealed, may be recorded and shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 22 - Right to Grant Easements. To grant permits, licenses and easements under, through and over the Association property for utilities, roads and other purposes, which are reasonably necessary or useful for the proper maintenance and operation of the Project.

Section 23 - Availability of Documentation. To make available to any prospective purchaser of a Lot, any Owner of a Lot, any first Mortgage and the holders, insurers and guarantors of a first Mortgage on any Lot, current copies of the Governing Documents and all other books, records and financial statements of the Association. "Available" as used in this paragraph shall at least mean available for inspection upon request during normal business hours or under other reasonable circumstances

ARTICLE X

GENERAL PROVISIONS

Section 1. Severability. Should any provision in this Declaration be void or become invalid or unenforceable in law or in equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect

Section 2 – Amendments. This Declaration may be amended at any time and from time to time by an instrument in writing signed by Members representing 67% or more of the voting power of each class of Members unless the Class B membership has been converted to Class A membership, in which event, 67% of the total voting power of the Association comprised of at least 67% of the votes of Members other than declarant shall be necessary to amend this Declaration. Such amendment shall become effective upon the recording thereof, provided, however, that no change may be made to material provisions herein without the prior written consent of Eligible Mortgage Holders, all as more particularly set forth in Section 3 of this Article X. Notwithstanding the above or any other section of this Declaration, the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

Section 3 - Material Amendments.

- (a) In addition to the consent of the Members in accordance with section 2 of this Article X, the approval of at least fifty-one percent (51%) of the Eligible Mortgage Holders shall be required to add or amend any material provisions of the Governing Documents which establish, provide for, govern or regulate any of the following:
 - (1) Voting,
 - (2) Any provisions which are for the express benefit of Mortgage holders, Eligible Mortgage Holders or Eligible Insurers or Guarantors.

An addition or amendment to the Governing Documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An eligible Mortgage Holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Section 4 – Limitation of restrictions on Developer and Merchant Developer. Developer and Merchant Developer are undertaking the work of subdividing unimproved real property and the sale of improved lots, along with incidental improvements upon the properties. The completion of that work, and the sale and other disposal of lots or parcels is essential to the establishment and welfare of the Project as a residential community. In order that said work may be completed and established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- (a) Prevent Developer or Merchant Developer, its contractors or subcontractors from doing whatever is reasonably necessary or advisable in connection with the completion of said work, or

- (b) Prevent Developer or Merchant Developer or its representatives from erecting, constructing and maintaining on any part or parts of the properties such structures as may be reasonable and necessary for the conduct of its business of completing said work; or
- (c) Prevent Developer or Merchant Developer from conducting on any part of the properties its business of completing said work, and of disposing of said properties in dwellings by sale, lease or otherwise; or
- (d) Prevent Developer or Merchant Developer from maintaining such sign or signs on any of the properties as may be necessary for the sale or disposition thereof, provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by Owner of his Lot. Notwithstanding any provision herein to the contrary, Developer or Merchant Developer shall not have the right to maintain any sign or signs on or within any Lot, which is not owned by Developer or Merchant Developer
- (e) The rights of Developer and Merchant Developer provided in this Section shall expire ten (10) years from the date this Declaration is recorded, provided that such period may be extended an additional three (3) year period if approved by the Veterans Administration.
- (f) Developer shall have the right at any time prior to the conveyance of a lot to an Owner to amend this Declaration, to establish on the project additional easements, reservations and rights of way to itself, over, under or across such lot, to utility companies, or to others as may from time to time be reasonably necessary to the Property Development. Developer or the organization for whose benefit said easements, reservations and rights of way have been established shall have the right at any time to cut and remove any trees, branches, or other unauthorized objects from such easements, reservations and rights of way.

Section 5 – Owners' Compliance. Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration, the By-Laws, decision and resolutions of the Association or its duly authorized representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action to recover sums due, for damages, or for injunctive relief.

Section 6 – Captions. The captions appearing at the commencement of the paragraphs hereof are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the paragraph at the head of which it appears, the paragraph and not the caption shall control and govern in the construction of this Declaration.

Section 7 – Liability Limit. No member of the Board, or the Manager, shall be personally liable to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, the Manager, or any other representatives or employees of the Association, provided that such Board members, or the Manager, has upon the basis of such information as may be possessed by him, acted in good faith.

Section 8 – Conflicting Provisions. In the case of any conflict between this Declaration and the Articles, the By-Laws or Rules, this Declaration shall control. In the event of any conflict between the Articles and the By-Laws, the Articles shall control.

Section 9 – Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

Section 10 – Agreements. All agreements and determinations lawfully made by the Association in accordance with the voting percentage established in this Declaration or in the By-Laws shall be deemed to be binding on all Owners of Lots, their successors and assigns.

Section 11 – No Impairment of Liens. No violation of any of the covenants, conditions or restrictions in this Declaration, nor any of the right or rights to claim a lien or liens created hereunder upon any Lot in the Project shall defeat or render invalid the lien of any holder of any indebtedness, or the renewal, extension or refinancing thereof, made in good faith and for value, and secured by any recorded trust deed upon such Lot in favor of or for the benefit of any agency or officer of the United States of America, any agency or officer of the State of Nevada, any institutional lender (meaning any bank, insurance company, savings and loan association, or building and loan association), Developer, any wholly-owned corporate subsidiary of Developer, or any corporation of which Developer is a wholly-owned subsidiary.

Section 12 – Veterans Affairs and FHA Approval. So long as there is a Class B membership, the following actions will require the prior approval of the FHA and the VA: Annexation or de-annexation of additional properties, any merger or consolidation of the Association, and any amendment to this Declaration, a draft of which shall be submitted to and approved by the VA prior to the recordation.

Section 13 – Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of community areas. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision of any other provision hereof.

EXHIBIT 4

EXHIBIT 4

20090603-0003607

Fee: \$14.00
N/C Fee: \$0.00
06/03/2009 12:38:07
T20090194197
Requestor:
JUNES LEGAL SERVICES
Debbie Conway ADF
Clark County Recorder Pgs: 1

When recorded return to:)
ALESSI & KOENIG, LLC)
9500 W. Flamingo Rd., Suite 100)
Las Vegas, Nevada 89147)
Phone: (702) 222-4033)

A.P.N. 139-09-410-021

Trustee Sale # 16246-1524

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

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


The property against which the lien is imposed is commonly referred to as **1524 Highfield Ct. , N. Las Vegas, NV 89032** and more particularly legally described as: **Lot 32 Book 61 Page 61** in the County of **Clark**.

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

The mailing address(es) is: **1524 Highfield Ct., N. Las Vegas, NV 89032**

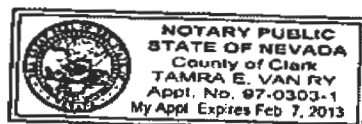
The total amount due through today's date is: **\$571.85**. Of this total amount **\$320.00** represent Collection and/or Attorney fees and **\$55.31** represent collection costs, late fees, service charges and interest. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **May 21, 2009**

By: 
Thessa Elpidio - Legal Assistant
Alessi & Koenig, LLC on behalf of **Hidden Canyon Owners Association**

State of Nevada
County of Clark
SUBSCRIBED and SWORN before me **May 21, 2009**

(Seal)



(Signature)



NOTARY PUBLIC

EXHIBIT 5

EXHIBIT 5

(2)

When recorded mail to:

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

)
)
)
)
)
)

A.P.N. 139-09-410-021

Trustee Sale No. 16246-1524

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

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default is recorded. The date of recordation appears on this notice. The amount due is **\$1,404.49** as of **July 23, 2009** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact: **Hidden Canyon Owners Association**, c/o Alessi & Koenig, LLC, 9500 West Flamingo Road, Suite 100, Las Vegas, NV 89147.

THIS NOTICE pursuant to that certain Assessment Lien, recorded on **June 3, 2009** as document number **03607**, of Official Records in the County of **Clark**, State of Nevada.
Owner(s): **Dania Hernandez**


Of **Lot 32**, as per map recorded in Book **61**, Pages **61**, as shown on the Condominium Plan, Recorded on as document number as shown on the Subdivision map recorded in Maps of the County of **Clark**, State of Nevada.

PROPERTY ADDRESS: 1524 Highfield Ct., N. Las Vegas, NV 89032

If you have any questions, you should contact an attorney or the Association that maintains the right of assessment upon your property. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. **REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.**

NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated **June 3, 2009**, executed by **Hidden Canyon Owners Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions. A breach of, and default in, the obligation for which said Covenants, Conditions, and Restrictions as security has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, Association's fees and costs, trustee's fees and costs, and attorney's fees and costs.

Dated: **July 23, 2009**



Thessa Elpidio, Alessi & Koenig, LLC on behalf of **Hidden Canyon Owners Association**.

EXHIBIT 6

EXHIBIT 6

MILES, BERGSTROM & WINTERS, LLP AFFIDAVIT

State of California }
 }ss.
Orange County }

Affiant being first duly sworn, deposes and says:

1. I am a managing partner with the law firm of Miles, Bergstrom & Winters, LLP formerly known as Miles, Bauer, Bergstrom & Winters, LLP (**Miles Bauer**) in Costa Mesa, California. I am authorized to submit this affidavit on behalf of Miles Bauer.

2. I am over 18 years of age, of sound mind, and capable of making this affidavit.

3. Miles Bauer uses ProLaw software to record and track all documents prepared and correspondence sent in connection to a particular file. ProLaw is recognized in the legal industry as a standard software platform for electronic document management and retention. Miles Bauer creates a separate electronic folder on ProLaw for each of its files. Within the folder, Miles Bauer maintains record of communications with its clients and third parties, including, but not limited to, borrowers and homeowners' associations. Miles Bauer also creates and records notes in its ProLaw folders, documenting the status and progress of the related files.

4. The information in this affidavit is taken from Miles Bauer's business records, including records maintained in ProLaw. I have personal knowledge of Miles Bauer's procedures for creating these records. They are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer to make such records. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed that the information in this affidavit is accurate by reading

the affidavit and attachments, and checking that the information in this affidavit matches Miles Bauer's records available to me.

5. Bank of America, N.A. (**BANA**) retained Miles Bauer to tender payments to homeowners associations (**HOA**) to satisfy super-priority liens in connection with the following loan:

Loan Number: [REDACTED] 4618

Borrower(s): Dania Hernandez

Property Address: 1524 Highfield Ct., North Las Vegas, NV 89032

6. Attached hereto as **Exhibit 1** is a true and correct copy of the ProLaw screenshot of the folder created for this particular loan and borrower. This screenshot is taken directly from ProLaw and reflects Miles Bauer's activity for this particular loan and borrower. I have personal knowledge of Miles Bauer's procedures for creating ProLaw folders. They are: (a) made before or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information stored therein, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer to make such ProLaw folders to store and organize all Miles Bauer records for individual files. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed the information in the ProLaw screenshot is an accurate representation of Miles Bauer's activity by reading the screenshot, and checking that the screenshot information matches Miles Bauer's records available to me.

7. Miles Bauer maintains records for the loan in connection with tender payments to HOA. As part of my job responsibilities for Miles Bauer, I am familiar with the type of records maintained by Miles Bauer in connection with the loan.

8. Based on Miles Bauer's business records, attached as **Exhibit 2** is a copy of the Microsoft Word version of a letter from Jeremy Bergstrom, Esq., an attorney with Miles Bauer, to Hidden Canyon Owners Association, care of The Alessi & Koenig, LLC. Although the attached letter is incorrectly dated June 9, 2017 due to the "Automatic Date Change" function in Microsoft Word and date of reprinting of that letter, Miles Bauer's case management system includes a specific note evidencing the letter was sent to on or about October 20, 2009. A copy of a screenshot of the relevant case management note[s] confirming the letter was sent is attached as **Exhibit 1**.

9. Based on Miles Bauer's business records, attached as **Exhibit 3** is a copy of a Statement of Account from Alessi & Koenig, LLC dated December 17, 2009 and received by Miles Bauer in response to the letter identified above.

10. Based on Miles Bauer's business records, attached as **Exhibit 4** is a copy of a January 21, 2010 letter from Rock K. Jung, an attorney with Miles Bauer, to Alessi & Koenig, LLC enclosing a check for \$88.50.

///

///

///

///

///

///

///

11. Based on Miles Bauer's business records, attached as **Exhibit 5** is a copy of a February 4, 2010 letter from Alessi & Koenig, LLC.

FURTHER DECLARANT SAYETH NOT.

Date: 6/20/17



Declarant Douglas E. Miles

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this 20th day of June, 2017,
by Douglas E. Miles, proved to me on the basis of satisfactory evidence to be
(Name of Signer)

the person who appeared before me.

Signature Amanda Maria Mendoza (Seal)
(Signature of Notary Public)

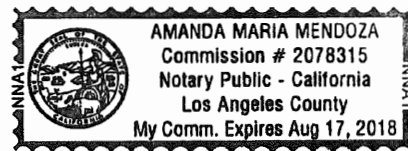


EXHIBIT 1

| | | | |
|--|-----------------------------|-------|---|
| Matter ID: | 09-L0716H | Desc: | Hernandez, Dania V. BAC v. Hernandez HOA |
| Client Sort: | BANK OF AMERICA, N.A. (CWF) | | |
| General Notes Billing Contacts Matters Events Inquiry Settlement Civil Contract Info Custom Deed Info New Invoice | | | |
| Date: 1/1/2004 to 8/23/2004 (all) | | | |
| <ul style="list-style-type: none"> <input checked="" type="checkbox"/> 10/5/2009: RCVD REFERRAL; OPENED 10/5/09 <input checked="" type="checkbox"/> 10/5/2009: EMF JB re: New Referral <input checked="" type="checkbox"/> 10/20/2009: 10/27 - letters to borrower and HOA sent 10/20. FU with HOA. <input checked="" type="checkbox"/> 10/20/2009: EMT Clnt re: Attached is a letter we are sending to the borrower <input checked="" type="checkbox"/> 11/25/2009: 11/25 EMT CLIENT RE HOA UPDATE BUT NO PO OR SALE <input checked="" type="checkbox"/> 11/29/2009: FW 166 09-L0716 LOAN #132544618 1524 Highfield Court <input checked="" type="checkbox"/> 12/10/2009: 12/10 EMT CLIENT RE HOA UPDATE BUT STILL NO PO OR <input checked="" type="checkbox"/> 12/10/2009: FW 653 09-L0716 132544618 1524 Highfield Court .msg <input checked="" type="checkbox"/> 12/18/2009: 12/18 EMT CLIENT RE HOA UPDATE AND PO ATTACHED; <input checked="" type="checkbox"/> 12/18/2009: FW 912 09-L0716 132544618 1524 Highfield Court .msg <input checked="" type="checkbox"/> 1/6/2010: EMF Clnt re: Wire request submitted for 88.50 on 1/6 <input checked="" type="checkbox"/> 1/20/2010: RCVD WIRE; F/U 1/28 CONFIRM FUNDS TO HOA <input checked="" type="checkbox"/> 1/22/2010: 1/22 CHECK SENT TO HOA; FU 2/19 SEE IF CHECK WAS <input checked="" type="checkbox"/> 2/18/2010: 2/18 CHECK RETURNED; F/U 5/9 MONITOR EX PARTE <input checked="" type="checkbox"/> 2/18/2010: EMF RKJ re: Status of Payoff funds, rejected <input checked="" type="checkbox"/> 1/24/2011: collection email <input checked="" type="checkbox"/> 4/4/2011: PROPERTY SOLD AT HOA SALE, NEW DEED RECORDED; <input checked="" type="checkbox"/> 4/14/2011: WAITING ON RESPONSE FROM OUTSIDE LAW FIRM <input checked="" type="checkbox"/> 4/27/2011: EMF JB re: response from Akerman law firm re spreadsheet <input checked="" type="checkbox"/> 7/19/2011: DOT sale postponed till 8/15 **DOT sale cancelled** <input checked="" type="checkbox"/> 10/17/2011: EMF RKJ re: continue to monitor <input checked="" type="checkbox"/> 5/14/2012: DEED CORRECTION RECORDED 4/26; F/U 8/10 SEE IF <input checked="" type="checkbox"/> 7/19/2012: EMF RKJ re: monitor for 3 more weeks, set reminder 8/9 <input checked="" type="checkbox"/> 8/10/2012: EMF RKJ re: reminder for 8/14 <input checked="" type="checkbox"/> 8/16/2012: EMF RKJ re: 3 questions to research & answer <input checked="" type="checkbox"/> 8/16/2012: RESEARCH 3 ITEMS FOR FILE; F/U 9/11 RESPOND <input checked="" type="checkbox"/> 9/5/2012: 3 items researched email <input checked="" type="checkbox"/> 11/12/2012: 11/12 EMT JB RESEARCH FINDINGS RE 3 ITEMS FOR FILE; <input checked="" type="checkbox"/> 11/12/2012: Status Update Research Answers Hernandez re 09-L0716.msg <input checked="" type="checkbox"/> 12/13/2012: 12/13 EMT JB STATUS UPDATE THAT NO CHANGE IN <input checked="" type="checkbox"/> 12/17/2012: EMF RKJ re: closing file <input checked="" type="checkbox"/> 12/18/2012: EMF JTB re: closing file <input checked="" type="checkbox"/> 12/26/2012: EMT CLNT w/excel spreadsheet & Dec. 12/19 & 12/20 invoices attached. <input checked="" type="checkbox"/> 1/7/2013: EMF CLNT (MRT) re: invoice submitted for payment processing | | | |

EXHIBIT 2

DOUGLAS E. MILES *
Also Admitted in Nevada and Illinois
RICHARD J. BAUER, JR.*
JEREMY T. BERGSTROM
Also Admitted in Arizona
FRED TIMOTHY WINTERS*
KEENAN E. McCLENAHAN*
MARK T. DOMEYER*
Also Admitted in District of
Columbia & Virginia
TAMI S. CROSBY*
MATTHEW D. TOKARZ *
L. BRYANT JAQUEZ *
DANIEL L. CARTER *
BRIAN H. TRAN*
RYAN W. STOCKING *
GINA M. CORENA
BRUCE T. BAUER *
ROBIN L. LEWIS
Also Admitted in California



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

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

* CALIFORNIA OFFICE
1665 SCENIC AVENUE
SUITE 200
COSTA MESA, CA 92626
PHONE (714) 481-9100
FACSIMILE (714) 481-9141

Of Counsel
JOHN W. LISH
Admitted in Utah

June 9, 2017

Hidden Canyon Owners Association
c/o THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 100
Las Vegas, NV 89147

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 1524 Highfield Ct., North Las Vegas, NV 89032*
MBBW File No. 09-L0716

Dear Sirs:

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

As you know, NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...

any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:
(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien.

Subsection 2b of NRS 116.3102 clearly provides that an HOA lien "is prior to all other liens except a first security interest..." But such a lien is prior to a first security interest to the extent of the assessments for common expenses which would have become due during the 6 months before institution of an action to enforce the lien.

Based on Section 2(b), a portion of your HOA lien is arguably senior to BAC's first deed of trust, specifically the six months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated July 23, 2009. For purposes of calculating the six-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the six months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BAC should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

Please let me know what the status of any HOA lien foreclosure sale is, if any. My client does not want these issues to become further exacerbated by a wrongful HOA sale and it is my client's goal and intent to have these issues resolved as soon as possible. Please refrain from taking further action to enforce this HOA lien until my client and the HOA have had an opportunity to speak to attempt to fully resolve all issues.

Thank you for your time and assistance with this matter. I may be reached by phone directly at (702) 942-0442. Please fax the breakdown of the HOA arrears to my attention at (702) 369-7143. I will be in touch as soon as I've reviewed the same with BAC.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP

Jeremy Bergstrom, Esq.

EXHIBIT 3

DAVID ALESSI*

THOMAS BAYARD *

ROBERT KOENIG**

RYAN KERBOW****

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bars

*** Admitted to the Nevada Bar

**** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 100

Las Vegas, Nevada 89147

Telephone: 702-222-4033

Facsimile: 702-222-4043

www.alessikoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2323

&
DIAMOND BAR CA
PHONE: 909-843-6590

Nevada Licensed Qualified Collection
Manager

AMANDA LOWER

FACSIMILE COVER LETTER

| | | | |
|----------|------------------|--------|-----------------------------|
| To: | Alexander Bahame | Re: | Escrow #1524 Highfield Ct |
| From: | Thessa Elpidio | Date: | Thursday, December 17, 2009 |
| Fax No.: | | Pages: | 1, including cover |
| | | HO #: | 16246 |

Dear Alexander Bahame:

This cover will serve as an amended demand on behalf of Hidden Canyon Owners Association for the above referenced escrow; property located at 1524 Highfield Ct., N. Las Vegas, NV. The total amount due through January, 1, 2010 is \$1,554.43. The breakdown of fees, interest and costs is as follows:

| | |
|--|-------------------|
| Notice of Delinquent Assessment Lien -- Nevada | \$295.00 |
| Notice of Default | \$395.00 |
| Total | \$690.00 |
| 1. Attorney and/or Trustees fees: | \$690.00 |
| 2. Costs (Notary, Recording, Copies, Mailings, Publication and Posting) | \$200.00 |
| 3. Interest Through December, 17, 2009 | \$0.00 |
| 4. Title Research (10-Day Mailings per NRS 116.31163) | \$285.00 |
| 5. Management Company Audit Fee | \$25.00 |
| 6. Management Document Processing & Transfer Fee | \$0.00 |
| 7. Late Fees Through December, 17, 2009 | \$0.00 |
| 8. Fines Through December, 31, 2009 | \$30.00 |
| 9. Assessments Through January, 1, 2010 @ \$118.00 Annual | \$324.43 |
| 10. Progress Payments: | \$0.00 |
| 12. RPIR-GI Report | \$0.00 |
| Sub-Total: | \$1,554.43 |
| Less Payments Received: | \$0.00 |
| Total Amount Due: | \$1,554.43 |

Please have a check in the amount of \$1,554.43 made payable to the Alessi & Koenig, LLC and mailed to the below listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

Resident Transaction Detail

Active Flag Yes

Void Flag No

HIDDEN CANYON

Account #: 83220

Property Address: 1524 HIGHFIELD CT

| Code | Date | Amount | Balance | Check# | Memo |
|--------|------------|---------|---------|------------|----------------------|
| MA | 1/1/2007 | 118.00 | 118.00 | | |
| LF | 2/28/2007 | 1.77 | 119.77 | | |
| LF | 3/30/2007 | 1.77 | 121.54 | | |
| LF | 4/30/2007 | 1.77 | 123.31 | | |
| LF | 5/30/2007 | 1.77 | 125.08 | | |
| Intent | 6/12/2007 | 50.00 | 175.08 | | INTENT TO LIEN |
| LF | 6/30/2007 | 1.77 | 176.85 | | |
| PMT | 7/9/2007 | -175.08 | 1.77 | 2002130774 | WAL MART MONEY ORDER |
| MA | 1/1/2008 | 118.00 | 119.77 | | Assessment |
| PMT | 1/4/2008 | -119.77 | 0.00 | 2004 | 010408.usb |
| MA | 1/1/2009 | 118.00 | 118.00 | | Assessment |
| LF | 1/30/2009 | 10.00 | 128.00 | | Late Fee Processed |
| LF | 1/30/2009 | 1.77 | 129.77 | | Late Fee Processed |
| Intent | 2/19/2009 | 15.00 | 144.77 | | LATE NOTICE |
| Intent | 3/24/2009 | 50.00 | 194.77 | | INTENT TO LIEN |
| LF | 3/30/2009 | 1.77 | 196.54 | | Late Fee Processed |
| LF | 5/30/2009 | 1.77 | 198.31 | | Late Fee Processed |
| LF | 6/30/2009 | 1.77 | 200.08 | | Late Fee Processed |
| LF | 7/30/2009 | 1.77 | 201.85 | | Late Fee Processed |
| LF | 8/30/2009 | 1.77 | 203.62 | | Late Fee Processed |
| LF | 9/30/2009 | 1.77 | 205.39 | | Late Fee Processed |
| LF | 10/30/2009 | 0.52 | 205.91 | | Late Fee Processed |
| LF | 11/30/2009 | 0.52 | 206.43 | | Late Fee Processed |
| MA | 1/1/2010 | 118.00 | 324.43 | | Assessment |

Count: 1

Total Units: 761

Resident Transaction Detail

Active Flag Yes

Void Flag No

HIDDEN CANYON

Account #: 112126

Property Address: 1524 HIGHFIELD CT

| Code | Date | Amount | Balance | Check# | Memo |
|-----------|-----------|--------|---------|--------|------------------|
| Admin Ltr | 6/19/2009 | 15.00 | 15.00 | | Certified Letter |
| Admin Ltr | 8/3/2009 | 15.00 | 30.00 | | Certified Letter |

Count: 1

Total Units: 761

EXHIBIT 4

DOUGLAS E. MILES *
Also Admitted in Nevada and Illinois
RICHARD J. BAUER, JR.*
JEREMY T. BERGSTROM
Also Admitted in Arizona
FRED TIMOTHY WINTERS*
KEENAN E. McCLENAHAN*
MARK T. DOMEVER*
Also Admitted in District of
Columbia & Virginia
TAMI S. CROSSBY*
MATTHEW D. TOKARZ*
L. BRYANT JAQUEZ*
DANIEL L. CARTER*
BRIAN H. TRAN*
RYAN W. STOCKING*
GINA M. CORENA
ROBIN L. LEWIS
Also Admitted in California
WAYNE A. RASH*
ROCK K. JUNG
VY T. PHAM*
SCOTT B. OLIFANT
Also Admitted in California



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

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

* CALIFORNIA OFFICE
1665 SCENIC AVENUE
SUITE 200
COSTA MESA, CA 92626
PHONE (714) 481-9100
FACSIMILE (714) 481-9141

Of Counsel
JOHN W. LISH
Admitted in Utah

January 21, 2010

ALESSI & KOENIG, LLC
9500 W. FLAMINGO ROAD, SUITE 100
LAS VEGAS, NV 89147

Re: *Property Address:* 1524 Highfield Court
HOA #: 16246
LOAN #: [REDACTED] 4618
MBBW File No. 09-L0716

Dear Sir/Madame:

As you may recall, this firm represents the interests of BAC Home Loans Servicing, LP fka Countrywide Home Loans, Inc. (hereinafter "BAC") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by in regards to the above-referenced address shows a full payoff amount of \$1,554.43 the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...
any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:
(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

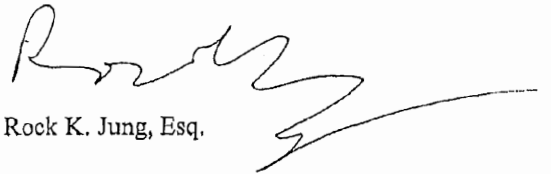
Based on Section 2(b), a portion of your HOA lien is arguably prior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n).

Our client has authorized us to make payment to you in the amount of \$88.50 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$88.50, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BAC's financial obligations towards the HOA in regards to the real property located at 1524 Highfield Court have now been "paid in full".

Thank you for your prompt attention to this matter. If you have any questions or concerns, I may be reached by phone directly at (702) 942-0442.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP

A handwritten signature in black ink, appearing to read 'Rock K. Jung', with a long, sweeping horizontal line extending to the right.

Rock K. Jung, Esq.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct

09-L0716

Initials: TLC

Payee: Alessi & Koenig, LLC

Check #: 2490

Date: 1/14/2010 Amount: 88.50

| Inv. Date | Reference # | Description | Inv. Amount | Case # | Matter Description | Cost Amount |
|-----------|-------------|------------------------|-------------|--------|--------------------|-------------|
| 1/14/2010 | #16246 | To Cure HOA Deficiency | 88.50 | | | |

Miles, Bauer, Bergstrom & Winters, LLP
Trust Account
1665 Scenic Avenue - Suite 200
Costa Mesa, CA 92626
Phone: (714) 481-9100

Bank of America
1100 N. Green Valley Parkway
Henderson, NV 89074
16-86/1220
1020
09-L0716
Loan # [REDACTED] 1618

2490

Date: 1/14/2010

Amount \$**** 88.50

Check Void After 90 Days

Pay \$*****Eighty-Eight & 50/100 Dollars

to the
order
of

Alessi & Koenig, LLC

Details on back.
Security Features Included.

EXHIBIT 5

DAVID ALESSI*
THOMAS BAYARD*
ROBERT KOENIG**
RYAN KERBOW***
* Admitted to the California Bar
** Admitted to the California, Nevada
and Colorado Bar
*** Admitted to the California and Nevada Bar

**ALESSI
KOENIG**
A Multi-Jurisdictional Law Firm

9500 West Flamingo Road, Suite 100
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES

AGOURA HILLS, CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2323

&
DIAMOND BAR CA
PHONE: 909-843-6590

Nevada Licensed Qualified Collection Manager
AMANDA LOWER

February 4, 2010

Miles, Bauer, Bergstrom & Winters
2200 Paseo Verde Parkway, Suite 250
Henderson, NV 89052

Re: Rejection of Partial Payments

Gentlepersons,

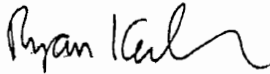
This letter will serve to inform you that we are unable to accept the partial payments offered by your clients as payment in full. While we understand how you read NRS 116.3116 as providing a super priority lien only with respect to 9 months of assessments, case authority exists which provides that the association's lien also includes the reasonable cost of collection of those assessments. (see *Korbel Family Trust v. Spring Mountain Ranch Master Association*, Case No. 06-A-523959-C.)

If the association were to accept your offer that only includes assessments, Alessi & Koenig would be left with a lien against the association for our substantial out-of-pocket expenses and fees generated. The association could end up having *lost* money in attempting to collect assessments from the delinquent homeowner.

It has come to my attention that our office inadvertently posted some of the checks sent from Miles Bauer that contained only partial payments. We are therefore refunding that money, as our clients have not authorized us to take payments that amount to a small fraction of their total liens. We apologize for an inconvenience this may cause you.

If you would like to discuss these matters further, please do not hesitate to call.

Sincerely,



Ryan Kerbow, Esq.

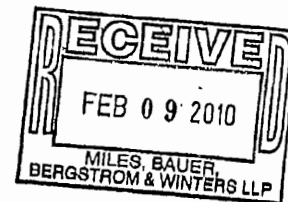


EXHIBIT 7

EXHIBIT 7

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

APN: 139-09-410-021
Title No. 082409-6-J TSN 16246-1524

Inst #: 201008090001324
Fees: \$14.00
N/C Fee: \$0.00
08/09/2010 09:05:00 AM
Receipt #: 457526
Requestor:
JUNES LEGAL SERVICES
Recorded By: KGP Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

NOTICE OF TRUSTEE'S SALE

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

NOTICE IS HEREBY GIVEN THAT:

On September 8, 2010, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on June 3, 2009, as instrument number 03607, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 4:00 P.M. at 930 S. 4th Street, Las Vegas Nevada 89101.

The street address and other common designation, if any, of the real property described above is purported to be: 1524 Highfield Ct., N. Las Vegas, NV 89032. The owner of the real property is purported to be: Dania Hernandez

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$2,862.23. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: July 29, 2010 

By: Branko Jetic on behalf of Hidden Canyon Owners Association

EXHIBIT 8

EXHIBIT 8

Inst #: 201103030003434
Fees: \$14.00 N/C Fee: \$0.00
RPTT: \$22.95 Ex: #
03/03/2011 01:17:31 PM
Receipt #: 694972
Requestor:
CAMCO
Recorded By: JRV Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
Hidden Canyon HOA
C/O CAMCO
PO Box 12117
N. Las Vegas, NV 89112

A.P.N. No.139-09-410-021

Trustee Sale No. 16246-1524 Space above for Recorder's Use


TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was Foreclosing Beneficiary: **Hidden Canyon HOA**
The amount of unpaid debt together with costs (Real Property Transfer Tax Value): **\$4,310.82**
The amount paid by the Grantee (Buyer) at the Trustee's Sale: **\$4,310.82**
The Documentary Transfer Tax: **\$22.95**
Property address: **1524 Highfield Ct., N. Las Vegas, NV 89032**
Said property is in [] unincorporated area: City of N. Las Vegas
Trustor (Former Owner that was foreclosed on): **Dania Hernandez**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded June 3, 2009 as instrument number 03607, in Clark County, does hereby grant, without warranty expressed or implied to: **Hidden Canyon Owners Association (Grantee)**, all its right, title and interest in the property legally described as: Lot 32, as per map recorded in Book 61, Pages 61 as shown in the Office of the County Recorder of Clark County Nevada.

TRUSTEE STATES THAT:

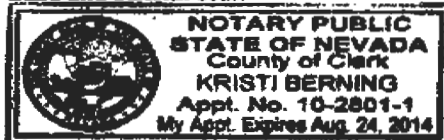
This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **March 02, 2011** at the place indicated on the Notice of Trustee's Sale.

Branko Jettic 
Signature of AUTHORIZED AGENT for Alessi&Koenig, LLC

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me March 3, 2011

WITNESS my hand and official seal.
(Seal)




(Signature)

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

a. 139-09-410-021
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

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

\$ 4,310.82

\$ 4,310.82

\$ \$22.95

4. **If Exemption Claimed:**

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

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

Signature: Kelly Mitchell

Capacity: Grantee

Signature: _____

Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Alessi & Koenig LLC
Address: 9500 W Flamingo Rd Ste 100
City: Las Vegas
State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Hidden Canyon OA
Address: PO Box 12117
City: Las Vegas
State: NV Zip: 89112

COMPANY REQUESTING RECORDING

Print Name: CAMCO
Address: PO Box 12117
City: Las Vegas

Escrow #: N/A foreclosure

State: NV Zip: 89112

As a public record this form may be recorded/microfilmed

EXHIBIT 9

EXHIBIT 9

Inst #: 201103310003138
Fees: \$15.00 N/C Fee: \$0.00
RPTT: \$453.90 Ex: #
03/31/2011 12:18:10 PM
Receipt #: 724339
Requestor:
CAMCO
Recorded By: GWC Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 139-09-410-021

WHEN RECORDED MAIL DEED AND
TAX STATEMENTS TO:

Las Vegas Development Group, LLC
397 3rd Ave, Ste A
Chula Vista CA 91910

SPACE ABOVE THIS LINE FOR RECORDER'S USE

QUITCLAIM DEED

THIS QUITCLAIM DEED made on **March 30, 2011**, between **Hidden Canyon HOA** c/o Absolute Collection Services, LLC, PO Box 12117, Las Vegas, NV 89112, and Las Vegas Development Group, LLC, 397 3rd Ave, Ste A, Chula Vista CA 91910.

That for and in the consideration of the sum of FOUR THOUSAND FIVE HUNDRED AND 00/100 (\$4,500.00) the receipt of which is hereby acknowledged, Hidden Canyon HOA does hereby release, remise and forever quitclaim unto Las Vegas Development Group, LLC all of his interest, if any, in that certain real property commonly known as:

**1524 Highfield Ct.
N Las Vegas NV 89032**

described as follows:

Lot 32 as per map recorded in Book 61, Pages 61, Unit 3 as shown in the Office of the County Recorder of Clark County Nevada

Together with all the tenements, hereditaments, and appurtenances thereunto belonging, and the reversions, remainders, rents, issues, and profits thereof. To have and to hold, all and singular the premises, with the appurtenances, unto Las Vegas Development Group, LLC and his/her heirs and assigns forever.


In witness whereof, Hidden Canyon HOA has hereunto this 30th day March and 2011 as set forth above.

State of Nevada)ss

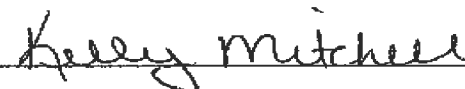
County of Clark)ss

I, Richard Kaye , being first duly sworn, deposes and says:

That I am the authorized representative of Hidden Canyon HOA in the above-entitled action: that I have read the foregoing and know the contents thereof, and that the same is true of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.


Richard Kaye, Agent for Hidden Canyon HOA

Subscribed and sworn to before me this 30th DAY OF March 2011.



Kelly Mitchell, Notary Public



STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

a. 139-09-410-021
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____
Date of Recording: _____
Notes: _____

3. a. Total Value/Sales Price of Property

\$ 4500.00

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

(_____)

c. Transfer Tax Value:

\$ 88.560.00

d. Real Property Transfer Tax Due

\$ 453.90

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

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

Signature: [Signature]

Capacity: Member, Grantee

Signature: _____

Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Hidden Canyon HOA
Address: PO Box 12117
City: Las Vegas
State: NV Zip: 89112

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: CAS VEGAS Development LLC
Address: 397 3RD AVE Suite A
City: CHULA VISTA
State: CA Zip: 91910

COMPANY REQUESTING RECORDING

Print Name: CAMCO
Address: PO Box 12117
City: Las Vegas

Escrow #: Foreclosed Purchase

State: NV Zip: 89112

As a public record this form may be recorded/microfilmed

EXHIBIT 10

EXHIBIT 10

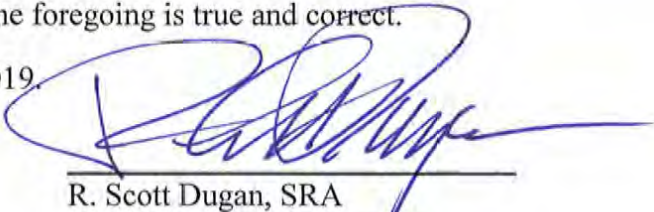
DECLARATION OF R. SCOTT DUGAN, SRA

I, R. Scott Dugan, under penalty of perjury, hereby declare as follows:

1. I am a licensed Certified General Appraiser in the State of Nevada.
2. I am over 18 years of age, of sound mind, and capable of making this declaration.
3. The statements in this declaration are true and correct and made on the basis of my personal knowledge.
4. I have been retained as an expert to testify in the matter of *Las Vegas Development Group, LLC, Plaintiff(s) vs. Dania V. Hernandez, et al., Defendant(s)* filed in the United States District Court, District of Nevada, Case No. A-17-756215-C.
5. I am a Certified General Appraiser of the state of Nevada and owner of R. Scott Dugan Appraisal Company, Inc.
6. I have conducted a retroactive appraisal analysis of the property located at 1524 Highfield Court, Las Vegas, Nevada 89032. The conclusions I reached are fully expressed in the Summary Appraisal Report, a true and correct copy of which is attached hereto as Exhibit 1.
7. All opinions, analysis, and conclusions expressed in my report fully comply with the Uniform Standard of Professional Appraisal Practice promulgated by the Appraisal Standards Board and of the Appraisal Foundation and the reporting requirements of the Appraisal Institute.
8. That I declare the opinions, analysis and conclusions are expressed in my report, attached hereto as Exhibit 1, are true and correct.
9. That I incorporate into this Declaration my report in its entirety.

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

DATED this 26 day of February, 2019.



R. Scott Dugan, SRA
Certified General Appraiser
Lic. No. A.0000166-CG

APPRAISAL OF REAL PROPERTY



LOCATED AT

1524 Highfield Ct
N Las Vegas, NV 89032
Hidden Canyon Horizons Premier Unit 3 Plat Book 61 Page 61 Lot 32

FOR

Akerman LLP
1635 Village Center Circle, Ste 200
Las Vegas, NV 89134

AS OF

March 02, 2011

BY

R. Scott Dugan, SRA
R. Scott Dugan Appraisal Company, Inc.
8930 West Tropicana Avenue, Suite 1
Las Vegas, NV 89147
702-876-2000
appraisals@rsdugan.com

R. Scott Dugan Appraisal Company, Inc.
 8930 West Tropicana Avenue, Suite 1
 Las Vegas, NV 89147
 702-876-2000

November 09, 2018

Akerman LLP
 1635 Village Center Circle, Ste 200
 Las Vegas, NV 89134

Re: Property: 1524 Highfield Ct
 N Las Vegas, NV 89032
 Borrower: N/A
 File No.: 1524 Highfield Ct

Opinion of Value: \$ 76,000
 Effective Date: March 02, 2011

As requested, we have prepared an analysis and valuation of the referenced property. The purpose of this assignment was to develop a value opinion based upon the assignment conditions and guidelines stated within the attached report. Our analysis of the subject property was based upon the property (as defined within the report) and the economic, physical, governmental and social forces affecting the subject property as of the effective date of this assignment.

The analysis and the report were developed and prepared within the stated Scope of Work and our Clarification of Scope of Work along with our comprehension of applicable Uniform Standards of Professional Appraisal Practice and specific assignment conditions provided by the client and intended user.

The findings and conclusions are intended for the exclusive use of the stated client and for the specific intended use identified within the report. The reader (or anyone electing to rely upon this report), should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions regarding the subject property.

The opinion assumes the date/time of value to be prior to the HOA lien transfer on the same date and assumes the property to be in average condition and professionally marketed under normal terms.

Use and reliance on this report by the client or any third party indicates the client or third party has read the report, comprehends the basis and guidelines employed in the analysis and conclusions stated within and has accepted same as being suitable for their decisions regarding the subject property.

The value opinion reported is as of the stated effective date and is contingent upon the Certification and Limiting Conditions attached. The Assumptions and Limiting Conditions along with the Clarification of Scope of Work provide specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

Thank you for the opportunity to service your appraisal needs.

Sincerely,



R. Scott Dugan, SRA
 R. Scott Dugan Appraisal Company, Inc.
 License or Certification #: A.0000166-CG
 State: NV Expires: 05/31/2019
 appraisals@rsdugan.com

| | | | | | | |
|------------------|-------------------|--------|-------|----------|-------------------|----------------|
| Client | Akerman LLP | | | File No. | 1524 Highfield Ct | |
| Property Address | 1524 Highfield Ct | | | | | |
| City | N Las Vegas | County | Clark | State | NV | Zip Code 89032 |
| Owner | Dania Hernandez | | | | | |

TABLE OF CONTENTS

Cover Page 1

Letter of Transmittal 2

GP Residential 3

Additional Comparables 4-6 6

Explanatory Comments 7

Economic Indicators Addendum 8

Case Shiller Report 9

Location Map 10

Plat Map 11

Building Sketch 12

Subject Photos 13

Comparable Photos 1-3 14

Comparable Photos 4-6 15

Clarification of Scope of Work 16

GP Residential Certifications Addendum 19

RESIDENTIAL APPRAISAL REPORT

File No.: 1524 Highfield Ct

| | | | | | | | | | | | | | | | | | | | | |
|---|--|----------------------|--|--|---|-----------------------------------|---|---|---|--|--|-----------|---|--|--------------------------|----------------------------|---|--|------------------|--|
| SUBJECT | Property Address: 1524 Highfield Ct | | City: N Las Vegas | | State: NV | | Zip Code: 89032 | | | | | | | | | | | | | |
| | County: Clark | | Legal Description: Hidden Canyon Horizons Premier Unit 3 Plat Book 61 Page 61 Lot 32 | | | | | | | | | | | | | | | | | |
| | Assessor's Parcel #: 139-09-410-021 | | | | | | | | | | | | | | | | | | | |
| | Tax Year: 2011 | | R.E. Taxes: \$ N/A | | Special Assessments: \$ 0 | | Borrower (if applicable): N/A | | | | | | | | | | | | | |
| | Current Owner of Record: Dania Hernandez | | Occupant: <input checked="" type="checkbox"/> Owner | | <input type="checkbox"/> Tenant | | <input type="checkbox"/> Vacant | | <input type="checkbox"/> Manufactured Housing | | | | | | | | | | | |
| ASSIGNMENT | Project Type: <input checked="" type="checkbox"/> PUD | | <input type="checkbox"/> Condominium | | <input type="checkbox"/> Cooperative | | <input type="checkbox"/> Other (describe) | | HOA: \$ 118 | | <input checked="" type="checkbox"/> per year | | <input type="checkbox"/> per month | | | | | | | |
| | Market Area Name: Hidden Canyon Horizons Premier - North Las Vegas | | | | Map Reference: 34-E4 | | | | Census Tract: 0036.44 | | | | | | | | | | | |
| | The purpose of this appraisal is to develop an opinion of: <input checked="" type="checkbox"/> Market Value (as defined), or <input type="checkbox"/> other type of value (describe) | | | | | | | | | | | | | | | | | | | |
| | This report reflects the following value (if not Current, see comments): <input type="checkbox"/> Current (the Inspection Date is the Effective Date) <input checked="" type="checkbox"/> Retrospective <input type="checkbox"/> Prospective | | | | | | | | | | | | | | | | | | | |
| | Approaches developed for this appraisal: <input checked="" type="checkbox"/> Sales Comparison Approach <input type="checkbox"/> Cost Approach <input type="checkbox"/> Income Approach (See Reconciliation Comments and Scope of Work) | | | | | | | | | | | | | | | | | | | |
| MARKET AREA DESCRIPTION | Property Rights Appraised: <input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold <input type="checkbox"/> Leased Fee <input type="checkbox"/> Other (describe) | | | | | | | | | | | | | | | | | | | |
| | Intended Use: Provide a Retrospective Market Value opinion for litigation involving the HOA foreclosure of the subject property. For definitions, refer to the attached Explanatory Comments - Retrospective Value and Definition of Value section in the Residential Certifications Addendum. | | | | | | | | | | | | | | | | | | | |
| | Intended User(s) (by name or type): Akerman LLP and/or legal professionals associated with this case. | | | | | | | | | | | | | | | | | | | |
| | Client: Akerman LLP | | | | Address: 1635 Village Center Circle, Ste 200, Las Vegas, NV 89134 | | | | | | | | | | | | | | | |
| | Appraiser: R. Scott Dugan, SRA | | | | Address: 8930 W Tropicana Avenue, Suite 1, Las Vegas, NV 89147 | | | | | | | | | | | | | | | |
| MARKET AREA DESCRIPTION | Location: <input type="checkbox"/> Urban | | <input checked="" type="checkbox"/> Suburban | | <input type="checkbox"/> Rural | | Predominant Occupancy | | One-Unit Housing | | Present Land Use | | Change in Land Use | | | | | | | |
| | Built up: <input checked="" type="checkbox"/> Over 75% | | <input type="checkbox"/> 25-75% | | <input type="checkbox"/> Under 25% | | <input checked="" type="checkbox"/> Owner | | PRICE AGE | | One-Unit 70 % | | <input checked="" type="checkbox"/> Not Likely | | | | | | | |
| | Growth rate: <input type="checkbox"/> Rapid | | <input type="checkbox"/> Stable | | <input checked="" type="checkbox"/> Slow | | <input type="checkbox"/> Tenant | | \$ (000) (yrs) | | 2-4 Unit 0 % | | <input type="checkbox"/> Likely * <input type="checkbox"/> In Process * | | | | | | | |
| | Property values: <input type="checkbox"/> Increasing | | <input type="checkbox"/> Stable | | <input checked="" type="checkbox"/> Declining | | <input type="checkbox"/> Vacant (0-5%) | | 50 Low 1 | | Multi-Unit 5 % | | * To: _____ | | | | | | | |
| | Demand/supply: <input type="checkbox"/> Shortage | | <input checked="" type="checkbox"/> In Balance | | <input type="checkbox"/> Over Supply | | <input type="checkbox"/> Vacant (>5%) | | 225 High 28 | | Comm'l 5 % | | | | | | | | | |
| | Marketing time: <input checked="" type="checkbox"/> Under 3 Mos. | | <input type="checkbox"/> 3-6 Mos. | | <input type="checkbox"/> Over 6 Mos. | | <input type="checkbox"/> Vacant (>5%) | | 105 Pred 13 | | Vac/Schools 20 % | | | | | | | | | |
| | Market Area Boundaries, Description, and Market Conditions (including support for the above characteristics and trends): Craig Road - N, Commerce Street - E, Cheyenne Avenue - S, and Simmons Street - W. The subject project of Hidden Canyon Horizons Premier is located in North Las Vegas. There are a variety of residential tract housing with supporting services in the immediate area. Major office / retail / major medical facilities are within 3 to 8 +/- miles, which includes the Aliante Casino & Hotel, Crossroads Town Center, College of Southern Nevada Cheyenne Campus, Craig Ranch Regional Park, and VA Southern Nevada Healthcare Services Center. The subject is within 8 to 11 +/- miles of the Las Vegas CBD and Resort Corridor (key employment centers) with good freeway and major street access. Market conditions show declining prices in this market segment. Refer to market condition comments and trends in this report. | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | |
| | SITE DESCRIPTION | Dimensions: 45 x 105 | | | | Site Area: .11 Acre (4,792 Sq Ft) | | | | | | | | | | | | | | |
| Zoning Classification: PUD | | | | Description: Planned Unit Development | | | | | | | | | | | | | | | | |
| Zoning Compliance: <input checked="" type="checkbox"/> Legal | | | | <input type="checkbox"/> Legal nonconforming (grandfathered) <input type="checkbox"/> Illegal <input type="checkbox"/> No zoning | | | | | | | | | | | | | | | | |
| Are CC&Rs applicable? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown | | | | Have the documents been reviewed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | | | Ground Rent (if applicable) \$ N/A/ | | | | | | | | | | | | |
| Highest & Best Use as improved: <input checked="" type="checkbox"/> Present use, or <input type="checkbox"/> Other use (explain) The highest and best use is limited to single-family residential via zoning, master plan and CC&R's. | | | | | | | | | | | | | | | | | | | | |
| Actual Use as of Effective Date: Single Family Residential Use as appraised in this report: Single Family Residential | | | | | | | | | | | | | | | | | | | | |
| Summary of Highest & Best Use: The subject is zoned residential and limited to residential uses by zoning and CC&R's, with no other uses permitted. There is sufficient demand and therefore the current use is the Highest & Best Use. | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | |
| DESCRIPTION OF THE IMPROVEMENTS | Utilities | | Public | | Other | | Provider/Description | | Off-site Improvements | | Type | | Public | | Private | | Topography | | Built Up Pad | |
| | Electricity | | <input checked="" type="checkbox"/> | | <input type="checkbox"/> | | NV Energy | | Street | | Asphalt | | <input checked="" type="checkbox"/> | | <input type="checkbox"/> | | Size | | Typical for Area | |
| | Gas | | <input checked="" type="checkbox"/> | | <input type="checkbox"/> | | SW Gas | | Curb/Gutter | | Concrete | | <input checked="" type="checkbox"/> | | <input type="checkbox"/> | | Shape | | Rectangular/CDS | |
| | Water | | <input checked="" type="checkbox"/> | | <input type="checkbox"/> | | LLVWD | | Sidewalk | | Concrete | | <input checked="" type="checkbox"/> | | <input type="checkbox"/> | | Drainage | | Appears Adequate | |
| | Sanitary Sewer | | <input checked="" type="checkbox"/> | | <input type="checkbox"/> | | Clark County | | Street Lights | | Electric | | <input checked="" type="checkbox"/> | | <input type="checkbox"/> | | View | | Residential | |
| | Storm Sewer | | <input checked="" type="checkbox"/> | | <input type="checkbox"/> | | Clark County | | Alley | | None | | <input type="checkbox"/> | | <input type="checkbox"/> | | | | | |
| | Other site elements: <input type="checkbox"/> Inside Lot <input type="checkbox"/> Corner Lot <input checked="" type="checkbox"/> Cul de Sac <input checked="" type="checkbox"/> Underground Utilities <input type="checkbox"/> Other (describe) | | | | | | | | | | | | | | | | | | | |
| | FEMA Spec'l Flood Hazard Area <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No FEMA Flood Zone X FEMA Map # 32003C2160F FEMA Map Date 11/16/2011 | | | | | | | | | | | | | | | | | | | |
| | Site Comments: The site is adjacent and across from similar uses, with improvements located onsite to maximize utility. Present use considered highest and best use as the improvements contribute to the overall value and no alternative use would result in a better use of the property. | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | |
| DESCRIPTION OF THE IMPROVEMENTS | General Description | | | | Exterior Description | | | | Foundation | | | | Basement <input checked="" type="checkbox"/> None | | | | Heating Yes | | | |
| | # of Units One <input type="checkbox"/> Acc.Unit | | | | Foundation Concrete | | | | Slab Concrete | | | | Area Sq. Ft. _____ | | | | Type FWA | | | |
| | # of Stories One | | | | Exterior Walls Stucco | | | | Crawl Space None | | | | % Finished _____ | | | | Fuel Gas | | | |
| | Type <input checked="" type="checkbox"/> Det. <input type="checkbox"/> Att. <input type="checkbox"/> | | | | Roof Surface Tile | | | | Basement None | | | | Ceiling _____ | | | | | | | |
| | Design (Style) Ranch/1-Story | | | | Gutters & Dwnspts. None | | | | Sump Pump <input type="checkbox"/> None | | | | Walls _____ | | | | Cooling Yes | | | |
| | <input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> Und.Cons. | | | | Window Type Insulated | | | | Dampness <input type="checkbox"/> None | | | | Floor _____ | | | | Central Yes | | | |
| | Actual Age (Yrs.) 15 | | | | Storm/Screens None | | | | Settlement None | | | | Outside Entry _____ | | | | Other None | | | |
| | Effective Age (Yrs.) 15 | | | | | | | | Infestation None | | | | | | | | | | | |
| | Interior Description | | | | Appliances | | | | Attic <input type="checkbox"/> None | | | | Amenities | | | | Car Storage <input type="checkbox"/> None | | | |
| | Floors Exterior Only | | | | Refrigerator <input type="checkbox"/> | | | | Stairs <input type="checkbox"/> | | | | Fireplace(s) # 0 | | | | Woodstove(s) # _____ | | | |
| Walls Exterior Only | | | | Range/Oven <input checked="" type="checkbox"/> | | | | Drop Stair <input type="checkbox"/> | | | | Patio Yes | | | | Garage # of cars (4 Tot.) | | | | |
| Trim/Finish Exterior Only | | | | Disposal <input checked="" type="checkbox"/> | | | | Scuttle <input checked="" type="checkbox"/> | | | | Deck None | | | | Attach. 2 | | | | |
| Bath Floor Exterior Only | | | | Dishwasher <input checked="" type="checkbox"/> | | | | Doorway <input type="checkbox"/> | | | | Porch Yes | | | | Detach. _____ | | | | |
| Bath Wainscot Exterior Only | | | | Fan/Hood <input checked="" type="checkbox"/> | | | | Floor <input type="checkbox"/> | | | | Fence Yes | | | | Blt-In _____ | | | | |
| Doors Exterior Only | | | | Microwave <input checked="" type="checkbox"/> | | | | Heated <input type="checkbox"/> | | | | Pool None | | | | Carport _____ | | | | |
| | | | | Washer/Dryer <input type="checkbox"/> | | | | Finished <input type="checkbox"/> | | | | Spa None | | | | Driveway 2 | | | | |
| | | | | | | | | | | | | | | | | Surface Concrete | | | | |
| Finished area above grade contains: 6 Rooms 3 Bedrooms 2 Bath(s) 1,434 Square Feet of Gross Living Area Above Grade | | | | | | | | | | | | | | | | | | | | |
| Additional features: The property is assumed to have standard features and amenities for this submarket. | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | |
| Describe the condition of the property (including physical, functional and external obsolescence): As of the physical date of inspection, the subject exterior was in average condition. In that this is a retrospective assignment per client request, the appraiser invokes the following Extraordinary Assumptions as of the effective date of inspection indicated within this report: 1) the condition of the interior was at minimum average 2) no obsolescence affected the interior improvements (missing kitchen appliances or bath fixtures, no AC, etc.). If one or more of these are found to be false, it could alter the value opinion and or other conclusions in this report. Refer to the definition of Extraordinary Assumption. For further information regarding the improvements, please refer to the photographs included in this report. | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | |

RESIDENTIAL APPRAISAL REPORT

File No.: 1524 Highfield Ct

TRANSFER HISTORY

My research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s): GLVAR MLS & Clark County Public Records

1st Prior Subject Sale/Transfer

Analysis of sale/transfer history and/or any current agreement of sale/listing: No reported sales or transfers.

Date:

Price:

Source(s):

2nd Prior Subject Sale/Transfer

Date:

Price:

Source(s):

SALES COMPARISON APPROACH

SALES COMPARISON APPROACH TO VALUE (if developed) ☐ The Sales Comparison Approach was not developed for this appraisal.

| FEATURE | SUBJECT | COMPARABLE SALE # 1 | | | COMPARABLE SALE # 2 | | | COMPARABLE SALE # 3 | | |
|---|--|--|------------|----------------|--|------------|----------------|--|------------|----------------|
| Address | 1524 Highfield Ct N Las Vegas, NV 89032 | 3837 Intermezzo Way N Las Vegas, NV 89032 | | | 3602 Blue Dawn Dr N Las Vegas, NV 89032 | | | 3724 Brentcove Dr N Las Vegas, NV 89032 | | |
| Proximity to Subject | | 0.69 miles NW | | | 0.40 miles NE | | | 0.45 miles N | | |
| Sale Price | \$ | \$ 91,000 | | | \$ 90,000 | | | \$ 95,000 | | |
| Sale Price/GLA | \$ /sq.ft. | \$ 62.37 /sq.ft. | | | \$ 61.69 /sq.ft. | | | \$ 70.90 /sq.ft. | | |
| Data Source(s) | MLS-Pub Records | MLS-Public Records / DOM 11 | | | MLS-Public Records / DOM 15 | | | MLS-Public Records / DOM 11 | | |
| Verification Source(s) | Public Records | 20110210:0839 | | | 20110204:2611 | | | 20101026:2886 | | |
| VALUE ADJUSTMENTS | DESCRIPTION | DESCRIPTION | + | (-) \$ Adjust. | DESCRIPTION | + | (-) \$ Adjust. | DESCRIPTION | + | (-) \$ Adjust. |
| Sales or Financing | | Traditional | | | Traditional | | | Traditional | | |
| Concessions | | CASH \$0 | | | CASH \$0 | | | FHA \$3,200 | | -3,200 |
| Date of Sale/Time | | 02/10/2011 | | | 02/04/2011 | | | 10/26/2010 | | |
| Rights Appraised | Fee Simple | Fee Simple | | | Fee Simple | | | Fee Simple | | |
| Location | Hidden Canyon | Symphony West | | | Del Prado Hghlnds | | | Cheyenne Ridge | | |
| Site | 4,792 SF/CDS | 5,227 SF/Interior | | | 9,583 SF/CDS | -9,582 | | 6,098 SF/Interior | | |
| View | Residential | Residential | | | Residential | | | Residential | | |
| Design (Style) | Ranch/1-Story | Ranch/1-Story | | | Ranch/1-Story | | | Ranch/1-Story | | |
| Quality of Construction | Stucco | Stucco | | | Stucco | | | Stucco | | |
| Age | 15 | 17 | | | 14 | | | 17 | | |
| Condition | Average | Very Good | -11,700 | | Average | | | Good | | -5,350 |
| Above Grade | Total Bdrms Baths | Total Bdrms Baths | | | Total Bdrms Baths | | | Total Bdrms Baths | | |
| Room Count | 6 3 2 | 6 3 2 | | | 5 3 2 | | | 5 3 2 | | |
| Gross Living Area | 1,434 sq.ft. | 1,459 sq.ft. | | | 1,459 sq.ft. | | | 1,340 sq.ft. | | +2,400 |
| Basement & Finished | None | None | | | None | | | None | | |
| Rooms Below Grade | None | None | | | None | | | None | | |
| Functional Utility | Average | Average | | | Missing Appliances | +1,500 | | Average | | |
| Heating/Cooling | Central | Central | | | Central | | | Central | | |
| Energy Efficient Items | Standard | Standard | | | Standard | | | Standard | | |
| Garage/Carport | 2 Car Garage | 2 Car Garage | | | 2 Car Garage | | | 3 Car Garage | | -3,000 |
| Porch/Patio/Deck | L/S,C/Patio | L/S,Patio | | | L/S,C/Patio | | | L/S,C/Patio | | |
| Contract Date | None | 01/22/2011 | -2,750 | | 12/08/2010 | -5,400 | | 09/26/2010 | | -9,500 |
| Rent/GRM | N/A | 1095/83.10 | | | N/A | | | N/A | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| Net Adjustment (Total) | | <input type="checkbox"/> + <input checked="" type="checkbox"/> - | \$ -14,450 | | <input type="checkbox"/> + <input checked="" type="checkbox"/> - | \$ -13,482 | | <input type="checkbox"/> + <input checked="" type="checkbox"/> - | \$ -18,650 | |
| Adjusted Sale Price | | Net 15.9 % | | | Net 15.0 % | | | Net 19.6 % | | |
| of Comparables | | Gross 15.9 % | \$ 76,550 | | Gross 18.3 % | \$ 76,518 | | Gross 24.7 % | \$ 76,350 | |
| Summary of Sales Comparison Approach The comparables in this report range in gross living area (GLA) from 1,340 to 1,629 square feet, with one located in the subject project. Due to the majority of comparables in the project being distressed transactions, four of five selected for use in this assignment are from nearby competitive projects. These are similar for overall to the subject for design, age, etc., therefore, lacking alternative comparables, they were deemed the best available for use in this assignment. REO's and short sales were not considered due to terms, conditions, etc. | | | | | | | | | | |
| The comparables required adjustments (rounded, unless otherwise indicated) for variations in the following: site at \$2 per square foot, if well oversized; concessions dollar for dollar, with no special financing or other considerations noted; condition of fair to very good/part renovated from \$4 to \$10 per square foot of gross living area (GLA), where four of five properties were recognized for inferior or superior condition and the partially renovated home as having new paint, flooring, appliances, etc.; GLA at \$25 per square foot; utility at \$1,500 for missing appliances; and garage at \$3,000 per bay. Unless a recent transaction currently under contract, comparables were adjusted for time at -2% percent per month of sale price from the date of contract, to reflect changes in market conditions over this period of time. This generally is considered consistent with price changes in this market segment. Cross comparison of the data did not support adjustments for other variations in the grid. While these were noted, in most cases a consistent value difference indication between the sales could not be isolated. | | | | | | | | | | |
| Minor value features, i.e., fireplaces, storage sheds, etc., and external conditions lacking adjustment support, may not have been noted in the grid. If present, minor value features in the comparables were contrasted to the similar or offsetting items in the subject and factored into the reconciliation and final value opinion. | | | | | | | | | | |
| In consideration of the above market transactions and current market conditions, greatest consideration is placed on the Sales Comparison Approach to Value. The value opinion is correlated at \$76,000. The package price per square foot of \$53 (rounded) includes land plus improvements. The comparable closed transactions indicate a package price from \$46 to \$83 (rounded). The subject's package price is supported by the unadjusted sale price divided by gross living area of the comparables utilized, which in the appraiser's determination would reasonably compete with the subject property. The adjusted range of comparable pricing brackets and supports the value conclusion, with the subject's central tendency of \$76,000 (rounded) considered reasonable in support of the final conclusion of value. | | | | | | | | | | |
| Indicated Value by Sales Comparison Approach \$ 76,000 | | | | | | | | | | |

GPRESIDENTIAL


Copyright© 2007 by a la mode, inc. This form may be reproduced unmodified without written permission, however, a la mode, inc. must be acknowledged and credited.
Form GPRES2 — "WinTOTAL" appraisal software by a la mode, inc. — 1-800-ALAMODE

3/2007

DUGAN0000050209

RESIDENTIAL APPRAISAL REPORT

File No.: 1524 Highfield Ct

| | | |
|---|---|--|
| COST APPROACH | COST APPROACH TO VALUE (if developed) <input checked="" type="checkbox"/> The Cost Approach was not developed for this appraisal. | |
| | Provide adequate information for replication of the following cost figures and calculations. | |
| | Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value): <u>Not developed.</u> | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| INCOME APPROACH | INCOME APPROACH TO VALUE (if developed) <input checked="" type="checkbox"/> The Income Approach was not developed for this appraisal. | |
| | Estimated Monthly Market Rent \$ <u>1,325</u> X Gross Rent Multiplier <u>N/A</u> = \$ <u>N/A</u> Indicated Value by Income Approach | |
| | Summary of Income Approach (including support for market rent and GRM): <u>Rents in the area for similar homes range from about \$900 to \$1,150 monthly.</u> | |
| | Based on the assumed average condition of the subject, a rent estimate of \$900 at the low end of the range is considered reasonable. GRMs were limited, with data for the income approach not sufficient enough to complete a reasonable value opinion via this approach. | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| PUD | PROJECT INFORMATION FOR PUDs (if applicable) <input checked="" type="checkbox"/> The Subject is part of a Planned Unit Development. | |
| | Legal Name of Project: <u>Hidden Canyon Horizons</u> | |
| | Describe common elements and recreational facilities: <u>Perimeter fencing and enforcement of CC&R's.</u> | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| RECONCILIATION | Indicated Value by: Sales Comparison Approach \$ 76,000 Cost Approach (if developed) \$ N/A Income Approach (if developed) \$ N/A | |
| | Final Reconciliation The cost and income approaches to value were not developed for the reasons stated. The value opinion is based upon sales comparison approach. The opinion considers a 30 to 90 day (each) marketing and exposure period. The potential range of value was from about \$75,500 to \$76,500 with a central tendency of \$76,000. The opinion assumes the date/time of value to be prior to the HOA lien transfer on the same date and assumes the property to be in average condition and professionally marketed under normal terms. | |
| | This appraisal is made <input checked="" type="checkbox"/> "as is", <input type="checkbox"/> subject to completion per plans and specifications on the basis of a Hypothetical Condition that the improvements have been completed, <input type="checkbox"/> subject to the following repairs or alterations on the basis of a Hypothetical Condition that the repairs or alterations have been completed, <input type="checkbox"/> subject to the following required inspection based on the Extraordinary Assumption that the condition or deficiency does not require alteration or repair: This is a retrospective value opinion based upon a drive-by inspection and subject to the stated extraordinary assumption(s) elsewhere within this report along with the specific assignment conditions. | |
| | <input checked="" type="checkbox"/> This report is also subject to other Hypothetical Conditions and/or Extraordinary Assumptions as specified in the attached addenda. | |
| | Based on the degree of inspection of the subject property, as indicated below, defined Scope of Work, Statement of Assumptions and Limiting Conditions, and Appraiser's Certifications, my (our) Opinion of the Market Value (or other specified value type), as defined herein, of the real property that is the subject of this report is: \$ <u>76,000</u> , as of: <u>March 02, 2011</u> , which is the effective date of this appraisal. | |
| | If indicated above, this Opinion of Value is subject to Hypothetical Conditions and/or Extraordinary Assumptions included in this report. See attached addenda. | |
| | | |
| | | |
| | | |
| | | |
| ATTACHMENTS | A true and complete copy of this report contains <u>20</u> pages, including exhibits which are considered an integral part of the report. This appraisal report may not be properly understood without reference to the information contained in the complete report. | |
| | Attached Exhibits: | |
| | <input checked="" type="checkbox"/> Letter of Transmittal <input checked="" type="checkbox"/> Explanatory Comments <input checked="" type="checkbox"/> Photos <input type="checkbox"/> | |
| | <input checked="" type="checkbox"/> Extraordinary Assumptions <input checked="" type="checkbox"/> Market Conditions/Graph(s) <input checked="" type="checkbox"/> Clarification of SOW <input type="checkbox"/> | |
| | <input checked="" type="checkbox"/> Additional Sales <input checked="" type="checkbox"/> Map, Plat, Sketch Addenda <input checked="" type="checkbox"/> GP-Res CertsAddenda <input type="checkbox"/> | |
| | | |
| | | |
| | | |
| | | |
| | | |
| SIGNATURES | Client Contact: <u>Akerman LLP</u> Client Name: <u>Akerman LLP</u> | |
| | E-Mail: <u>brieanne.siriwan@akerman.com</u> Address: <u>1635 Village Center Circle, Ste 200, Las Vegas, NV 89134</u> | |
| | APPRAISER | |
| | SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable) | |
| |  | |
| | Supervisory or Co-Appraiser Name: _____ | |
| | Company: _____ | |
| | Phone: _____ Fax: _____ | |
| | E-Mail: _____ | |
| | Date of Report (Signature): <u>November 09, 2018</u> | |
| Date of Report (Signature): _____ | | |
| License or Certification #: <u>A.0000166-CG</u> State: <u>NV</u> | | |
| License or Certification #: _____ State: _____ | | |
| Designation: <u>SRA</u> | | |
| Designation: _____ | | |
| Expiration Date of License or Certification: <u>05/31/2019</u> | | |
| Expiration Date of License or Certification: _____ | | |
| Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input checked="" type="checkbox"/> Exterior Only <input type="checkbox"/> None | | |
| Inspection of Subject: <input type="checkbox"/> Interior & Exterior <input type="checkbox"/> Exterior Only <input type="checkbox"/> None | | |
| Date of Inspection: <u>October 27, 2018</u> | | |
| Date of Inspection: _____ | | |

ADDITIONAL COMPARABLE SALES

File No.: 1524 Highfield Ct

| FEATURE | | SUBJECT | | | COMPARABLE SALE # 4 | | | | COMPARABLE SALE # 5 | | | | COMPARABLE SALE # 6 | | | | | |
|---------------------------------------|--|---|-------|-------|--|-------|-----------------|--------|--|--------------|-------------------|-------|---|--|-----------------|-------|-------|--|
| Address | | 1524 Highfield Ct N Las Vegas, NV 89032 | | | 1019 Heberdeen Ct N Las Vegas, NV 89032 | | | | 3420 Beca Faith Dr N Las Vegas, NV 89032 | | | | | | | | | |
| Proximity to Subject | | | | | 0.65 miles NE | | | | 0.07 miles NE | | | | | | | | | |
| Sale Price | | \$ | | | | | \$ 124,900 | | | | \$ 74,800 | | | | \$ | | | |
| Sale Price/GLA | | \$ /sq.ft. | | | \$ 82.77 /sq.ft. | | | | \$ 45.92 /sq.ft. | | | | \$ /sq.ft. | | | | | |
| Data Source(s) | | MLS-Pub Records | | | MLS-Public Records / DOM 90 | | | | MLS-Public Records / DOM 42 | | | | | | | | | |
| Verification Source(s) | | Public Records | | | 20100507:4211 | | | | 20110322:0052 | | | | | | | | | |
| VALUE ADJUSTMENTS | | DESCRIPTION | | | DESCRIPTION | | +(-) \$ Adjust. | | DESCRIPTION | | +(-) \$ Adjust. | | DESCRIPTION | | +(-) \$ Adjust. | | | |
| Sales or Financing Concessions | | | | | Traditional CASH \$0 | | | | Traditional CASH \$0 | | | | | | | | | |
| Date of Sale/Time | | | | | 05/07/2010 | | | | 03/22/2011 | | | | | | | | | |
| Rights Appraised | | Fee Simple | | | Fee Simple | | | | Fee Simple | | | | | | | | | |
| Location | | Hidden Canyon | | | Highland Estates | | | | Hidden Canyon | | | | | | | | | |
| Site | | 4,792 SF/CDS | | | 6,970 SF/CDS | | | | -4,356 | | 4,792 SF/Interior | | | | | | | |
| View | | Residential | | | Residential | | | | Residential | | | | | | | | | |
| Design (Style) | | Ranch/1-Story | | | Ranch/1-Story | | | | Ranch/1-Story | | | | | | | | | |
| Quality of Construction | | Stucco | | | Stucco | | | | Stucco | | | | | | | | | |
| Age | | 15 | | | 14 | | | | 15 | | | | | | | | | |
| Condition | | Average | | | Very Gd/Prt Renov | | | | -15,100 | | Fair | | +6,500 | | | | | |
| Above Grade | | Total | Bdrms | Baths | Total | Bdrms | Baths | | | Total | Bdrms | Baths | | | Total | Bdrms | Baths | |
| Room Count | | 6 | 3 | 2 | 5 | 3 | 2 | | | 6 | 3 | 2 | | | | | | |
| Gross Living Area | | 1,434 sq.ft. | | | 1,509 sq.ft. | | | -1,900 | | 1,629 sq.ft. | | | -4,900 | | sq.ft. | | | |
| Basement & Finished Rooms Below Grade | | None | | | None | | | | None | | | | | | | | | |
| Functional Utility | | Average | | | Average | | | | Average | | | | | | | | | |
| Heating/Cooling | | Central | | | Central | | | | Central | | | | | | | | | |
| Energy Efficient Items | | Standard | | | Standard | | | | Standard | | | | | | | | | |
| Garage/Carport | | 2 Car Garage | | | 3 Car Garage | | | | -3,000 | | 2 Car Garage | | | | | | | |
| Porch/Patio/Deck | | L/S,C/Patio | | | L/S,C/Patio | | | | L/S,C/Patio | | | | | | | | | |
| Contract Date | | None | | | 04/28/2010 | | | | -25,000 | | 03/05/2011 | | | | | | | |
| Rent/GRM | | N/A | | | N/A | | | | N/A | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| Net Adjustment (Total) | | | | | <input type="checkbox"/> + <input checked="" type="checkbox"/> - | | \$ -49,356 | | <input checked="" type="checkbox"/> + <input type="checkbox"/> - | | \$ 1,600 | | <input type="checkbox"/> + <input type="checkbox"/> - | | \$ | | | |
| Adjusted Sale Price of Comparables | | | | | Net 39.5 % | | | | Net 2.1 % | | | | Net % | | | | | |
| | | | | | Gross 39.5 % | | \$ 75,544 | | Gross 15.2 % | | \$ 76,400 | | Gross % | | \$ | | | |
| Summary of Sales Comparison Approach | | Refer to main page of the Summary of Sales Comparison Approach. | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | |

Explanatory Comments

File No. 1524 Highfield Ct

| | | | | |
|------------------|-------------------|--------|-------|-------------------------|
| Client | Akerman LLP | | | |
| Property Address | 1524 Highfield Ct | | | |
| City | N Las Vegas | County | Clark | State NV Zip Code 89032 |
| Owner | Dania Hernandez | | | |

EXTRAORDINARY ASSUMPTION:

USPAP provides the following definition for “extraordinary assumption”:

Defined as an assignment-specific assumption, as of the effective date regarding uncertain information used in an analysis, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Uncertain information might include physical, legal, or economic characteristics of the subject property; or conditions external to the property, such as market conditions or trends; or the integrity of data used in an analysis.

This report was completed without an interior inspection of the subject. External sources including, but not limited to, information from a drive-by street inspection, appraiser's files, county records, and or multiple listing service data were relied upon for information used to describe the improvements and or condition of the subject.

As indicated on page 1 of this report, if the assumptions invoked are found to be false, it could alter the value opinion and or other conclusions in this report. As such, the appraiser reserves the right to amend the value opinion and or conclusions based on new or revised information.

Retrospective Value: is generally defined as “A value opinion effective as of a specified historical date. The term does not define a type of value. Instead, it identifies a value opinion as being effective at some specific prior date. Value as of a historical date is frequently sought in connection with property tax appeals, damage models, lease renegotiation, deficiency judgments, estate tax, and condemnation. Inclusion of the type of value with this term is appropriate, e.g., “retrospective market value opinion.” Source: Appraisal Institute, The Dictionary of Real Estate Appraisal, 6th ed. (Chicago: Appraisal Institute, 2015).

The final value within this appraisal assignment represents a "Retrospective" Market Value opinion as of the date of the HOA sale, March 2, 2011, the effective date of this report. The physical exterior inspection of the subject property was performed on October 27, 2018.

Economic Indicators Addendum

| | | | | | | |
|------------------|-------------------|--------|-------|-------|----|----------------|
| Client | Akerman LLP | | | | | |
| Property Address | 1524 Highfield Ct | | | | | |
| City | N Las Vegas | County | Clark | State | NV | Zip Code 89032 |
| Owner | Dania Hernandez | | | | | |

Economic Indicators Addendum

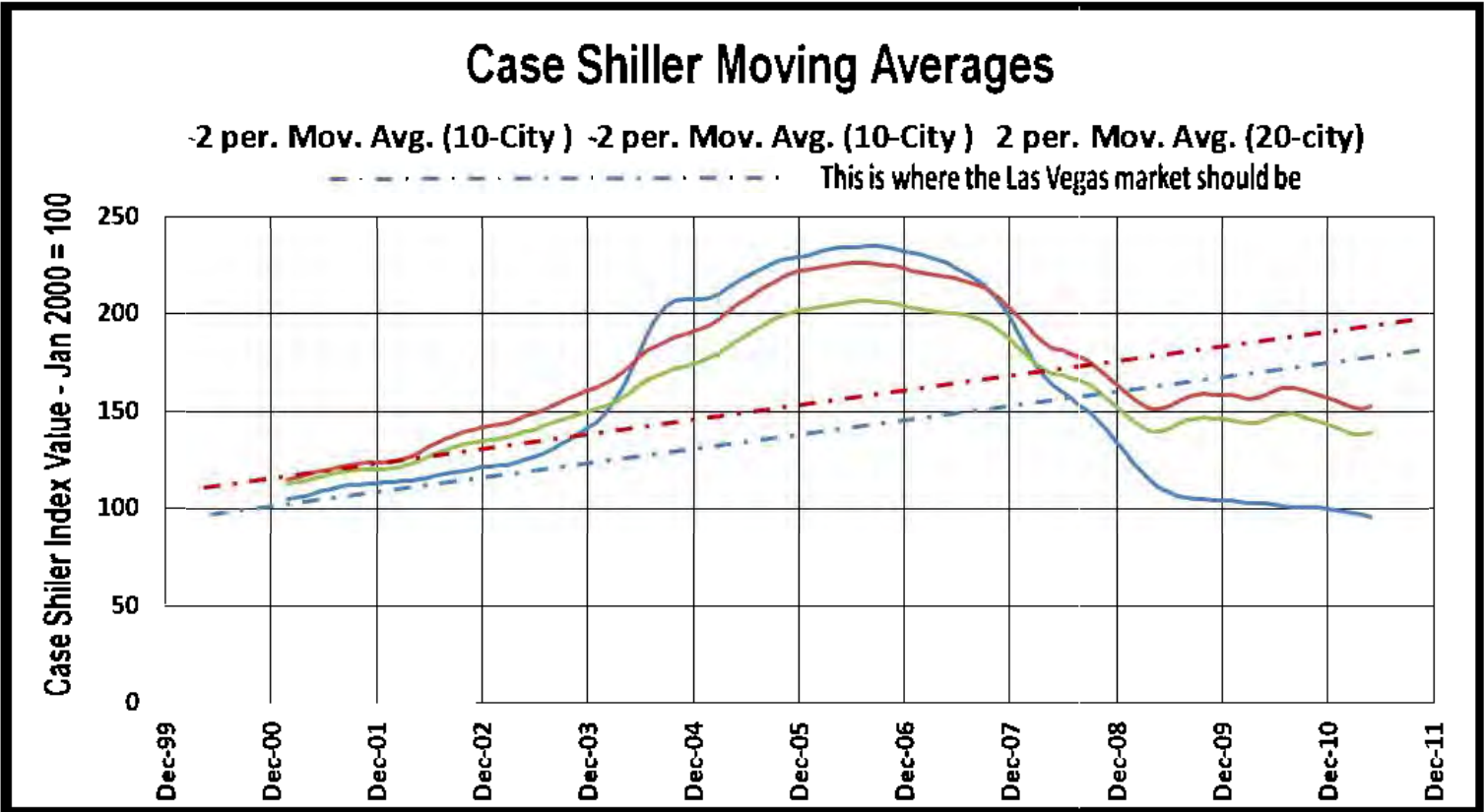
| Economic Overview - Key Indicators - Clark County, NV | | | | | | | | | | |
|---|-----------------|-----------------|-----------------|-----------------|-----------------|---------------|---------------|-----------|-----------|-----------|
| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | M | | |
| POPULATION - Mid Yr | 1,796,380 | 1,874,837 | 1,954,319 | 1,967,716 | 1,973,619 | 1,920,756 | 1,931,510 | 12* | | |
| EMPLOYMENT - Yr End | 837,022 | 878,962 | 907,717 | 917,400 | 853,700 | 813,100 | 822,700 | 12 | | |
| LABOR FORCE - Yr End | 873,406 | 917,325 | 953,644 | 999,213 | 981,900 | 955,600 | 942,200 | 12 | | |
| UNEMPL. RATE - Yr End | 4.17% | 4.18% | 4.82% | 8.19% | 13.06% | 14.91% | 12.68% | 12 | | |
| Pop. to Employ Ratio | 2.15 | 2.13 | 2.15 | 2.14 | 2.31 | 2.36 | 2.35 | 12 | | |
| Labor Force Growth | 36,572 | 43,919 | 36,319 | 45,569 | -17,313 | -26,300 | -13,400 | 12 | | |
| Net Jobs Created | 38,663 | 41,940 | 28,755 | 9,683 | -63,700 | -40,600 | 9,600 | 12 | | |
| Labor to Pop. Ratio | 2.06 | 2.04 | 2.05 | 1.97 | 2.01 | 2.01 | 2.05 | 12 | | |
| TAXABLE SALES -'000'S | \$34,133,810 | \$36,052,682 | \$36,358,261 | \$34,652,262 | \$28,503,924 | \$28,207,925 | \$28,241,896 | 12 | | |
| Taxable Sales / Capita | \$19,001 | \$19,230 | \$18,604 | \$17,610 | \$14,442 | \$14,686 | \$14,622 | 12 | | |
| BLDG. PERMIT VALUE | \$6,101,543,364 | \$5,994,333,945 | \$6,303,467,672 | \$2,522,758,474 | \$1,228,695,618 | \$703,528,779 | \$600,208,709 | 11 | | |
| Resid. Permit Value | \$4,791,874,562 | \$4,278,547,062 | \$3,902,624,686 | \$1,465,559,808 | \$560,608,082 | \$561,165,121 | \$453,877,423 | 11 | | |
| Comm. Permit Value | \$1,309,668,802 | \$1,715,786,883 | \$2,400,842,986 | \$1,057,198,666 | \$668,087,536 | \$142,363,658 | \$146,331,286 | 11 | | |
| HOTEL ROOMS | 146,605 | 145,948 | 146,372 | 153,165 | 161,383 | 164,574 | 162,537 | 12 | | |
| Visitors/Room | 300 | 300 | 300 | 273 | 247 | 247 | 240 | 12 | | |
| VISITOR VOLUME | 44,025,888 | 43,840,535 | 43,915,629 | 41,793,952 | 39,870,781 | 40,705,384 | 38,928,708 | 12 | | |
| Hotel Occupancy | 89% | 87% | 88% | 85% | 81% | 81% | 87% | 12 | | |
| Airport Passengers | 44,267,362 | 46,198,000 | 47,703,259 | 44,060,564 | 40,455,300 | 39,757,359 | 41,479,814 | 12 | | |
| Convention Attend. | 6,166,194 | 6,307,961 | 6,209,253 | 5,899,725 | 4,492,275 | 4,473,134 | 4,865,272 | 12 | | |
| GAMING REVENUE - '000's | \$9,718,807 | \$10,643,828 | \$10,868,509 | \$9,796,972 | \$8,833,902 | \$8,908,697 | \$9,222,906 | 12 | | |
| Revenue per room | \$66,292 | \$72,929 | \$74,253 | \$63,964 | \$54,739 | \$54,132 | \$56,743 | 12 | | |
| Housing - Clark County Totals | | | | | | | | | | |
| HOUSING STOCK TOTAL | 704,826 | 740,817 | 769,875 | 784,688 | 796,255 | 814,868 | 817,306 | MidYr | | |
| Pop./Housing Ratio | 2.55 | 2.53 | 2.54 | 2.51 | 2.48 | 2.36 | 2.36 | 12 | | |
| Emp./Housing Ratio | 1.19 | 1.19 | 1.18 | 1.17 | 1.07 | 1.00 | 1.01 | 12 | | |
| LabFor/Housing Ratio | 1.24 | 1.24 | 1.24 | 1.27 | 1.23 | 1.17 | 1.15 | 12 | | |
| RESIDENTIAL PERMITS | 38,254 | 33,942 | 24,069 | 14,555 | 5,741 | 4,859 | 5,343 | | | |
| Single Family | 29,408 | 20,748 | 13,011 | 6,095 | 3,840 | 4,324 | 4,011 | 12 | | |
| Multi-Family | 8,846 | 13,194 | 11,058 | 8,460 | 1,901 | 535 | 1,332 | 12 | | |
| INTEREST RATES | 5.87% | 6.41% | 6.34% | 6.03% | 5.01% | 4.75% | 3.88% | 4 | | |
| Existing Home Supply and Demand - GLVAR MLS | | | | | | | | | | |
| | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012-YTD |
| Single Family Listed | 31,194 | 60,661 | 57,943 | 64,049 | 62,783 | 61,038 | 57,016 | 56,643 | 55,174 | 15,583 |
| Single Family Sold | 30,142 | 35,260 | 33,529 | 24,130 | 15,279 | 24,924 | 38,127 | 34,434 | 38,153 | 12,703 |
| Percentage | 97% | 58% | 58% | 38% | 24% | 41% | 67% | 61% | 69% | 82% |
| Single Family Median Price | | | | | | \$222,500 | \$140,000 | \$135,347 | \$124,750 | \$122,000 |
| Single Family Average Price | | | | | | \$285,934 | \$170,118 | \$166,917 | \$152,924 | \$150,845 |
| Condo/Townhome Listed | 7,531 | 11,306 | 11,474 | 15,589 | 15,243 | 13,076 | 14,249 | 12,838 | 11,537 | 2,465 |
| Condo/Townhome Sold | 5,539 | 7,581 | 7,872 | 5,826 | 3,276 | 3,694 | 8,752 | 8,526 | 9,146 | 2,729 |
| Percentage | 74% | 67% | 69% | 37% | 21% | 28% | 61% | 66% | 79% | 111% |
| Condo/TH Median Price | | | | | | \$136,250 | \$66,644 | \$65,000 | \$56,500 | \$57,000 |
| Condo/TH Average Price | | | | | | \$185,375 | \$87,696 | \$73,159 | \$64,056 | \$63,044 |
| Total Home Sales | 35,681 | 42,841 | 41,401 | 29,956 | 18,555 | 28,618 | 46,879 | 42,960 | 47,299 | 15,432 |
| SFR Rentals Leased | N/A | N/A | N/A | 13,670 | 16,716 | 18,748 | 21,756 | 25,100 | 28,272 | 10,927 |
| SFR Median Rental | N/A | N/A | N/A | \$1,195 | \$1,295 | \$1,250 | \$1,195 | \$1,113 | \$1,115 | \$1,095 |

Las Vegas Home Sales vs. Median Price - GLVAR Data

Sold Volume Median Price

Copyright - 2007-2012 - For more information on this form contact LVREA@cox.net *estimated indicator

Case Shiller Report



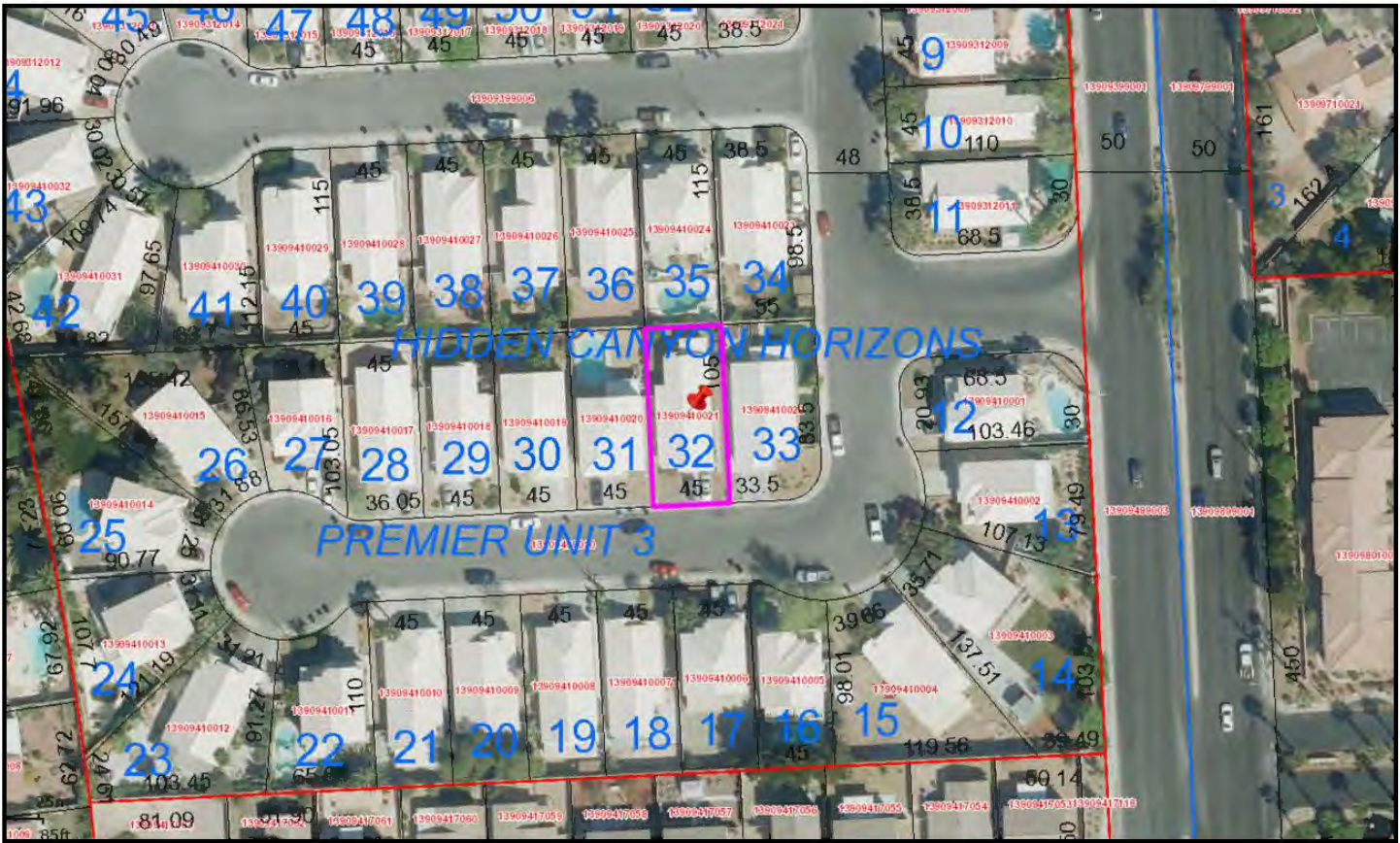
Location Map

| | | | | |
|------------------|-------------------|--------|-------|------------------------------|
| Client | Akerman LLP | | | |
| Property Address | 1524 Highfield Ct | | | |
| City | N Las Vegas | County | Clark | State NV Zip Code 89032 |
| Owner | Dania Hernandez | | | |



Plat Map

| | | | | |
|------------------|-------------------|--------|-------|-------------------------|
| Client | Akerman LLP | | | |
| Property Address | 1524 Highfield Ct | | | |
| City | N Las Vegas | County | Clark | State NV Zip Code 89032 |
| Owner | Dania Hernandez | | | |



Subject Photo Page

| | | | | | |
|------------------|-------------------|--------|-------|-------|---------------------------|
| Client | Akerman LLP | | | | |
| Property Address | 1524 Highfield Ct | | | | |
| City | N Las Vegas | County | Clark | State | NV Zip Code 89032 |
| Owner | Dania Hernandez | | | | |



Subject Front

1524 Highfield Ct
Sales Price
Gross Living Area 1,434
Total Rooms 6
Total Bedrooms 3
Total Bathrooms 2
Location Hidden Canyon
View Residential
Site 4,792 SF/CDS
Quality Stucco
Age 15



Subject Street

Comparable Photo Page

| | | | | | |
|------------------|-------------------|--------|-------|-------|---------------------------|
| Client | Akerman LLP | | | | |
| Property Address | 1524 Highfield Ct | | | | |
| City | N Las Vegas | County | Clark | State | NV Zip Code 89032 |
| Owner | Dania Hernandez | | | | |



Comparable 1

3837 Intermezzo Way
Prox. to Subject 0.69 miles NW
Sales Price 91,000
Gross Living Area 1,459
Total Rooms 6
Total Bedrooms 3
Total Bathrooms 2
Location Symphony West
View Residential
Site 5,227 SF/Interior
Quality Stucco
Age 17



Comparable 2

3602 Blue Dawn Dr
Prox. to Subject 0.40 miles NE
Sales Price 90,000
Gross Living Area 1,459
Total Rooms 5
Total Bedrooms 3
Total Bathrooms 2
Location Del Prado Hghlnds
View Residential
Site 9,583 SF/CDS
Quality Stucco
Age 14



Comparable 3

3724 Brentcove Dr
Prox. to Subject 0.45 miles N
Sales Price 95,000
Gross Living Area 1,340
Total Rooms 5
Total Bedrooms 3
Total Bathrooms 2
Location Cheyenne Ridge
View Residential
Site 6,098 SF/Interior
Quality Stucco
Age 17

Comparable Photo Page

| | | | | | |
|------------------|-------------------|--------|-------|-------|---------------------------|
| Client | Akerman LLP | | | | |
| Property Address | 1524 Highfield Ct | | | | |
| City | N Las Vegas | County | Clark | State | NV Zip Code 89032 |
| Owner | Dania Hernandez | | | | |



Comparable 4

1019 Heberdeen Ct
Prox. to Subject 0.65 miles NE
Sales Price 124,900
Gross Living Area 1,509
Total Rooms 5
Total Bedrooms 3
Total Bathrooms 2
Location Highland Estates
View Residential
Site 6,970 SF/CDS
Quality Stucco
Age 14



Comparable 5

3420 Beca Faith Dr
Prox. to Subject 0.07 miles NE
Sales Price 74,800
Gross Living Area 1,629
Total Rooms 6
Total Bedrooms 3
Total Bathrooms 2
Location Hidden Canyon
View Residential
Site 4,792 SF/Interior
Quality Stucco
Age 15

Clarification of Scope of Work

File No. 1524 Highfield Ct

| | | | | | |
|------------------|-------------------|--------|-------|-------|---------------------------|
| Client | Akerman LLP | | | | |
| Property Address | 1524 Highfield Ct | | | | |
| City | N Las Vegas | County | Clark | State | NV Zip Code 89032 |
| Owner | Dania Hernandez | | | | |

CLARIFICATION OF SCOPE OF WORK

(Rev. 02/05/2018)

This following, explanatory comments are not a modification of the assumptions, limiting conditions or certifications in the appraisal report, but a "clarification" of the appraiser's actions with respect to generally accepted appraisal practice and the requirements of this assignment. The intent is to clarify and document what the appraiser did and or did not do in order to develop the value opinion.

Limitations of the Assignment: The appraisal process is technical and therefore requires the intended user or anyone relying on the conclusions, to have a general understanding of the appraisal process to comprehend the limits of the applicability of the value opinion to the appraisal problem. Real estate is an "imperfect market" and one that can be affected by many factors. Therefore, supplemental reporting requirements and the realities of the market, including the reliability of the data sources, inability to verify key information and the reliance on information sources as being factual and accurate, can affect the conclusions within the report. Those relying on the report and its conclusions must understand and factor these limitations into their decisions regarding the subject property.

The "single point of value" (SPV) is based on the definition of value (stated within the report) which has criteria that may or may not be consistent in the marketplace. Value definitions often assume "knowledgeable buyers and sellers" or "no special motivations," when these and other criteria cannot be verified. For most assignments, guidelines require the selection and reporting of a SPV, taken from a range of value indicators that may vary high or low from the SPV due to factors that cannot be quantified or qualified within the constraints of the data, market conditions and time limits imposed in the development of the report and associated scope of work.

The SPV conclusion is a "benchmark" in time, provided at the request of the client and or intended user of this report and for the purpose stated. Anyone relying upon the conclusions should read the report in its entirety, to comprehend and accept the assignment conditions as suitable and reliable for their purpose.

This report was prepared to the intended user's requirements and only for their stated purpose. The analysis and conclusions are unique to that purpose and should not be relied upon for another purpose or use, even though they may seem similar. Decisions related to this property should only be made after properly considering all factors including information not within the report, but known or available to the reader and comprehending the process and guidelines that shape the appraisal process.

SCOPE OF WORK (SOW): Is "the type and extent of research and analysis in an assignment." This is specific to each appraisal given the appraisal problem and assignment conditions. The SOW is generally similar for most assignments, however, the property type or assignment conditions may require deviations from normal procedures. With some assignments, it is not possible to complete an interior inspection of the subject property. Likewise, with a retrospective date of value, the subject property and comparables may appear different than they were as of the effective value date.

For these and other reasons, this "clarification of scope of work" (COSOW) is intended as a guide to general tasks and analysis performed by the appraiser. These statements are a guide for comparison purposes (as part of the valuation process) and do not represent a detailed analysis of the physical or operational condition of these items. This report is not a home inspection. Any statement is advisory based only upon casual observation. The reader or intended user should not rely on this report to disclose hidden conditions and defects.

Complete Visual Inspection Includes: A visual inspection of only the readily accessible areas of the property and only those components that were clearly visible from the ground or floor level. List amenities, view readily observable interior and exterior areas, note quality of materials/workmanship and observe the general condition of improvements. Determine the building areas of the improvements; assess layout and utility of the property. Note the conformity to the market area. Perform a limited check and or observation of mechanical and electrical systems. Photograph interior/exterior, view site, observe and photograph each comparable from the street.

Complete Visual Inspection Does/Did NOT Include: Observation of spaces or areas not readily accessible to the typical visitor; building code compliance beyond obvious and apparent issues; testing or inspection of the well or septic system; mold and radon assessments; moving furniture or personal property; roof condition report beyond observation from the ground level.

Property Identification: Identification of the subject property was provided by the client, either by address and or by legal description. The appraiser has relied upon the client's property identification and assumes no liability for its accuracy. It is the client's responsibility to ascertain the property identified in the report is appropriate for their use.

No Interior Inspection: Some assignment conditions preclude inspection of the interior and or improvements on the site. Drive-by, review assignments, proposed construction and other assignment factors may affect the ability to view the improvements from the interior and at times, the exterior. In these cases, the appraiser has disclosed the "non-inspection" and used various sources of information to determine the property characteristics and condition as of the effective date of value. When applicable, these assignment conditions are stated in the report.

Clarification of Scope of Work

File No. 1524 Highfield Ct

| | | | | |
|------------------|-------------------|--------|-------|-------------------------|
| Client | Akerman LLP | | | |
| Property Address | 1524 Highfield Ct | | | |
| City | N Las Vegas | County | Clark | State NV Zip Code 89032 |
| Owner | Dania Hernandez | | | |

Inspect The Neighborhood: Observations were limited to driving through a representative number of streets in the area, reviewing maps and other data and observing comparables from the street to determine factors that may influence the value of the subject property. "Neighborhood" boundaries are not exact and are defined by the influence of physical, social, economic and governmental characteristics (the same criteria used to define census tracts). Over time, small areas merge and once distinct boundaries become less defined. Comparable data was selected based upon the area proximate to the subject that a buyer would consider directly competitive.

Repairs or Deterioration: Deficiency and livability are subjective terms. The value considers repair items that (in his/her opinion), affect safety, adequacy, and marketability of the property. Physical deterioration has not been itemized, but considered in the approaches to value.

Construction Defects: Construction defect issues (even when widely publicized) are not consistently reported in the MLS data. State law requires disclosure by the seller to a buyer of known defects and or prior issues. The definition of value assumes "informed buyer" and disclosure to the buyer is mandated by law. The analysis and conclusions presume the prices reported in the market data reflect the buyer's knowledge of prior or current defect related issues (if any).

Satisfactory Completion: The work will be completed as specified and consistent with the quality and workmanship associated with the quality classification identified and physical characteristics outlined within the report.

Cost Approach: Is applicable when the improvements are new or relatively new and when sufficient building sites are available to provide a buyer with a "construction alternative" to purchasing the subject. In areas where similar sites are not available and or in cases where the economy of scale from multi-unit construction is not available to a potential buyer, reliability of the cost approach is limited. Applicability of the cost approach in this assignment is specifically addressed in that section of the appraisal report.

If the cost approach was used it represents the "replacement cost estimate." If used, its inclusion was based on one of the following: request by the client; age requirement under FHA/HUD guidelines; or deemed appropriate for use by the appraiser for "valuation purposes." Regardless of the condition or reason for its use, it should not be relied upon for insurance purposes. The definition of "market value" used within this report is not consistent with the definition of "insurable value."

Income Approach: Is applicable when investors regularly acquire properties that are similarly desirable to the subject for the express purpose of the income they provide. While rentals may exist in any area, their presence alone is not proof of a viable rental and investor marketplace. Use or exclusion of the income approach is specifically addressed in that section of the appraisal report.

Gross Living Area (GLA): The Greater Las Vegas Association of Realtors® MLS auto-populates the GLA from Clark County Assessor (CCAO) records. Assessors in Nevada are granted (by statute), leeway in determination of the GLA via several commonly employed methods to measure properties and typically rounds measurements to the nearest foot. Therefore, it is common to have variances between the "as measured" GLA by the appraiser and the "as reported" GLA from the CCAO. The GLVAR MLS handles more than 90% of the transactions in this area. Buyers and sellers rely on the MLS and therefore, the GLAs therein are the de-facto standard used by the market as a decision making factor. The appraiser deems the CCAO reported GLA as being reasonable and reliable for comparison purposes, regardless of any other standard used by builders, architects, agents, etc. The appraiser has considered these facts in the analysis and reconciled in the value opinion, only differences in GLA that would be "market recognized" and contribute to greater utility or function in the subject or comparable and greater value by the buying and selling public.

Extent of Data Research-Comparable Data: The appraiser used reasonably available information from city/county records, assessor's records, multiple listing service (MLS) data and visual observation to identify the relevant characteristics of the subject property. Comparables used were considered relevant to the analysis of subject property and applicable to the appraisal problem. The data was adjusted to the subject to reflect the market's reaction (if any and in terms of value contribution) to differences. Photographs taken by the appraiser are originals and un-altered, unless physical access was unavailable. In some cases, MLS photographs may be used to illustrate property conditions, views, etc.

Public and Private Data: The appraiser has access to public records and data available on the internet, the Multiple Listing Service, various cost estimating services, flood data, maps and other property related information, along with private information and knowledge of the market that is pertinent and relevant for this assignment.

Adverse Factors: Based upon the standards of the party observing the property, a range of factors internal or external to the property may be "adverse" by their viewpoint. The appraiser noted factors that may affect the marketability and livability to potential buyers, based upon knowledge of the market and as evidenced by sales of properties with similar or comparable conditions. These items are noted in the report and the valuation approaches that were applied to the analysis. Some buyers in the market may consider factors such as drug labs, registered sex offenders, criminal activity, interim rehabilitation facilities, halfway houses or similar uses as "adverse". No attempt was made to investigate or discover such activities, unless such

Clarification of Scope of Work

File No. 1524 Highfield Ct

| | | | | |
|------------------|-------------------|--------|-------|-------------------------|
| Client | Akerman LLP | | | |
| Property Address | 1524 Highfield Ct | | | |
| City | N Las Vegas | County | Clark | State NV Zip Code 89032 |
| Owner | Dania Hernandez | | | |

factors were readily apparent and obviously affecting the subject property as evidenced by market data. If the intended user or a reader has concerns in these areas, it is recommended that they secure this information from a reliable source.

Easements: Major power transmission and distribution lines, railroad and other services related easements, including utility easements, limited common areas and conditions that grant others the right to access the subject property and or travel adjacent to the private areas of the subject property. The term adverse applies to individual perspective. It may or may not be negative, dependent upon the individual. One perspective may hold easements to be unappealing visually or disruptive. From another, such easements and corridors provide open space and ensure greater privacy (due to the size of the easement) from neighboring properties. Unless the easement affects the utility or use of the site or improvements, any impact was only considered from the perspective of marketability. In cases where the site abuts a major power transmission easement, the towers are generally centered within the right of-way and engineered to collapse within the easement. The effect or impact is inconsistent (as measured in the market) and therefore unless compelling evidence was found in comparable data, no adjustment was made, only the presence stated.

Valuation Methodology: The data presented in the report is considered to be the most relevant to the valuation of the subject property (and its market segment) based on its current occupancy and market environment. In areas influenced by foreclosure, short-sale and REO activity, and motivated (or impacted) by factors that cannot be qualified or quantified, the transactional characteristics of those sales may not fully meet the definition of market value criteria and therefore may be misleading. Verifications and drive-by inspections frequently reveal inconsistencies between the MLS and public records. Through this process, the appraiser can present the rationale supporting the final value opinion within the reconciliation and the reader can comprehend the logic and its application to the valuation process.

The Value Opinion: The value opinion may not be valid in another time-period. It is important for anyone relying on the report to comprehend the dynamic nature of real estate and the validity of the single value point or value range reported. The reported value is a benchmark or reference in time (as of a specific date) and subject to change (sometimes rapidly), based upon many factors including market conditions, interest rates, supply and demand. Therefore, anyone relying on the reported conclusions should first comprehend and accept the assignment conditions, assumptions, limiting conditions and other factors stated within the report as being suitable and reliable for their purpose and intended use.

Specific Reporting Guidelines: Market participants have unique appraisal reporting guidelines. The COSOW is supplemental to the forms stated scope of work, providing an overview of the appraiser's actions with respect to general appraisal practice and the stated requirements of the assignment. The intent is to clarify what the appraiser did and or did not do in order to develop the value opinion. Guidelines require the borrower receive a copy of the appraisal report, however, the borrower is not an intended user. The appraisal process and specific reporting requirements are highly technical and in most cases, beyond the comprehension of most readers. Anyone choosing to rely upon the appraisal should read the report in its entirety and if needed, consult with professionals that can assist them with understanding the basis of this report and the required reporting requirements, prior to making any decisions based upon the conclusions and or observations stated within.

Use of Electronic Appraisal Delivery Services: If the client directed that the appraiser transmit the content of this report via Appraisal Port or a similar delivery portal service, pursuant to user agreements, these services disclaim any warranty that the service provided will be error free and that these services may be subject to transmission errors. Accordingly, the client should make its own determination as to the accuracy and reliability of any such service they employ. The appraiser makes no representations and specifically disclaims any warranty regarding the accuracy or portrayal of content transmitted via Appraisal Port or any similar service or their reliability. The appraiser uses such technology at the specific direction and sole risk of the client. At its request, the client may obtain a true copy of the original report directly from the appraiser via email (PDF), mail or other means.

GP Residential Certifications Addendum

File No.: 1524 Highfield Ct

| | | | |
|-------------------------------------|---|-----------|-----------------|
| Property Address: 1524 Highfield Ct | City: N Las Vegas | State: NV | Zip Code: 89032 |
| Client: Akerman LLP | Address: 1635 Village Center Circle, Ste 200, Las Vegas, NV 89134 | | |
| Appraiser: R. Scott Dugan, SRA | Address: 8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147 | | |

STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

— The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.

— The appraiser may have provided a sketch in the appraisal report to show approximate dimensions of the improvements, and any such sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size. Unless otherwise indicated, a Land Survey was not performed.

— If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

— The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.

— If the cost approach is included in this appraisal, the appraiser has estimated the value of the land in the cost approach at its highest and best use, and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used. Unless otherwise specifically indicated, the cost approach value is not an insurance value, and should not be used as such.

— The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.

— The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.

— The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.

— If this appraisal is indicated as subject to satisfactory completion, repairs, or alterations, the appraiser has based his or her appraisal report and valuation conclusion on the assumption that completion of the improvements will be performed in a workmanlike manner.

— An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.

— The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database.

— An appraisal of real property is not a 'home inspection' and should not be construed as such. As part of the valuation process, the appraiser performs a non-invasive visual inventory that is not intended to reveal defects or detrimental conditions that are not readily apparent. The presence of such conditions or defects could adversely affect the appraiser's opinion of value. Clients with concerns about such potential negative factors are encouraged to engage the appropriate type of expert to investigate.

The Scope of Work is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.

Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):

Important – Please Read – The client should review this report in its entirety to gain a full awareness of the subject property, its market environment and to account for identified issues in their business decisions. This appraisal report includes comments, observations, exhibits, maps, explanatory comments, and addenda that are necessary for the reader to comprehend the relevant characteristics of the subject property. The Expanded Comments and Clarification of Scope of Work provides specifics as to the development of the appraisal along with exceptions that may have been necessary to complete a credible report.

INTENDED USE/USER:

The intended user of this appraisal report is the lender/client. No additional intended users are identified by the appraiser. This report contains sufficient information to enable the client to understand the report. Any other party receiving a copy of this report for any reason is not an intended user; nor does it result in an appraiser-client relationship. Use of this report by any other party(ies) is not intended by the appraiser.

SCOPE OF WORK:

In the normal course of business, the appraiser attempted to obtain an adequate amount of information regarding the subject and comparable properties. Some of the required standardized responses, especially those in which the appraiser has not had the opportunity to verify personally or measure, could mistakenly imply greater precision and reliability in the data than is factually correct or typical in the normal course of business. Consequently, this information should be considered an estimate unless otherwise noted by the appraiser.

Examples include condition and quality ratings, as well as comparable sales and listing data. Not every element of the subject property was viewable, and comparable property data was generally obtained from third-party sources (real estate agents, buyers, sellers, public records, and the Greater Las Vegas Board of Realtors Multiple Listing Service).

Certifications

File No.: 1524 Highfield Ct

| | | | |
|-------------------------------------|---|-----------|-----------------|
| Property Address: 1524 Highfield Ct | City: N Las Vegas | State: NV | Zip Code: 89032 |
| Client: Akerman LLP | Address: 1635 Village Center Circle, Ste 200, Las Vegas, NV 89134 | | |
| Appraiser: R. Scott Dugan, SRA | Address: 8930 West Tropicana Avenue, Suite 1, Las Vegas, NV 89147 | | |

APPRAISER'S CERTIFICATION

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

- The statements of fact contained in this report are true and correct.
- The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
- I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.
- Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
- Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.

Additional Certifications:

Supplemental Certification: In compliance with the Ethics Rule of USPAP, I hereby certify that I have not performed any services with regard to the subject property within the 3-year period immediately preceding the engagement of this assignment.

Supplemental Certification: The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute. As of the date of this report, I, R. Scott Dugan, SRA, Certified General Appraiser, have completed the continuing education program for Designated members of the Appraisal Institute.

Definition of Market Value: (X) Market Value () Other Value

Source of Definition: FDIC Interagency Appraisal and Evaluation Guidelines (December 2, 2010) Appendix D

As defined in the Agencies' appraisal regulations, the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

*The definition of market value above is the most widely cited by federally regulated lending institutions, HUD and VA. Absent a specific definition from the client, this definition was used in the assignment.

| | |
|-------------------------------------|---|
| Client Contact: Akerman LLP | Client Name: Akerman LLP |
| E-Mail: brianne.siriwan@akerman.com | Address: 1635 Village Center Circle, Ste 200, Las Vegas, NV 89134 |

APPRAISER

SUPERVISORY APPRAISER (if required)
or CO-APPRAISER (if applicable)

SIGNATURES



Appraiser Name: R. Scott Dugan, SRA
Company: R. Scott Dugan Appraisal Company, Inc.
Phone: Las Vegas, NV 89147 Fax: 702-253-1888
E-Mail: appraisals@rsdugan.com
Date Report Signed: November 09, 2018
License or Certification #: A.0000166-CG State: NV
Designation: SRA
Expiration Date of License or Certification: 05/31/2019
Inspection of Subject: ☐ Interior & Exterior ☐ Exterior Only ☐ None
Date of Inspection: October 27, 2018

Supervisory or Co-Appraiser Name: _____
Company: _____
Phone: _____ Fax: _____
E-Mail: _____
Date Report Signed: _____
License or Certification #: _____ State: _____
Designation: _____
Expiration Date of License or Certification: _____
Inspection of Subject: ☐ Interior & Exterior ☐ Exterior Only ☐ None
Date of Inspection: _____

R. Scott Dugan, SRA



GENERAL APPRAISAL EXPERIENCE:

- Independent Real Estate Appraiser - September 1976 to Present
- Senior Real Estate Appraiser First Western Savings Association, Las Vegas, NV - 10/74 to 09/76
- Independent Real Estate Appraiser - 1969 to 1974

SPECIALIZED VALUATION EXPERIENCE:

Qualified Expert Witness: Real Estate and Appraisal Matters- District, Bankruptcy and Federal Courts

Forensic Review Expert: Appraisal reviews for litigation. Clients include major banks, attorneys and the FDIC.

TYPES OF PROPERTIES:

Residential, Condominium, Planned Unit Developments, Small Residential Income, Existing, Proposed and Vacant Land, Commercial and Income units.

LICENSING:

Licensed in the State of Nevada, Certified General Appraiser-License #A.0000166-CG

PROFESSIONAL DESIGNATION:

SRA Member - Appraisal Institute - 1989 to Present

EDUCATION:

Bachelor of Science in Business Administration - Finance, University of Nevada

High School Diploma - General Studies, Ed W. Clark High School, Las Vegas, NV

REALTOR ASSOCIATIONS:

Appraiser Member - National Association of Realtors - 1992 to Present

Appraiser Member - Greater Las Vegas Association of Realtors - 1992 to Present

MEMBERSHIPS:

Member of the Nevada Appraisal Advisory Review Committee (AARC) - 2017

Employee Relocation Council, Appraiser Member - 1990 to 2013

Member of the Clark County Board of Equalization - 1994 to present (Current: Chairman of the Board)

Relocation Appraisers & Consultants Member - 1995 to Present

REFERENCES:

Cheryl Moss, SVP – Chief Appraiser

Bank of Nevada
2700 W. Sahara Avenue
Las Vegas, NV 89102
702-252-6366

Glenn Anderson, MAI, SRPA

Glenn Anderson
1601 S. Rainbow Boulevard, Ste. 230
Las Vegas, NV 89146
702-307-0888

Terry Jones, VP

First Security Bank
10501 W. Gowan Road, Ste.170
Las Vegas, NV 89129
702-853-0950

Sandy Boatwright, Branch Manager

I Mortgage
2855 St. Rose Parkway, Ste. 110
Henderson, NV 89052
702-575-6413

Dan Schwartz, VP

City National Bank
555 S. Flower St, 10th Floor
Los Angeles, CA 90071
213-673-9283

Jim Goodrich, MAI, SRA, CCIM

Goodrich Realty Consulting, LLC
2570 Eldorado Pkwy, Ste. 110
McKinney, TX 75070
972-529-2828

Timothy R. Morse – MAI, SRPA

Timothy R. Morse & Associates
801 S. Rancho Drive, Ste. B-1
Las Vegas, NV 89106
702-386-0068 X21

Rick Piette, Owner

Premier Mortgage Lending Group
8689 W. Sahara Ave, Ste. 100
Las Vegas, NV 89117
702-485-6600

OFFICES HELD:

- Nevada Commission of Appraisers - Real Estate Division Educational Committee - 1994-1996
- Member of the Regional Ethics and Counseling Panel Appraisal Institute - 1994-1996
- State Chair Nevada, State Government Relations Subcommittee Appraisal Institute - 1994-1995
- Chapter Admissions Chair, Las Vegas Chapter Appraisal Institute - 1994
- Chapter Representative, Las Vegas Chapter Appraisal Institute - 1993-1995
- Vice Chair Nevada, State Government Relations Subcommittee Appraisal Institute - 1993
- Member of Region VII Nominating Committee Appraisal Institute - 1992-1995
- President, Las Vegas chapter Appraisal Institute - 1992
- First Vice President, Las Vegas Chapter Appraisal Institute - 1990 - 1991

CONTINUING EDUCATION: GENERAL, LITIGATION, APPRAISAL INSTITUTE, ERC, and SREA:

- A.I Las Vegas Market Symposium 2018 – November 2018
- A.I. 2018-2019 7-Hour National USPAP Update Course – January 2018
- A.I. Las Vegas Market Symposium 2017 – November 2017
- A.I Litigation Appraising: Specialized Topics and Applications – July 2017
- How to Support and Prove Your Adjustments – March 2017
- Residential Property Inspection for Appraisers – January 2017
- 2016-2017 National USPAP Update – January 2016
- A.I. Business Practices & Ethics Course – September 2015
- A.I. Las Vegas Market Symposium 2014 – November 2014
- Unraveling the Mystery of Fannie Mae Appraisal Guidelines – June 2014
- Litigation Assignments for Residential Appraisers: Expert Work on Atypical Cases – June 2014
- Liability Issues for Appraisers Performing Litigation and Other Non-Lending Work – May 2014
- 2014 National USPAP Update Course – January 2014
- Las Vegas Market Symposium 2013 – November 2013
- Do's and Don'ts of Litigation Support – October 2013
- Appraising the Appraisal: Appraisal Review-Residential – April 2013
- A. I. Uniform Appraisal Dataset Aftereffects: Efficiency vs. Obligation – February 2013
- Complex Litigation Appraisal Case Studies – January 2013
- Seller Concessions in Market Value Appraisals – November 2012
- National USPAP Update Course – May 2012
- Valuation of Basements – March 2012
- Accurately Analyzing and Reporting Market Rebounds and Declines – December 2011
- Las Vegas Market Symposium 2011 – October 2011
- The Uniform Appraisal Dataset from FNMA and FMAC –July 2011
- Tools, Techniques & Opportunities for Residential Appraising – November 2010
- Business Practice and Ethics – September 2010
- Appraisal Curriculum Overview Residential – September 2010
- Nevada Commission of Appraisers Hearing – June 2010
- Inspecting the Residential Green or High-Performance House – January 2010
- ENERGY STAR and the Appraisal Process – January 2010
- 2009 National USPAP Update Course – January 2010
- A.I. Committee CE Credit – Chapter Level – December 2009
- Residential Design: The Making of a Good House November 2009
- The New Residential Market Conditions Form Seminar –March 2009
- REO Appraisal - Appraisal of Residential Property Foreclosure – October 2008
- National USPAP Update Course - Las Vegas, NV - March 2008
- Dealing with Client Pressure, Appraiser Identity Theft and Appraisal Report Tampering – March 2008
- Inside & Outside the Boxes, Developing & Communicating the URAR – October 2007
- Housing Market Analysis - September 2007
- Making Sense of the Changing Landscape of Value - Las Vegas, NV - July 2007
- The Real Estate Economy: What's in Store for 2008? - Las Vegas, NV - July 2007
- Real Estate Investing & Development - A Valuation Perspective - July 2007
- Litigation Skills for the Appraiser: An Overview - October 2006
- National USPAP Update Course - June 2006
- The Professional's Guide to the Uniform Residential Appraisal Report Seminar - July 2005
- Re-appraising, Re-addressing, and Re-assigning What to do and why Seminar - June 2005
- Market Analysis and the Site to Do Business Seminar - June 2005
- Secrets of a Successful Litigation Seminar - June 2005
- Mortgage Fraud & the Appraiser's Role Seminar - June 2005
- Uniform Standards of Professional Appraisal Practice Update Course - February 2005
- Course 705 Litigation Appraising - October 2004
- Avoiding Liability as a Residential Appraiser - October 2004
- AVM, VFR and Power Tools for Appraisers -September 2004
- Course 400 - National USPAP Update - November 2003
- Residential Sales Comparison Approach - October 2003
- Appraisal Review (Residential) - February 2003
- Nevada Real Estate Appraisal Statutes - October 2002

- National USPAP Update Course - June 2002
- Standard of Professional Practice Part A and Part B - Course 410 and 420 - September 2001
- Appraisal Procedures - Course 120 - November 2000
- Standards of Professional Practice Part A - Course 410 - October 1999
- Standards of Professional Practice Part B - Course 420 - October 1999
- Attacking & Defending an Appraisal in Litigation - September 1999
- FHA and the Appraisal Process - July 1999
- Reporting Sales Comparison Grid Adjustments for Residential Properties - March 1999
- Valuation of Detrimental Conditions in Real Estate - September 1998
- Standards of Professional Practice Part C - Course 430 - May 1998
- Incorporating Energy Efficiency into Residential Appraisals – December 1998
- Residential Design and Functional Utility Seminar - September 1997
- Alternative Residential Reporting Forms Seminar - July 1996
- Evaluation Guidelines Workshop – July/August 1994
- Understanding Limited Appraisals and Appraisal Reporting Options – July/August 1994
- Appraisal Review - Residential properties – July/August 1994
- Fair Lending and the Appraiser - July 1994
- Evaluation Guidelines Workshop July 1993
- Environmental Checklists, ASTM Property Screen Standard & the Valuation Process – July 1993
- Current Standards of Professional Appraisal Practice Issues-July 1993
- Americans With Disabilities Act (ADA)- July 1993
- The New Uniform Residential Appraisal Report- September 1993
- Intern Appraiser and the Law -February 1993
- Appraisal Reporting of Complex Residential Properties – December 1992
- Accrued Depreciation Seminar - September 1992
- Appraising from Blueprints - September 1992
- Appraising the Tough Ones -July 1992
- Employee or Independent Contractor- The Impact of an IRS Audit on an Appraiser-July 1992
- Landfills and Their Effect Upon Value- August 1991
- Subdivision Analysis- August 1991
- Real Estate Law for Real Estate Appraisers- August 1991
- Technical Inspection of Real Estate August 1991
- Relocation Appraisal Seminar- August 1991
- Practical Approach: The New Small Residential Income Property Guidelines – July 1990
- Extraction of Market Data on Residential Properties- August 1990
- Residential Appraisal Report from the User's Perspective- August 1990
- Legislative Update Panel-August 1990
- Relocation Appraising in the 90's PHH Home Equity – September 1990
- Nevada Real Estate Appraisal Statute October 1990
- Professional Practice and Real Estate Appraisal Law- October 1990
- Exam Preparation Seminar for Appraiser - General Certification – October 1990

ERC NATIONAL RELOCATION CONFERENCE:

- ERC – RAC Trac Conference - May 2007
- National Relocation Appraisal Forum - May 1996

PHH REAL ESTATE NETWORK:

- Regional Seminar "Hearts, Smarts & Courage" - September 1996
- "Force of Excellence" – November 1995
- Western Appraiser Regional Seminar "Leaders in Change" -September 1994

CLIENTS: Banks and Mortgage Companies:

- | | |
|--------------------------------------|---|
| • AAA Mortgage | • Capital One Bank |
| • Allegiance Relocation Services | • Chase Bank |
| • AMC Links | • Citibank |
| • Appraisal Logistics | • Citicorp Mortgage, Inc. |
| • Appraisals2U | • City National Bank |
| • Axia Home Loans | • Clark County Public Guardians Office |
| • Bank New York Mellon | • Coester Appraisal Management Co. |
| • Bank of Las Vegas | • Deutsche Bank |
| • Bank of Nevada | • ENG Lending |
| • Bank of New York | • Sirva Relocation |
| • Boulder Dam Credit Union | • Federal National Mortgage Association |
| • Broad Street Nationwide Valuations | • First Republic Bank |

- First Security Bank of Nevada
- Guarantee Bank
- Guaranteed Rate
- Home Base Mortgage
- HomeBridge Financial Services, Inc.
- Imortgage
- Irwin Union Bank and Trust Company
- J.P. Morgan
- Kinecta Federal Credit Union
- Leader One Financial
- Lender X
- Meadows Bank
- Mutual of Omaha Bank
- Nationstar Mortgage
- Nevada Guardian Services
- Northern Trust Bank
- Premier Mortgage Lending Group
- Prudential Relocation

Attorneys / Others:

- Abrams, Jennifer
- Akerman LLP
- Alverson, Taylor, Mortenson-Judd Balmer
- Americana Nevada Company
- Anderson, McPharlin & Conners
- Ballard Spahr LLP
- Barney, Anthony
- Barranco & Kircher
- Black & Lobello
- Bourassa Law Group
- Boyce & Gianni
- Bradley Arant Boult Cummings
- Bremer Whyte Brown & O'Meara
- Brooks Hubley
- Cooper Castle
- Delanoy, Schuetz & Mcgaha
- Dickerson Law Group
- Drizin, Lee A
- Ecker Law Group
- Fennemore Craig
- Fine, Fran (Broker)
- Gerrard Cox Larsen
- Goodrich, Jim (Valuation Consulting)
- Hansen, Randon

- Real Valuation Services
- Reichert Workforce Mobility
- Rels Valuation - Wells Fargo Bank
- REO Management Services
- RMS & Associates
- Royal Business Bank
- RPM Mortgage
- Settlement One
- SIRVA Relocation
- Solution Star
- South Pacific Financial
- Stars Valuations Services
- The Home Lending Group
- Trimavin Appraisal Management Co.
- United States Appraisals
- US Bank
- Veteran’s Administration
- Wells Fargo Bank

- Holland & Hart LLP
- Hoskin, Hughes and Pifer
- Jensen, Rob (Broker)
- Jolley Urga Wirth Woodbury & Standish
- Kainen Law Group
- Kelleher & Kelleher
- Kerr, Preston Sterling
- Kolesar & Leatham
- Leavitt, Andrew
- Lee & Russell
- Lee, Hernandez, Kelsey, & Brooks
- Love, Tom (Broker)
- Mazur Brooks
- Menninger, Carol
- Miller & Wright Rawlings, Olsen, Cannon, Gormley & Desruisseaux
- Mullin Hoard Brown
- Shapiro, Florence (Broker)
- Shea & Carlyon
- Wilson Elser Moskowitz Edleman & Diker
- Wolfe & Wyman
- Wright Finlay & Zak
- Woodbury & Standish

(Rev. November 8, 2018)

ATTORNEY WORKLOAD REPORT Current as of 9/27/2018

| Subject Address | Name | Purpose | Attorney or Client | Court Date | Case No. |
|------------------------------------|--|--------------------|------------------------------------|------------|-----------------------|
| FDIC Reviews | FDIC vs LSI Appraisal LLC | Deposition | K&L Gates LLP | 1/8/2014 | SACV11-706 DOC(Anx) |
| 8 Rue Mediterra Drive | RBM Constuction vs Rosenaur | Deposition | Bremer, Whyte, Brown & O'meara | 1/15/2014 | 09-A595366 |
| 2621 Dandelion Street | Puckett vs Bank of Nevada | Court Testimony | Michael Marcellette | 2/13/2014 | A-13-677331-C |
| 3180 Darby Gardens Court | Everflow | Court Testimony | Lionel, Sawyer & Collins | 3/4/2014 | A-11-652597-B |
| 4381 W Flamingo Rd #39301 | Royal Business Bank vs Lin | Court Testimony | Compton Law | 3/26/2014 | A-14-694431 |
| 7229 Mira Vista Street | Anthony Savino | Court Testimony | McDonald Law Offices | 6/12/2014 | A-13-674390-C |
| 1147 Evening Canyon Ave | Ana Thompson | Court Testimony | Brooks Hubley LLP | 9/26/2014 | A-13-17461 |
| 4381 W Flamingo Rd #18321 | Palms Place vs Lue Garlick | Deficiency Hearing | Brownstein Hyatt Farber Schreck | 11/4/2014 | A-14-697506-B |
| 6583 Mermaid Cr. | McGee vs. Citi Mortgage | Deposition | Wolfe & Wyman | 11/24/2014 | 2:12-CV-02025JCM-PAL |
| 3048 Palatine Terrace Ave | Jayna Shreck | Deficiency Hearing | Mazur & Brooks | 12/18/2014 | A-13-687732-C |
| 590 Lairmont Place | Rosenberg vs. Bank of America | Deposition | Kemp Jones | 3/17/2015 | A-13-689113-C |
| 7616 Lillywood Ave | Bank of NV vs. Dryden | Court Testimony | Mazur & Brooks | 3/24/2015 | A-14-710293-C |
| 6024 Rabbit Track St | Bofa c/o Bradley Arant Cummings | Deposition | Accurity Valuation | 6/1/2015 | A-14-698511-C |
| 1354 Manorwood St | Bofa c/o Bradley Arant Cummings | Deposition | Accurity Valuation | 6/1/2015 | A-14-694435-C |
| 10365 Morning Sorrow | Bofa c/o Bradley Arant Cummings | Deposition | Accurity Valuation | 6/2/2015 | A-14-696561-C |
| 8014 Brighton Summit | Bofa c/o Bradley Arant Cummings | Deposition | Accurity Valuation | 6/16/2015 | A-14-698568-C |
| 1521 Hollow Tree Dr | Bofa c/o Bradley Arant Cummings | Deposition | Accurity Valuation | 7/2/2015 | A-14-698102-C |
| 7912 Dappled Light | Bofa c/o Bradley Arant Cummings | Deposition | Accurity Valuation | 7/2/2015 | A-13-684630-C |
| 10125 Somerdale Ct | Bofa c/o Bradley Arant Cummings | Deposition | Accurity Valuation | 8/17/2015 | A-13-686512-C |
| 4962 Perrone Avenue | Bofa c/o Bradley Arant Cummings | Deposition | Accurity Valuation | 8/17/2015 | A-13-680704-C |
| 7400 Brittlethorne Ave | Bofa c/o Bradley Arant Cummings | Deposition | Accurity Valuation | 8/17/2015 | 2:14-cv-02080-RFB-GWF |
| 4525 Dean Martin Dr #3008 | Bofa c/o Bradley Arant Cummings | Deposition | Accurity Valuation | 8/17/2015 | A-14-701585-C |
| 32 Benevolo Dr | Morabito vs. Pardee Homes | Deposition | Koeller, Nebecker, Carlson & Hauck | 9/2/2015 | A-13-688285 |
| 55 Pheasant Ridge Dr | Veronica Chew v PV Hazell | Court Testimony | Kelleher & Kelleher | 10/19/2015 | D-14-506515 |
| 8175 Arville Street #380 | City National vs. Steven Graner | Court Testimony | HDW Attorneys at Law | 3/22/2016 | A-15-725190-C |
| 9172 W Viking Rd | Gary L Stevens vs. Sharen Stevens | Court Testimony | Kelleher & Kelleher | 3/23/2016 | D-14-504559-D |
| 145 E Harmon Ave #3619 & #3621 | Banc of California v. Melbrod | Court Testimony | LeClairRyan | 3/30/2016 | A-15-719718-C |
| 6222 Heather Creek Place | SFR v. Green Tree, et al | Court Testimony | Akerman LLP | 5/16/2016 | A-14-695002-C |
| 6250 W Flamingo Road #15 | Poshbaby LLC v. Elsinore III LLC | Court Testimony | Snell & Wilmer LLP | 5/17/2016 | A-14-699435-C |
| 6809 Cobre Azul Ave #201 | RJRN, LLC v. Nationstar Mortgage, LLC, BoA | Deposition | Akerman LLP | 7/26/2016 | A-14-706671-C |
| 4962 Perrone Avenue | SFR Investments v. Diltech Financial | Court Testimony | Snell & Wilmer LLP | 7/28/2016 | A-13-680704-C |
| 3952 Stormy Weather Lane | Southern Capital Preservation v. GSAA Home Equity Trs. | Court Testimony | Akerman LLP | 9/29/2016 | A-14-698864-C |
| 7604 Brisa Del Mar Avenue | Christiana Trust v. SFR Investments | Deposition | Akerman LLP | 2/1/2017 | 2:16-cv-01226-JCM-GWF |
| 1450 San Juan Hills Drive #203 | Kenneth Renfro v. Bank of New York Mellon, et al | Court Testimony | Akerman LLP | 2/14/2017 | A-14-699490-C |
| 1637 Bent Arrow Drive | Salicoy Bay LLC Series 1637 Bent Arrow v. Bank of New York Mellon | Court Testimony | Wright, Finlay & Zak | 2/22/2017 | A-14-704418-C |
| 821 Peachy Canyon Circle #204 | Platinum Realty & Holdings v. Nationstar et al. Heather Dowers | Court Testimony | Akerman LLP | 2/28/2017 | A-14-693956-C |
| 5246 Ferrell Street | LN Management LLC v. Carmen and Jesus Calleros, BoFA | Court Testimony | Akerman LLP | 3/27/2017 | A-13-691319-C |
| 200 Canyon Drive | Josephine Carol Diamant vs. Zafirir Yahalom Diamant | Court Testimony | Abrams & Mayo | 4/7/2017 | D-15-521839-D |
| 6024 Rabbit Track Street | SFR Investments Pool Vs. Bank of America | Court Testimony | Akerman LLP | 5/5/2017 | A-14-698511-C |
| 3673 Belvedere Park Lane | SFR v. Nationstar (David Vik) | Court Testimony | Akerman LLP | 6/21/2017 | A-13-676349-C |
| 5308 La Quinta Hills Street | Paradise Harbor Place Trust v. Diltech Financial | Court Testimony | Brooks Hubley LLP | 8/15/2017 | A-13-680189-C |
| 840 Cline Cellars Avenue | SFR v. Nationstar | Deposition | Wright, Finlay & Zak | 8/21/2017 | A-15-718988-C |
| 1365 Via Savona Drive | Gabriel v. Wells Fargo Bank | Court Testimony | Gerrard & Cox | 10/2/2017 | A-15-718965-C |
| 6643 Lilac Sky Avenue | SFR v. Anchetta | Court Testimony | Akerman LLP | 10/3/2017 | A-13-674889-C |
| 256 Serenity Ridge | Bank of America v. Salicoy | Court Testimony | Wright, Finlay & Zak | 10/20/2017 | A-15-718657-C |
| 193 Oella Ridge Court | Oella Ridge Trust v. Silver State Schools Credit Union | Court Testimony | Kolesar & Leatham | 11/9/2017 | A-12-673389-C |
| 5330 E Charleston Blvd #52 | Lopez v. US Bank National Association | Court Testimony | Wright, Finlay & Zak | 11/9/2017 | A-14-702574-C |
| 3428 Lacebark Pine St | Bank of New York Mellon v. SFR Investments Pool 1 LLC | Court Testimony | Akerman LLP | 11/27/2017 | A-15-727274-C |
| 336 River Glider Avenue | River Glider Ave Trust v. Durcan | Court Testimony | Akerman LLP | 11/30/2017 | A-13-680532-C |
| 1931 Davina Street | LaFrance v. Cline | Court Testimony | Kainen Law Group | 12/1/2017 | D-14-499144-D |
| 30 Strada Di Villaggio Street #534 | LN Management LLC v. Federal National Mortgage | Deposition | Wright, Finlay & Zak | 12/6/2017 | A-13-682355-C |
| 5512 Meridian Rain Street | Johnny Watts v. Nationstar Mortgage | Deposition | Wright, Finlay & Zak | 12/6/2017 | A-14-699086-C |
| 2634 Cimarron Cove Court | Nationstar Mortgage v. SFR Investments Pool 1, LLC | Deposition | Wright, Finlay & Zak | 12/6/2017 | A-16-734861-C |
| 3059 Red Arrow Drive | Irina Ansell v. Doug Ansell | Court Testimony | Willick Law Group | 12/13/2017 | D-15-521960-D |
| 2827 Nikki Terrace | Irina Ansell v. Doug Ansell | Court Testimony | Willick Law Group | 12/13/2017 | D-15-521960-D |
| 669 Dragon Peak Drive | Irina Ansell v. Doug Ansell | Court Testimony | Willick Law Group | 12/13/2017 | D-15-521960-D |
| 2240 Village Walk Drive #2213 | Irina Ansell v. Doug Ansell | Court Testimony | Willick Law Group | 12/13/2017 | D-15-521960-D |
| 2220 Village Walk Drive #3213 | Irina Ansell v. Doug Ansell | Court Testimony | Willick Law Group | 12/13/2017 | D-15-521960-D |
| 10125 Somerdale Court | Alessi & Koenig, LLC v. Bank of New York Mellon | Court Testimony | Akerman LLP | 12/19/2017 | A-13-686512-C |
| 1533 Moss View Court | Javalina Options Ltd. v. Pennymac Corp. | Court Testimony | Akerman LLP | 1/10/2018 | A-15-723977-C |
| 86 Magical Mystery Lane | KE Aloha Holdings LLC v. Lum Lung | Deposition | Wright, Finlay & Zak | 1/16/2018 | A-14-694370-C |
| 6041 Shining Light Avenue | Bank of New York Mellon vs. Madeline De Vera | Court Testimony | Akerman LLP | 3/13/2018 | A-13-682897-C |
| 4575 Dean Martin Drive #1500 | Christiana Trust v. SFR Investments | Court Testimony | Wright, Finlay & Zak | 3/20/2018 | A-15-726031-C |
| 6120 Malisse Avenue | HSBC Bank vs. Daisy Trust | Deposition | Gordon Rees Scully Mansukhani, LLP | 3/23/2018 | A-13-681941-C |
| 2651 San Lago Court | RJRN Holdings vs. James Peterson | Deposition | Wright, Finlay & Zak | 5/15/2018 | A-14-699643-C |
| 8346 Hunter Brook Street | SFR Investments vs. Deutsche Bank | Deposition | Wright, Finlay & Zak | 5/15/2018 | A-13-683597-C |
| 2812 Whisper Lane | US Bank National Association v. SFR Investments | Deposition | Wright, Finlay & Zak | 5/15/2018 | 2:16-cv-00576-GMN-NJK |
| 2811 Sodomoro Lane | Nevada Association Services v. Gabriel Magallanes | Deposition | Gordon Rees Scully Mansukhani, LLP | 5/22/2018 | A-14-696888-C |
| 5061 River Glen Drive #69 | Gifford W Cochran Revocable Living Trust v. US Bank National Association | Court Testimony | Wright, Finlay & Zak | 6/13/2018 | A-13-689486-C |
| 3950 Edgemoor Way | Deutsche Bank National Trust Company v. SFR Investments Pool 1, LLC | Court Testimony | Akerman LLP | 6/18/2018 | A-15-728840-C |
| 2288 Surrey Meadows Ave | Las Vegas Rental and Repair LLC Series 66 v. Darlene Castello | Court Testimony | Wright, Finlay & Zak | 9/27/2018 | A-15-728753-C |

Expert Disclosure Requirements
R. Scott Dugan, SRA
R. Scott Dugan Appraisal Co, Inc.
Nevada Certified General Appraiser A.0000166-CG
702-876-2000

Compensation for Assignment and Court Testimony:

R. Scott Dugan, SRA, charged a total of \$750 to prepare an appraisal report for the subject matter of this assignment.

R. Scott Dugan, SRA, is charging \$500 per hour for non-testimony and testimony time. Non-testimony time is billed for supplemental work and research, consultation, meetings, field inspections, travel time, analysis, deposition, and court preparation.

Publications:

None

Summary of Recent Testimony in Court and Depositions:

Court Testimony: See attached sheet.

Deposition Testimony: See attached sheet.

IN THE SUPREME COURT OF THE STATE OF NEVADA

| | | |
|-------------------------------|---|-----------------------------|
| LAS VEGAS DEVELOPMENT |) | |
| GROUP, LLC, A NEVADA LIMITED |) | |
| LIABILITY COMPANY, |) | |
| |) | Supreme Court No. 81961 |
| Appellant, |) | |
| vs. |) | Consolidated with No. 82266 |
| |) | |
| THE BANK OF NEW YORK |) | |
| MELLON, F/K/A THE BANK OF NEW |) | |
| YORK, AS TRUSTEE FOR THE |) | |
| CERTIFICATEHOLDERS OF CWABS, |) | |
| INC., ASSET-BACKED |) | |
| CERTIFICATES, SERIES 2006-7, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

APPEAL

From the Eighth Judicial District Court,
The Honorable Mark R. Denton, District Court Judge
District Court Case No. A-17-756215-C

JOINT APPENDIX - VOLUME 3

Roger P. Croteau, Esq.
Nevada Bar No. 4958
Timothy E. Rhoda, Esq.
Nevada Bar No. 7878
ROGER P. CROTEAU AND ASSOCIATES, LTD
2810 West Charleston Boulevard, Suite 75
Las Vegas, Nevada 89102
Telephone: (702) 254-7775
Facsimile: (702) 228-7719
Attorneys for Plaintiff/Appellant Las Vegas Development Group, LLC

INDEX OF APPENDIX - CHRONOLOGICAL

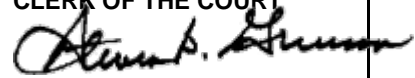
| DOCUMENT | PAGE |
|--|-------------|
| VOLUME 1 | |
| First Amended Complaint | 0001 - 0010 |
| Acceptance of Service | 0011 - 0012 |
| Answer to Complaint and Counterclaim | 0013 - 0038 |
| LVDG Motion to Dismiss Counterclaim and Motion for Summary Judgment | 0039 - 0063 |
| Opposition to Motion to Dismiss and Motion for Summary Judgment | 0064 - 0072 |
| Reply to Opposition to Motion to Dismiss and Motion for Summary Judgment | 0073 - 0081 |
| Transcript of Hearing 8-10-17 | 0082 - 0101 |
| VOLUME 2 | |
| BONY Motion for Summary Judgment | 0102 - 0231 |
| VOLUME 3 | |
| LVDG Opposition to Motion for Summary Judgment | 0232 - 0334 |
| Reply to Opposition to Motion for Summary Judgment | 0335 - 0367 |
| Order Denying Motion for Summary Judgment | 0368 - 0369 |
| Notice of Entry of Order Denying Motion for Summary Judgment | 0370 - 0373 |
| Answer to Counterclaim | 0374 - 0381 |
| Findings of Fact, Conclusions of Law and Judgment | 0382 - 0399 |
| VOLUME 4 | |
| BONY Memorandum of Costs and Disbursements | 0400 - 0475 |
| Notice of Entry of FFCL | 0476 - 0497 |
| Voluntary Dismissal of Hernandez | 0498 - 0500 |
| Notice of Appeal (Trial Court Judgment) | 0501 - 0503 |
| BONY Motion for Attorneys' Fees and Costs | 0504 - 0610 |
| Opposition to Motion for Attorneys' Fees and Costs | 0611 - 0621 |
| Reply in Support of Motion for Attorneys' Fees and Costs | 0622 - 0626 |

[illegible]

INDEX OF APPENDIX - ALPHABETICAL

| DOCUMENT | VOLUME : PAGE |
|--|----------------------|
| Acceptance of Service | 1:0011 |
| Answer to Complaint and Counterclaim | 1:0013 |
| Answer to Counterclaim | 3:0374 |
| Bench Trial Transcript - Day 1 | 5:0648 |
| Bench Trial Transcript - Day 2 | 5:0741 |
| BONY Memorandum of Costs and Disbursements | 4:0400 |
| BONY Motion for Attorneys' Fees and Costs | 4:0504 |
| BONY Motion for Summary Judgment | 2:0102 |
| Decision | 4:0627 |
| Findings of Fact, Conclusions of Law and Judgment | 3:0382 |
| First Amended Complaint | 1:0001 |
| LVDG Motion to Dismiss Counterclaim and Motion for Summary Judgment | 1:0039 |
| LVDG Opposition to Motion for Summary Judgment | 3:0232 |
| Notice of Appeal (Order Granting Attorney' Fees and Costs) | 4:0645 |
| Notice of Appeal (Trial Court Judgment) | 4:0501 |
| Notice of Entry of FFCL | 4:0476 |
| Notice of Entry of Order Denying Motion for Summary Judgment | 3:0370 |
| Notice of Entry of Order Granting Motion for Attorneys' Fees and Costs in Part | 4:0636 |
| Opposition to Motion for Attorneys' Fees and Costs | 4:0611 |
| Opposition to Motion to Dismiss and Motion for Summary Judgment | 1:0064 |
| Order Denying Motion for Summary Judgment | 3:0368 |
| Order Granting Motion for Attorneys' Fees and Costs in Part | 4:0631 |
| Reply in Support of Motion for Attorneys' Fees and Costs | 4:0622 |
| Reply to Opposition to Motion for Summary Judgment | 3:0335 |

[illegible]



OMSJ
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
ROGER P. CROTEAU & ASSOCIATES, LTD.
9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
(702) 254-7775
(702) 228-7719 (facsimile)
croteaulaw@croteaulaw.com
Attorney for Plaintiff
LAS VEGAS DEVELOPMENT GROUP, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)

Plaintiff,)

vs.)

DANIA V. HERNANDEZ, an individual; THE)
BANK OF NEW YORK MELLON f/k/a THE)
BANK OF NEW YORK, AS TRUSTEE FOR)
THE CERTIFICATEHOLDERS OF CWABS,)
INC., ASSET-BACKED CERTIFICATES,)
SERIES 2006-7, a national banking association;)
DOE individuals I through XX; and ROE)
CORPORATIONS I through XX,)

Defendants.)

THE BANK OF NEW YORK MELLON f/k/a)
THE BANK OF NEW YORK, AS TRUSTEE)
FOR THE CERTIFICATEHOLDERS OF)
CWABS, INC., ASSET-BACKED)
CERTIFICATES, SERIES 2006-7,)

Counterclaimant,)

vs.)

LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)

Counterdefendant.)

Case No. A-17-756215-C
Dept. No. XIII

**OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

Date of Hearing: April 18, 2019
Time of Hearing: 9:00 a.m.

1 **OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

2 COMES NOW, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, by and through
3 its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby presents its
4 Opposition to Defendant, THE BANK OF NEW YORK MELLON f/k/a THE BANK OF NEW
5 YORK's, Motion for Summary Judgment. This Motion is made and based upon the attached
6 memorandum of points and authorities, all pleadings, papers and documents on file herein, and
7 any oral argument that the Court may entertain at the hearing of this matter.

8 DATED this 1st day of April, 2019.

9 ROGER P. CROTEAU & ASSOCIATES, LTD.

10
11 /s/ Timothy E. Rhoda
12 ROGER P. CROTEAU, ESQ.
13 Nevada Bar No. 4958
14 TIMOTHY E. RHODA, ESQ.
15 Nevada Bar No. 7878
16 9120 West Post Road, Suite 100
17 Las Vegas, Nevada 89148
18 (702) 254-7775
19 *Attorney for Plaintiff*
20 **LAS VEGAS DEVELOPMENT GROUP, LLC**

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **I.**

23 **INTRODUCTION**

24 For the past several years, the purchasers of real properties at homeowners association
25 lien foreclosure sales have been embroiled in litigation with purportedly secured deed of trust
26 holders such as the Defendant herein, THE BANK OF NEW YORK MELLON f/k/a THE
27 BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS,
28 INC., ASSET-BACKED CERTIFICATES, SERIES 2006-7 (*"BONY" or the "Bank"*) regarding
the force and effect of NRS §116.3116, which provides an HOA with a superpriority lien on an
individual homeowner's property for up to nine months of unpaid HOA dues. In a nutshell, the
purchasers of these properties have always asserted that HOA lien foreclosure sales served to
extinguish all junior liens, including a first position deed of trust, pursuant to black letter lien

1 law. Deed of trust holders such as BONY incorrectly asserted that their security interests
2 survived the HOA lien foreclosure sales.

3 For a lengthy period of time, the conflicting positions of the purchasers and the purported
4 secured mortgage holders were the subject of significant dispute. However, on September 18,
5 2014, the Nevada Supreme Court, in the matter of *SFR Investments Pool I, LLC v. U.S. Bank,*
6 *N.A.*, 130 Nev. ___, 334 P.3d 408, 2014 WL 4656471 (Adv. Op. No. 75, Sept. 18, 2014),
7 definitively determined that the foreclosure of a HOA's superpriority lien does indeed extinguish
8 a first deed of trust, stating as follows:

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

11 “The SFR decision made winners out of the investors who purchased foreclosure properties in
12 HOA sales and losers of the lenders who gambled on the opposite result, elected not to satisfy the
13 HOA liens to prevent foreclosure, and thus saw their interests wiped out by sales that often
14 yielded a small fraction of the loan balance.” *Freedom Mortg. Corp. v. Las Vegas Dev. Grp.,*
15 *LLC*, 2015 U.S. Dist. LEXIS 66249, 1-2 (D. Nev. May 19, 2015) (Dorsey, J.). Unfortunately, the
16 Nevada Supreme Court's decision did little to stem the litigation associated with N.R.S. Chapter
17 116. On the contrary, many deed of trust holders, including BONY, have simply buried their
18 heads in the sand, refusing to acknowledge the Nevada Supreme Court's binding precedent.

19 Pursuant to its decision in *SFR Investments*, the Nevada Supreme Court resolved the
20 divergent opinions that previously existed in the state and federal courts of the State of Nevada
21 regarding the force, effect and interpretation of NRS §116.3116 *et seq.* In doing so, the Nevada
22 Supreme Court clarified that the statute provides a homeowners association with a true
23 superpriority lien over real property that can and does extinguish a first deed of trust when non-
24 judicially foreclosed. *Id.* The Nevada Supreme Court also recognized that a foreclosure deed
25 “reciting compliance with notice provisions of NRS 116.31162 through NRS 116.31168 ‘is
26 conclusive’ as to the recitals ‘against the unit’s former owner, his or her heirs and assigns and all
27 other persons.’” *See id.* at *3 (citing NRS 116.3116.31166(2)). Moreover, under Nevada law, the
28

1 HOA foreclosure sale and the resulting foreclosure deed are both presumed valid. NRS
2 47.250(16)-(18) (stating that disputable presumptions exist “that the law has been obeyed”; “that
3 a trustee or other person, whose duty it was to convey real property to a particular person, has
4 actually conveyed to that person, when such presumption is necessary to perfect the title of such
5 person or a successor in interest”; “that private transactions have been fair and regular”; and “that
6 the ordinary course of business has been followed.”).

7 Pursuant to NRS Chapter 116, as interpreted by the Nevada Supreme Court in the matter
8 of *SFR Investments*, the HOA Foreclosure Sale served to extinguish the then-existing First Deed
9 of Trust pursuant to Nevada law. By way of its Counterclaim, BONY pleads for a different
10 result. However, to the extent that its claims could conceivably have any merit whatsoever,
11 BONY sat on its rights for well over six years. As a result, its claims are time-barred and the
12 instant action must be dismissed.

13 II.

14 STATEMENT OF UNDISPUTED FACTS

15 At issue herein is real property commonly known as 1524 Highfield Court, North Las
16 Vegas, Nevada 89032, Assessor Parcel No. 139-09-410-021 (*the “Property”*). BONY claims to
17 own a deed of trust recorded against the Property in the Official Records of the Clark County
18 Recorder as Instrument No. 20060419-0000609 (*“First Deed of Trust”*). Counterclaim, ¶10-11.
19 The Property was the subject of a homeowners association lien foreclosure sale dated March 2,
20 2011, conducted by Alessi & Koenig, LLC (*“Alessi” or “HOA Trustee”*) on behalf of Hidden
21 Canyon Owners Association (*“HOA”*), at which HOA purchased the Property. Counterclaim,
22 ¶21. On March 3, 2011, a Trustee’s Deed Upon Sale (*“HOA Foreclosure Deed”*) was recorded,
23 vesting title to the Property in the name of HOA. *Id.* Pursuant to Nevada law as interpreted by
24 the Nevada Supreme Court in the matter of *SFR Investments*, the HOA Foreclosure Sale served
25 to extinguish all then-existing subordinate security interests in the Property.

26 On or about March 30, 2011, HOA transferred and sold the Property to the Plaintiff, Las
27 Vegas Development Group, LLC. Counterclaim, ¶22. On March 31, 2011, a Quitclaim Deed
28 was recorded in the Official Records of the Clark County Recorder as Instrument No. 20110331-

1 0003138, transferring all right, title and interest in the Property from HOA to Plaintiff. Said
2 Quitclaim Deed was re-recorded on April 26, 2012, as Instrument No. 20120426-0000422, and
3 on January 28, 2013, as Instrument No. 20130128-0002187. *Id.* The Court may take judicial
4 notice of the recorded documents attached hereto because they are public and “[c]apable of
5 accurate and ready determination by resort to sources whose accuracy cannot reasonably be
6 questioned...” NRS 47.130 (2)(b); *see also Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th
7 Cir. 2001) (“court may take judicial notice of matters of public record.”).

8 On or about April 10, 2006, Dania V. Hernandez (“*Former Owner*”) obtained a mortgage
9 loan secured by the Property. Complaint, ¶13; Counterclaim, ¶10. Thereafter, a deed of trust
10 associated with said mortgage loan was recorded against the Property in the Official Records of
11 the Clark County Recorder as Instrument No. 10060419-0000609 (“*First Deed of Trust*”).
12 Complaint, ¶14; Counterclaim, ¶10. A copy of the First Deed of Trust is attached hereto and
13 incorporated herein by reference as Exhibit 1. BONY claims to be the current owner of the First
14 Deed of Trust. Counterclaim, ¶11.

15 The First Deed of Trust – which was obviously drafted by the Bank or its predecessor –
16 specifically required that the Former Owner pay all assessments and other charges related to the
17 Property, stating as follows:

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

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

...

1 **9. Protection of Lender's Interest in the Property and Rights Under this**
2 **Security Instrument.** If (a) Borrower fails to perform the covenants and
3 agreements contained in this Security Instrument, (b) there is a legal proceedings
4 that might significantly affect Lender's interest in the Property and/or rights under
5 this Security Instrument (such as a proceeding in bankruptcy, probate, for
6 condemnation or forfeiture, **for enforcement of a lien which may attain priority**
7 **over this Security Instrument** or to enforce laws or regulations, or (c) Borrower
8 has abandoned the Property, then **Lender may do and pay for whatever is**
9 **reasonable or appropriate to protect Lender's interest in the Property and**
10 **rights under this Security Instrument**, including protecting and/or assessing the
11 value of the Property, and securing and/or repairing the Property. **Lender's**
12 **actions can include, but are not limited to: (a) paying any sums secured by a**
13 **lien which has priority over this Security Instrument; (b) appearing in court;**
14 **and (c) paying reasonable attorneys' fees to protect its interest in the**
15 **Property and/or rights under this Security Instrument**, including its secured
16 position in a bankruptcy proceeding. Securing the Property includes, but is not
17 limited to, entering the Property to make repairs, change locks, replace or board
18 up doors and windows, drain water from pipes, eliminate building or other code
19 violations or dangerous conditions, and have utilities turned on or off. Although
20 Lender may take action under this Section 9, Lender does not have to do so and is
21 not under any duty or obligation to do so. It is agreed that Lender incurs no
22 liability for not taking any or all actions authorized under this Section 9.

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

28 See Exhibit 1 (Emphasis added). Moreover, the First Deed of Trust included a Planned Unit
Development Rider ("*PUD Rider*"), again specifically recognizing the obligation of the Former
Owner to pay assessments to the HOA and the ability and right of the lender to pay the
assessments should the Former Owner default and fail to do so. See Exhibit 1. The PUD Rider
provided 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. Borrower shall promptly pay,
when due, all dues and assessments imposed pursuant to the Constituent
Documents.

...

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.

1 See Exhibit 1.

2 It is readily apparent based upon the explicit terms of the First Deed of Trust and PUD
3 Rider that the Bank or its predecessor was fully aware (1) of the existence of HOA; (2) of the fact
4 that assessments must be paid to HOA; and (3) that a lien such as the HOA Lien could obtain
5 priority over the First Deed of Trust. Moreover, it is clear that (1) the Bank provided itself with
6 various remedies in the event that such a lien came into existence, including the right to satisfy
7 the lien; (2) the right to retain an attorney; and (3) in the event that the Bank paid any amounts to
8 protect its interest or satisfy a lien that possessed priority over its security interest, the Bank was
9 entitled to add any and all amounts that it paid to the outstanding balance owed by the Former
10 Owner and the repayment of such sums would have been secured by the First Deed of Trust.

11 As recognized by the First Deed of Trust and PUD Rider, by virtue of his or her
12 ownership of the Property, Former Owner was a member of the HOA and accordingly was
13 obligated to pay HOA assessments pursuant to the terms of the CC&Rs. At some point in time
14 during his or her ownership of the Property, Former Owner failed to pay these assessments,
15 causing HOA to initiate foreclosure proceedings. Complaint, ¶20; Counterclaim, ¶12. To that
16 end, the HOA caused a Notice of Delinquent Assessment Lien to be recorded on June 3, 2009.
17 Complaint, ¶21; Counterclaim, ¶12. See also Exhibit 2, attached hereto and incorporated herein
18 by reference. Thereafter, HOA caused a Notice of Default and Election to Sell to be recorded on
19 September 2, 2009. Complaint, ¶22; Counterclaim, ¶13. See also Exhibit 3, attached hereto and
20 incorporated herein by reference.

21 The Former Owner continued to fail to pay his or her assessments. As a result,
22 on August 9, 2010, HOA caused a Notice of Sale to be recorded, scheduling a foreclosure sale
23 related to the HOA Lien. Complaint, ¶24; Counterclaim, ¶14. See also Exhibit 4, attached
24 hereto and incorporated herein by reference. On or about March 2, 2011, HOA caused the HOA
25 Foreclosure Sale to be conducted pursuant its Notice of Delinquent Assessment Lien; the Notice
26 of Default and Election to Sell; and Notice of Sale. Complaint, ¶26; Counterclaim, ¶21. HOA
27 purchased the Property at the HOA Foreclosure Sale. Complaint, ¶27; Counterclaim, ¶21. The
28 HOA Foreclosure Deed was thereafter recorded on March 3, 2011, vesting title to the Property in

1 the name of HOA. Complaint, ¶28; Counterclaim, ¶21. See also Exhibit 5, attached hereto and
2 incorporated herein by reference. On or about March 30, 2011, HOA sold the Property to
3 Plaintiff, Las Vegas Development Group, LLC (“LVDG”). Complaint, ¶51-52; Counterclaim,
4 ¶22. See also Exhibit 6, attached hereto and incorporated herein by reference.

5 III.

6 LEGAL ARGUMENT

7 1. STATEMENT OF THE LAW

8 Pursuant to N.R.C.P. 56, two substantive requirements must be met before a Court may
9 grant a motion for summary judgment: (1) there must be no genuine issue as to any material fact;
10 and, (2) the moving party must be entitled to judgment as a matter of law. *Fyssakis v. Knight*
11 *Equipment Corp.*, 108 Nev. 212, 826 P.2d 570 (1992). Summary judgment is appropriate under
12 NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits,
13 if any, that are properly before the court demonstrate that no genuine issue of material fact exists,
14 and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway*, 121 Nev. Adv.
15 Op. 73, 121 P.3d 1026 (October, 2005) citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. at
16 713, 57 P.3d at 87 (2003). In deciding whether these requirements have been met, the Court
17 must first determine, in the light most favorable to the non-moving party “whether issues of
18 material fact exist, thus precluding judgment by summary proceeding.” *National Union Fire Ins.*
19 *Co. of Pittsburgh v. Pratt & Whitney Canada, Inc.*, 107 Nev. 535, 815 P.2d 601, 602 (1991).
20 The Supreme Court has indicated that Summary Judgment is a drastic remedy and that the trial
21 judges should exercise great care in granting such motions. *Pine v. Leavitt*, 84 Nev. 507, 445
22 P.2d 942 (1968); *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 905 P.2d 168 (1995).

23 In this case, BONY is entitled to no relief under any set of circumstances because its
24 claims are time-barred. Because BONY possesses no means to contest the force and effect of
25 the HOA Foreclosure Sale due to its extraordinary delay, summary judgment must be entered in
26 favor of the Plaintiff, confirming that it is the rightful title owner of the Property free and clear of
27 any claimed interest of BONY.

1 **2. THE DEFENDANT’S COUNTERCLAIM IS BARRED BY THE STATUTE OF**
2 **LIMITATIONS**

3 BONY’s Counterclaim, like the Plaintiff’s Complaint, is composed of a single cause of
4 action for Quiet Title/Declaratory Relief. Pursuant to NRS 40.010, a quiet title action “may be
5 brought by any person against another who claims an estate or interest in real property, adverse to
6 the person bringing the action, for the purpose of determining such adverse claim.” In a quiet
7 title case, a presumption exists in favor of the record title holder. *Breliant v. Preferred Equities*
8 *Corp.*, 112 Nev. 663, 669 (1996). Thus, a presumption exists in favor of the Plaintiff herein.

9 As discussed by Chief Judge Gloria Navarro of the United States District Court for the
10 District of Nevada, the Nevada Supreme Court has not determined within what period of time a
11 bank such as BONY must bring claims to contest a homeowners association lien foreclosure sale:

12 The Nevada Supreme Court has yet to weigh in on which limitations period
13 applies to a lienholder's quiet title claim. Consequently, there is an intra-District
14 split as to whether lienholders have four or five years to bring quiet title actions.
15 To the extent there is any ambiguity as to NRS 11.070, the Court finds application
16 of that statute's longer limitations period aligns with Ninth Circuit's guidance on
17 conflicting statutes of limitations. *See Fed. Deposit Ins. Corp. v. Former Officers*
 & Directors of Metro. Bank, 884 F.2d 1304, 1307 (9th Cir. 1989) (“[W]hen there
 is a 'substantial question' which of two conflicting statutes of limitations to apply,
 the court should apply the longer.”) (quoting *Guam Scottish Rite Bodies v. Flores*,
 486 F.2d 748, 750 (9th Cir. 1973) (applying longer statute of limitations when a
 claim had features of both an action in trespass and an action in ejectment)).

18 *Bank of Am., N.A. v. Woodcrest Homeowners Ass’n*, 2019 U.S. Dist. LEXIS 54950, *11. As
19 Judge Navarro states, the applicable time period is either 4 years or 5 years. In this particular
20 case, it matters not whether a 4 or 5 year statute of limitations is applied because the Bank failed
21 to take action **for over 6 years**. As a result of its extraordinary delay, the Bank’s claims became
22 time-barred as a matter of law. This includes a case such as this where the Bank’s predecessor
23 purportedly attempted to satisfy the superpriority portion of the HOA Lien.

24 It is well settled in Nevada that a cause of action accrues when “the aggrieved party
25 knew, or reasonably should have known, of the facts giving rise to the damage or injury.”
26 *Nevada State Bank v. Jamison Partnership*, 106 Nev. 792, 800, 801 P.2d 1377, 1382 (1990). As
27 noted by Judge Jones of the United States District Court:
28

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

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

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

20 *U.S. Bank Nat’l Ass’n v. Woodland Vill.*, 2016 U.S. Dist. LEXIS 168460, at *6-8 (D. Nev. Dec. 6,
21 2016).

22 Here, the face of Defendant’s Counterclaim proves that the HOA Foreclosure Sale took
23 place on March 2, 2011, and that the HOA Foreclosure Deed was recorded on March 3, 2011.
24 Counterclaim, ¶21. As Judge Jones noted, the statutes of limitations applicable to Plaintiff’s
25 claims began to run, at the latest, on the date of recordation of the foreclosure deed. *U.S. Bank*
26 *Nat’l Ass’n v. Woodland Vill.*, 2016 U.S. Dist. LEXIS 168460, at *8. Thus, assuming for the sake
27 or argument that 5-year statute is applicable, it commenced running no later than March 3, 2011,
28

1 and BONY was required to file any claims contesting the force and effect of the HOA
2 Foreclosure Sale no later than March 4, 2016.

3 It is undisputed that neither BONY nor any other party brought any claims contesting the
4 force and effect of the HOA Foreclosure Sale until June 15, 2017 – well over full six years after
5 the HOA Foreclosure Sale took place and the HOA Foreclosure Deed was recorded. Under such
6 circumstances, the Defendant’s claim for Quiet Title/Declaratory Relief is barred by the statute of
7 limitations no matter what period of limitations is applied and must be dismissed.

8 The United States District Court for the District of Nevada has very recently addressed
9 the statute of limitations under circumstances substantially identical to this matter in *Bank of N.Y.*
10 *Mellon v. SFR Invs. Pool 1*, 2019 U.S. Dist. LEXIS 50030. In that case, Judge Boulware
11 analyzed substantially identical facts, including the rejection of a check that was actually sent to
12 the HOA’s agent by Miles Bauer Bergstrom & Winters, LLP (“*Miles Bauer*”) on behalf Bank of
13 America, N.A. (“*BANA*”), and determined that all of the bank’s claims were barred by the
14 applicable statute of limitations. In coming to this conclusion, Judge Boulware rejected all of the
15 same arguments raised by the Bank in response to Plaintiff’s prior Motion to Dismiss
16 Counterclaim and for Summary Judgment in this case. A copy of this decision is attached hereto
17 and incorporated herein by reference as Exhibit 7 for the Court’s ease of reference. This Court
18 should rule in an identical manner in this case and find that all of the Bank’s claims are time-
19 barred. Assuming for the sake or argument that the Court finds that the Bank’s claims are not
20 time-barred, LVDG still prevails.

21 **3. THE HOA FORECLOSURE SALE PRESUMPTIVELY EXTINGUISHED THE**
22 **FIRST DEED OF TRUST AS A MATTER OF LAW**

23 For the Plaintiff to succeed on its quiet title action, it must prove that its claim to the
24 property is superior to all others. *Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669 (1996).
25 (“In a quiet title action, the burden of proof rests with the plaintiff to prove good title in
26 himself.”). However, in a quiet title case, a presumption exists in favor of the record title holder.
27 *Id.* Thus, a presumption exists herein in favor of LVDG. In addition to the presumption that
28

1 exists in favor of the record title holder, various other statutory presumptions also exist in favor
2 of LVDG.

3 Pursuant to *SFR Investments*, the Nevada Supreme Court has determined that the non-
4 judicial foreclosure of an HOA lien extinguishes a first deed of trust. Pursuant to N.R.S.
5 116.31166(1), the recitals made in the HOA Foreclosure Deed are conclusive proof of the
6 matters recited, e.g., that the process complied with the applicable law for foreclosure of HOA
7 liens. Specifically, N.R.S. §116.31166(1) states as follows:

- 8 1. The recitals in a deed made pursuant to NRS 116.31164 of:
9 (a) Default, the mailing of the notice of delinquent assessment, and the recording
10 of the notice of default and election to sell;
11 (b) The elapsing of the 90 days; and
12 (c) The giving of notice of sale,
13 are conclusive proof of the matters recited.

14 The conclusive recitals concern default, notice, and publication of the [notice of sale], all
15 statutory prerequisites to a valid HOA lien foreclosure sale as stated in NRS 116.31162 through
16 NRS 116.31164, the sections that immediately precede and give context to NRS 116.31166.”
17 *Shadow Wood Homeowners Assoc., Inc. v. N.Y. Cmty. Bancorp, Inc.*, 366 P.3d 1105, 1110 (Nev.
18 2016).

19 Aside from the conclusive recitals of the HOA Foreclosure Deed, Nevada law provides
20 that the HOA Foreclosure Sale and the resulting HOA Foreclosure Deed are both presumed
21 valid. N.R.S. 47.250(16)-(18) (stating that there are disputable presumptions “that the law has
22 been obeyed”; “that a trustee or other person, whose duty it was to convey real property to a
23 particular person, has actually conveyed to that person, when such presumption is necessary to
24 perfect the title of such person or a successor in interest”; “that private transactions have been
25 fair and regular”; and “that the ordinary course of business has been followed.”). A presumption
26 not only fixes the burden of going forward with evidence, but it also shifts the burden of proof.
27 *Yeager v. Harrah’s Club, Inc.*, 111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995) (citing *Vancheri*
28 *v. GNLV Corp.*, 105 Nev. 417, 421, 777 P.2d 366, 368 (1989).) In order to overcome these
presumptions, the party against whom they are directed bears the burden of proving that the
nonexistence of the presumed fact is more probable than its existence. *Id.* (citing N.R.S.

1 47.180.).

2 In this case, the HOA Foreclosure Deed recites the fact that the HOA Foreclosure Sale
3 complied with all requirements of law. See Exhibit 5. Moreover, the HOA Foreclosure Deed
4 stated on its face that the “amount of unpaid debt together with costs” was \$4,310.82 at the time
5 of the HOA Foreclosure Sale. *Id.* (Emphasis added). NRS 47.240(6) provides that conclusive
6 presumptions include “[a]ny other presumption which, by statute, is expressly made conclusive.”
7 Because NRS 116.31166 contains exactly such an expressly conclusive presumption, the recitals
8 in the HOA Foreclosure Deed are “conclusive proof” of the default of the Former Owner and that
9 the HOA complied with all notice and mailing requirements related to the HOA Foreclosure Sale
10 set forth in NRS 116.31162 through 116.31168. It naturally follows that the First Deed of Trust
11 was extinguished at the time of the HOA Foreclosure Sale and the Bank thereafter possessed no
12 security interest in the Property.

13 The conclusive presumptions contained in NRS 116.31166 are consistent with the
14 common law presumption that “[a] nonjudicial foreclosure sale is presumed to have been
15 conducted regularly and fairly; one attacking the sale must overcome this common law
16 presumption ‘by pleading and proving an improper procedure and the resulting prejudice.’”
17 *Fontenot v. Wells Fargo Bank*, 198 Cal. App. 4th 256, 272, 129 Cal. Rptr. 3d 467 (2011).
18 Furthermore, “[t]he conclusive presumption precludes an attack by the trustor on a trustee’s sale
19 to a bona fide purchaser even though there may have been a failure to comply with some required
20 procedure which deprived the trustor of his right of reinstatement or redemption.” *Moeller v.*
21 *Lien*, 25 Cal. App. 4th 822, 831, 30 Cal. Rptr. 777 (1994). The detailed and comprehensive
22 statutory requirements for a foreclosure sale are indicative of a public policy which favors a final
23 and conclusive foreclosure sale as to the purchaser. See Miller & Starr, California Real Property
24 3d §10:210.

25 Notwithstanding the foregoing, courts retain the equitable authority to consider quiet title
26 actions when a HOA’s foreclosure deed contains statutorily conclusive recitals. *Shadow Wood*,
27 366 P.3d 1105, 1112. While NRS 116.3116 accords certain deed recitals conclusive effect—*e.g.*,
28

1 default, notice, and publication of the notice of sale—it does not conclusively, as a matter of law,
2 preclude a bank from success on its quiet title claim. *See Shadow Wood*, 366 P.3d at 1112
3 (rejecting contention that NRS 116.31166 defeats, as a matter of law, action to quiet title). Thus,
4 the question is whether the Bank can demonstrate sufficient grounds to justify setting aside the
5 foreclosure sale. *See id.* “When sitting in equity . . . courts must consider the entirety of the
6 circumstances that bear upon the equities. This includes considering the status and actions of all
7 parties involved, including whether an innocent party may be harmed by granting the desired
8 relief.” *Id.* Here, the Bank has presented no such grounds.

9 In this case, the evidence indicates that the HOA complied with all mailing and noticing
10 requirements stated in N.R.S. 116.31162 through N.R.S. 116.31168. Indeed, as discussed further
11 below, the Bank’s predecessor’s attorney, Miles Bauer, actually contacted the HOA in response
12 to the notices. Thus, there is no doubt whatsoever that the Bank or its predecessor was provided
13 with actual notice of the HOA Foreclosure Sale.

14 Under NRS 116.31166(1), the holder of a first deed of trust may pay off the superpriority
15 portion of an HOA lien to prevent the foreclosure sale from extinguishing that security interest.
16 *See Nev. Rev. Stat. § 116.31166(1); see also SFR Investments*, 334 P.3d at 414 (“But as a junior
17 lienholder, U.S. Bank could have paid off the SHHOA lien to avert loss of its security . . .”); *see*
18 *also, e.g., 7912 Limbwood Ct. Trust v. Wells Fargo Bank, N.A., et al.*, 979 F. Supp. 2d 1142,
19 1149 (D. Nev. 2013) (“If junior lienholders want to avoid this result, they readily can preserve
20 their security interests by buying out the senior lienholder’s interest.” (citing *Carillo v. Valley*
21 *Bank of Nev.*, 734 P.2d 724, 725 (Nev. 1987); *Keever v. Nicholas Beers Co.*, 611 P.2d 1079,
22 1083 (Nev. 1980))).

23 Pursuant to the notice of trustee’s sale, the sum of \$2,862.23 was due and owing as of the
24 date of the Notice of Sale. See Exhibit 4. Had the Bank paid the noticed amount, the HOA’s
25 interest would have been subordinate to the first deed of trust. *See Nev. Rev. Stat. §*
26 *116.31166(1); see also SFR Investments*, 334 P.3d at 418 (noting that the deed of trust holder can
27 pay the entire lien amount and then sue for a refund). Rather than paying the noticed amount and
28

1 preserving its interest, as discussed further below, the evidence indicates that the Bank purports
2 that its predecessor attempted to pay the sum of \$88.50. Although it was specifically advised that
3 such sum was insufficient, the Bank's predecessor did absolutely nothing further.

4 **4. BANA'S PURPORTED "TENDER" WAS INEFFECTIVE**

5 The primary basis upon which the Bank seeks summary judgment is a purported "tender"
6 of the superpriority portion of the HOA Lien by BANA's attorney, Miles Bauer. In support of its
7 Motion, the Bank has provided an affidavit from Miles Bauer, as well as various exhibits
8 attached thereto. See Exhibit 8, attached hereto and incorporated herein by reference.

9 The evidence in this case indicates that on or about October 20, 2009, shortly after the
10 Notice of Default was recorded on September 2, 2009, and served by HOA, Miles Bauer
11 contacted HOA Trustee on behalf of BANA, the then-servicer of the First Deed of Trust and
12 associated loan. See Exhibit 8. The letter, which is incorrectly dated June 9, 2017, but actually
13 sent on or about October 20, 2009 according to the sworn affidavit of Miles Bauer, proves
14 without a shadow of a doubt that the Bank or its predecessors possessed actual knowledge of the
15 HOA Foreclosure Sale and related proceedings long before the HOA Foreclosure Sale took
16 place. Moreover, pursuant to the letter, Miles Bauer acknowledged that [b]ased on Section 2(b)
17 "a portion of your HOA lien is arguably senior to BAC's first deed of trust." *Id.* Thus, the Bank
18 or its predecessor possessed actual knowledge that its security interest was subordinate to the
19 HOA Lien and that it would thus be extinguished if the HOA Foreclosure Sale took place.

20 HOA Trustee responded to Miles Bauer's letter by way of facsimile dated December 17,
21 2009. See Exhibit 8. Pursuant to its correspondence of said date, HOA Trustee provided a
22 detailed breakdown of the amounts claimed to be due and owing to HOA, which advised that the
23 annual assessments related to the Property were \$118.00. *Id.*

24 Miles Bauer responded to HOA Trustee's facsimile on January 21, 2010. *Id.* In
25 conjunction with its letter, provided a trust account check in the amount of \$88.50 "to satisfy its
26 obligations to the HOA as a holder of the first deed of trust against the property." *Id.* Miles
27 Bauer's letter falsely stated that the check was a cashier's check. *Id.* The check stub attached to
28

1 the check stated that the payment was “To Cure HOA Deficiency.” *Id.* This was the case
2 although HOA Trustee had advised that the sum of \$1,554.53 was due and owing. *Id.* Miles
3 Bauer further stated that this payment was “a non-negotiable amount and any endorsement of
4 said cashier’s check on your part, whether express or implied, will be strictly construed as an
5 unconditional acceptance on your part of the facts stated herein and express agreement that
6 BAC’s obligations towards the HOA in regards to the [Property] have now been ‘paid in full.’”
7 *Id.*

8 The Bank has disclosed a letter dated February 4, 2010, which noted that HOA Trustee
9 was “unable to accept the partial payments offered by your clients as payment in full.” *Id.* This
10 letter does not indicate that it related specifically to the Property. Thus, it is unclear whether
11 Miles Bauer or BANA received this letter in connection with the Property. At any rate, pursuant
12 to this letter, HOA Trustee cited a decision entered in the matter of *Korbel Family Trust v.*
13 *Spring Mountain Master Ranch Association*, Case No. 06-A-523959-C, which determined that
14 the HOA Lien included reasonable costs of collection. *Id.*

15 According to the Bank, HOA Trustee rejected the check that BANA and Miles Bauer sent
16 to it. Thereafter, it appears that neither BANA nor Miles Bauer did anything further whatsoever,
17 instead simply “dropping the ball” and simply sitting idly by and watching as the Property was
18 sold at the HOA Foreclosure Sale to HOA. Thereafter, the Property was sold to LVDG, a bona
19 fide purchaser for value without notice of any of the foregoing.

20 Based upon the correspondence between HOA Trustee and Miles Bauer, it is abundantly
21 clear that a good faith dispute existed between the parties regarding the amounts owed and that
22 HOA and HOA Trustee expressly objected to the conditions placed upon BANA’s proposed
23 payment. No evidence has been presented that BANA, Miles Bauer or any other party did
24 anything at all after HOA Trustee ostensibly notified Miles Bauer that the payment had been
25 rejected. As a result, on March 2, 2011, HOA and HOA Trustee caused the HOA Foreclosure
26 Sale to be conducted. Notably, this occurred **over 1 year after the payment was purportedly**
27 **rejected.** Thus, BANA possessed more than adequate time to protect itself had it only done so.
28

1 a. *A Good Faith Dispute Existed Between BANA and the HOA Regarding the*
2 *Amounts Due and Owing*

3 The Bank argues that the Nevada Supreme Court's decision in the matter of *Horizons at*
4 *Seven Hills HOA v. Ikon Holdings, LLC*, confirms that it owed no more than nine months of
5 HOA assessments and therefore, its alleged "tender" served to protect its interest. **However,**
6 **even "an actual tender of the proper amount due and owing will not operate to discharge a**
7 **lien where the lienholder in good faith believes that a greater sum is due."** *Segars v. Classen*
8 *Garage and Service Co.*, 612 P.2d 293, 295 (Okla. Ct. App. 1980).

9 In this case, the correspondence between HOA Trustee and Miles Bauer clearly indicates
10 that HOA and HOA Trustee possessed a good faith belief that a greater sum was due than that
11 which was offered by Miles Bauer and BANA. Moreover, as stated in *Shadow Wood*, whether a
12 lender had to pay nine months plus collections costs in order to protect its deed of trust was still
13 "open" during the pertinent time period. *Shadow Wood*, 366 P.3d at 1113. At the very least,
14 questions of material fact exist regarding the good faith dispute between the parties.

15 The Bank relies in large part upon the Nevada Supreme Court's recent decision in the
16 matter of *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113 (Nev. 2018) ("Diamond
17 *Spur*"). However, this decision did not address the issue of a good faith dispute. In fact, in
18 *Diamond Spur*, the Nevada Supreme Court stated as follows:

19 SFR did not present its good-faith rejection argument to the district court. But see
20 *Schuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 436, 245 P.3d
21 542, 544 (2010) (HN6 "[A] de novo standard of review does not trump the general
22 rule that '[a] point not urged in the trial court, unless it goes to the jurisdiction of
23 that court, is deemed to have been waived and will not be considered on appeal.")
24 (second alteration in original) (quoting *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49,
 52, 623 P.2d 981, 983 (1981)). The authorities it cites to this court for that
 proposition do not support it. We therefore reject SFR's claim that the HOA's
 asserted "good faith" in rejecting Bank of America's tender allowed the HOA to
 proceed with the sale, thereby extinguishing Bank of America's first deed of trust.

25 *Diamond Spur*, 427 P.3d 113, 118-119, 2018 Nev. LEXIS 73, *8-9, 134 Nev. Adv. Rep. 72.

26 Thus, because the argument was not presented below and the record was undeveloped, the
27 Supreme Court declined to address it. The record in this case is far more developed, with the
28 correspondence between Miles Bauer and HOA Trustee clearly setting forth the good faith

1 dispute between the parties. At the very least, these facts constitute a question of material fact
2 which precludes summary judgment.

3 **b. *The Bank has not Proven that its “Tender” was Kept Good***

4 Additionally, by analogy in the Restatement, tender by a junior lien interest holder is only
5 effective in redeeming that holder’s interest when it is both “unconditional” and, if rejected, the
6 tender is “kept good.” Restatement (Third) of Property: Mortgages § 6.4, cmt. g. In association
7 with keeping an unconditional tender “good,” the Restatement contemplates that, after rejection
8 by a senior interest holder, the junior interest holder must deposit the funds into an escrow
9 account and advise the senior interest holder that the funds are being held for payment. *Id.*
10 Alternatively, “segregation of the funds is not essential if [the junior interest holder] can show
11 that he or she continues to be ready, willing and able to pay.” *Id.* The Bank has not shown that
12 BANA did anything at all after its purported attempted payment was rejected by HOA Trustee.
13 Nor has it shown that it remained ready, willing and able to pay.

14 In *Diamond Spur*, SFR argued that BANA should have taken further actions to keep its
15 tender good, such as paying the money into court or an escrow account. *Diamond Spur*, 427 P.3d
16 113, 120, 2018 Nev. LEXIS 73, *12, 134 Nev. Adv. Rep. 72. The Nevada Supreme Court
17 rejected SFR’s claim that the money must be paid into the court but stated that “[the bank] need
18 only be ready and willing to pay to keep the tender good.” *Id.*, 427 P.3d 113, 121, 2018 Nev.
19 LEXIS 73, *15, 134 Nev. Adv. Rep. 72. The Bank herein has failed to prove that BANA
20 remained ready and willing to pay the sums at issue after HOA Trustee rejected the payment.
21 Indeed, the Bank has presented **no evidence whatsoever** that BANA remained ready and willing
22 to pay.

23 Aside from the foregoing, in this case, although Miles Bauer asserted that the payment
24 was in the form of a cashier’s check, this was false. See Exhibit 8. BANA’s purported
25 attempted payment was, in fact, drawn upon the trust account of Miles Bauer. *Id.* Nor was the
26 check certified. *Id.* Moreover, the check, which was dated January 14, 2010, stated on its face
27 that “Check Void After 90 Days.” *Id.* Thus, **the check became void on its own terms long**
28

1 **before the HOA Foreclosure Sale that took place on March 2, 2011.** This again indicates
2 that BANA and Miles Bauer did **NOT** remain ready and willing to pay. At the very least,
3 questions of material fact exist regarding the proposed payment.

4 **c. *BANA's Conditional Offer to Pay was not an Effective "Tender"***

5 Although Nevada has not defined the term "tender," other states within the Ninth Circuit
6 have, and they have held that "tender" means the actual unconditional production of money. See
7 *McDowell Welding & Pipefitting, Inc. v. United State Gypsum Company*, 320 P.3d 579, 585 (Or.
8 Ct. App. 2014); *Gaffney v. Downey Savings and Loan Association*, 246 Cal.Rptr. 421, 427 (Cal.
9 Ct. App. 1988); *Allied Investments, Inc. v. Dunn*, 663 P.2d 300, 301 (Idaho 1983); *Owens v.*
10 *Idaho First National Bank*, 649 P.2d 1221, 1222-23 (Idaho Ct. App. 1982); *Bembridge v. Miller*,
11 385 P.2d 172, 175 (Or. 1963); *Equitable Life Assur. Soc. of United States v. Boothe*, 86 P.2d 960,
12 962 (Or. 1939). In this case, BANA's tender was not unconditional and it was therefore invalid.

13 BANA purports to have attempted to pay the sum of \$88.50 to HOA by and through
14 HOA Trustee. However, BANA conditioned its proposed payment by providing that the check
15 was a "non-negotiable amount" and that any endorsement of the check would be "strictly
16 construed as an unconditional acceptance on your part of the facts stated herein and express
17 agreement that BANA's financial obligations towards the HOA in regards to [the Property] have
18 now been 'paid in full.'" *Id.* The letter did not limit the time or scope of BANA's obligation to
19 the HOA. This restrictive language could mean that (1) acceptance of the check meant that the
20 HOA accepted all of the facts and arguments posited by BANA in its letter, and (2) BANA never
21 again would have to pay the HOA further sums after said check. It would be reasonably
22 problematic for the HOA to have unconditionally accepted all of these facts and arguments,
23 because (1) the issue of amounts owed was "still open," and (2) the letter could be deemed to
24 absolve BANA from any future payments in the event that it obtained title, as in *Shadow Wood*;
25 in the event that it again loaned money secured by the Property in the future; or in the event that a
26 new HOA Lien was later recorded against the Property. In sum, the payment was ineffective
27 based upon the conditions placed thereon.
28

1 In *Prop. Plus Invs., LLC v. Mortg. Elec. Registration Sys.*, 401 P.3d 728, 729, 2017 Nev.
2 LEXIS 88, *1, 133 Nev. Adv. Rep. 62, the Nevada Supreme Court confirmed as follows :

3 We hold that an HOA is not limited to only one superpriority lien under NRS
4 116.3116 per parcel of property forever. Rather, when an HOA rescinds a
5 superpriority lien on a property, the HOA may subsequently assert a separate
6 superpriority lien on the same property based on monthly assessments, and any
7 maintenance and nuisance abatement charges, accruing after the rescission of the
8 previous superpriority lien.

9 Thus, BANA could not require that the HOA agree that “BANA’s financial obligations towards
10 the HOA in regards to [the Property were] ‘paid in full.’” Doing so would have served to
11 preclude the HOA from collecting future liens. The HOA had an absolute right to refuse to
12 accept the alleged attempted conditional payment: it was not a “tender” due to the conditions
13 placed thereon.

14 In *Diamond Spur*, the Nevada Supreme Court addressed the issue of conditionality to
15 some degree, stating as follows:

16 Although Bank of America's tender included a condition, it had a right to insist on
17 the condition. Bank of America's letter stated that acceptance of the tender would
18 satisfy the superiority portion of the lien, preserving Bank of America's interest in
19 the property. Bank of America had a legal right to insist on this. SFR's claim that
20 this made the tender impermissibly conditional because the payment required to
21 satisfy the superpriority portion of an HOA lien was legally unsettled at the time is
22 unpersuasive. As discussed in Section A, a plain reading of NRS 116.3116
23 indicates that at the time of Bank of America's tender, tender of the superpriority
24 amount by the first deed of trust holder was sufficient to satisfy that portion of the
25 lien. Thus, this issue was not undecided, and Bank of America's tender of the
26 superpriority portion of the lien did not carry an improper condition.

27 *Diamond Spur*, 427 P.3d 113, 118, 2018 Nev. LEXIS 73, *6-7, 134 Nev. Adv. Rep. 72.

28 However, the Supreme Court did not consider the fact that Miles Bauer’s letter could be
interpreted to mean that BANA would never be required to pay another superpriority lien related
to the Property. Moreover, Miles Bauer’s letter stated that the acceptance of the check would
constitute an “unconditional acceptance on your part of the facts stated herein.” See Exhibit 8.

**This included Miles Bauer’s false statement that the check was a cashier’s check – a “fact”
that was patently and obviously false.** Miles Bauer and the Bank were not entitled to require
that the HOA agree that a trust account check was a cashier’s check when it quite simply was
not. On this basis alone, the tender was invalid.

1 ***d. BANA and Miles Bauer Did Absolutely Nothing After Being Advised of the***
2 ***Rejection of the Payment***

3 Upon receiving explicit notice of the fact that its payment had been rejected and the
4 reasons therefor, the evidence indicates that BANA and Miles Bauer did absolutely nothing. In
5 *Shadow Wood*, the Nevada Supreme Court stated that when determining whether a foreclosure
6 sale may be set aside, “courts must consider the entirety of the circumstances that bear upon the
7 equities. This includes considering the status and actions of all parties involved, including
8 whether an innocent party may be harmed by granting the desired relief.” *See Shadow Wood*, 366
9 P.3d at 1112. In this case, LVDG is an innocent party that neither possessed any responsibility
10 for, or even knowledge of, the attempted payment by BANA or the rejection thereof by the HOA
11 and HOA Trustee.

12 LVDG had no responsibility for the manner in which the HOA Foreclosure Sale or
13 related proceedings were carried out. To the contrary, LVDG simply purchased the Property
14 from HOA in good faith for valuable consideration. It did so without any knowledge whatsoever
15 of any claim that the Bank had attempted to pay any portion of the HOA Lien; that the HOA had
16 rejected any such payment; or that any portion of the HOA Lien had been satisfied in any manner
17 whatsoever.

18 It is difficult to conceive how the balance of the equities could possibly weigh in favor of
19 the Bank or the HOA as against LVDG. LVDG was a wholly innocent party with no
20 responsibility for, nor knowledge of, the alleged facts which the Bank now asserts constitute
21 cause to invalidate the HOA Foreclosure Sale in whole or in part. The Bank’s predecessor, Miles
22 Bauer, HOA and HOA Trustee were the only parties with knowledge of the secret negotiations
23 that they carried out before the HOA Foreclosure Sale. Invalidating the HOA Foreclosure Sale
24 and placing the loss upon LVDG would be completely inequitable.

25 **5. THE HOA FORECLOSURE SALE WAS NOT UNFAIR OR OTHERWISE**
26 **COMMERCIALLY UNREASONABLE**

27 In closing, the Bank resorts to a rather tired argument that the HOA Foreclosure Sale was
28

1 commercially unreasonable and therefore invalid. This argument is simply without merit. At the
2 very least, significant questions of material fact exist regarding these claims.

3 It is undisputed that the HOA paid valuable consideration \$4,310.82 for the Property at
4 the time of the HOA Foreclosure Sale. See Exhibit 5. It is further undisputed that no party,
5 including BANA, appeared at the publicly noticed and held HOA Foreclosure Sale and bid in
6 excess of this amount. This is the case despite the fact that BANA undisputably possessed actual
7 notice of the HOA Foreclosure Sale. However, BANA has presented no evidence whatsoever
8 that the HOA Foreclosure Sale was not conducted in a commercially reasonable manner. On the
9 contrary, the fact that no person or entity in the entire world appeared at the publicly noticed and
10 held HOA Foreclosure Sale to bid in excess of the prevailing bid of \$4,310.82 strongly indicates
11 that the Property was worth not more than that amount at that point in time.

12 BANA attempts to pull the wool over this Court's eyes by arguing that the price paid at
13 the HOA Foreclosure Sale was inadequate. However, it is undisputed at that Nevada Supreme
14 has very clearly and very specifically reaffirmed that an inadequate price – whether gross or not –
15 is **not** enough in and of itself to warrant setting aside a sale, stating exactly as follows:

16 As discussed above, demonstrating that an association sold a property at its
17 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.

18 *Shadow Wood Homeowners Ass'n*, 366 P.3d 1105, 1112 (Nev. 2016) (citing *Long v. Towne*, 98
19 Nev. at 13, 639 P.2d at 530). Quite simply the price paid at the HOA Foreclosure Sale is
20 irrelevant in the absence of proof of fraud, unfairness or oppression.

21 Knowing that this Court will likely not be fooled by its faulty misrepresentation of the
22 law, the Bank goes on to attempt to fabricate some sort of fraud, unfairness or oppression
23 associated with the HOA Foreclosure Sale, arguing that the sale price was unfair because BANA
24 attempted to satisfy the super-priority portion of the HOA Lien before the sale and that HOA
25 Trustee rejected said payment. For the reasons discussed at length above, this argument is a
26 nonstarter.

27 As discussed above, HOA Trustee rejected BANA's check because it purported to be a
28

1 “payment in full” intended “To Cure HOA Deficiency.” See Exhibit 8. It was completely
2 reasonable for HOA and HOA Trustee to reject the purported payment given the conditions that
3 were placed upon it, including the requirement that HOA and HOA Trustee accept as true Miles
4 Bauer’s false representation that the check that was sent was a cashier’s check. BANA’s
5 purported tender was ineffective. As a result, it cannot constitute a basis upon which to
6 invalidate the HOA Foreclosure Sale.

7 **6. LVDG IS A BONA FIDE PURCHASER FOR VALUE**

8 To entitle a party to the character of a bona fide purchaser, without notice, he must have
9 acquired the legal title, and have actually paid the purchase money before receiving notice of the
10 equity of another party. *Bailey v. Butner*, 64 Nev. 1, 14 (Nev. 1947). In this case, it is
11 undisputed that LVDG paid valuable consideration to purchase the Property from HOA.

12 At the time that it purchased the Property, LVDG possessed no knowledge that BANA
13 and Miles Bauer may have attempted to pay any portion of the HOA Lien. In *Shadow Wood*, the
14 Nevada Supreme Court stated as follows:

15 if the association forecloses on its superpriority lien portion, the sale also would
16 extinguish other subordinate interests in the property. *SFR Invs.*, 334 P.3d at 412-
17 13. So, when an association's foreclosure sale complies with the statutory
18 foreclosure rules, as evidenced by the recorded notices, such as is the case here,
and without any facts to indicate the contrary, the purchaser would have only
"notice" that the former owner had the ability to raise an equitably based post-sale
challenge, the basis of which is unknown to that purchaser.

19 *Shadow Wood Homeowners Ass'n*, 366 P.3d 1105 at 1116. Thus, the Nevada Supreme Court
20 has confirmed that a purchaser at a foreclosure sale may justifiably assume that a foreclosure sale
21 will extinguish subordinate liens such as the First Deed of Trust at issue in this case. The Court
22 went on to state as follows:

23 That NYCB retained the ability to bring an equitable claim to challenge Shadow
24 Wood's foreclosure sale is not enough in itself to demonstrate that Gogo Way took
25 the property with notice of any potential future dispute as to title. And NYCB
26 points to no other evidence indicating that Gogo Way had notice before it
27 purchased the property, either actual, constructive, or inquiry, as to NYCB's
28 attempts to pay the lien and prevent the sale, or that Gogo Way knew or should
have known that Shadow Wood claimed more in its lien than it actually was
owed, especially where the record prevents us from determining whether that is
true. *Lennartz v. Quilty*, 191 Ill. 174, 60 N.E. 913, 914 (Ill. 1901) (finding a
purchaser for value protected under the common law who took the property

1 without record or other notice of an infirmity with the discharge of a previous lien
2 on the property). Because the evidence does not show Gogo Way had any notice
3 of the pre-sale dispute between NYCB and Shadow Wood, the potential harm to
Gogo Way must be taken into account and further defeats NYCB's entitlement to
judgment as a matter of law.

4 *Shadow Wood Homeowners Ass'n*, 366 P.3d 1105 at 1116.

5 As in *Shadow Wood*, no evidence has been presented that LVDG possessed any notice of
6 BANA's attempted payment. The fact that LVDG may have possessed actual or constructive
7 knowledge that a deed of trust was recorded against the Property at the time of the HOA
8 Foreclosure Sale does not change this fact.

9 A "subsequent purchaser with notice, actual or constructive, of an interest in the land
10 superior to that which he is purchasing is not a purchaser in good faith, and not entitled to the
11 protection of the recording act." *Allison Steel Mfg. Co. v. Bentonite, Inc.*, 86 Nev. 494, 499, 471
12 P.2d 666, 669 (1970). However, the Nevada Supreme Court has determined that a first deed of
13 trust is not superior to, but rather **inferior** to an HOA Lien. As a result, any purchaser that
14 appeared at a homeowners association lien foreclosure sale that understood the law knew that a
15 first deed of trust would be extinguished when the proverbial gavel fell. The First Deed of Trust
16 is a "competing claim" only to the extent that the Bank has sought to make it one. In fact, there
17 is no "competition" between a superior and subordinate lien – the superior lien always wins. At
18 the very least, questions of material fact exist regarding whether or not LVDG qualifies as a bona
19 fide purchaser for value.

20 **7. THE BALANCE OF EQUITIES WEIGHS IN FAVOR OF LVDG**

21 The evidence in this case indicates that BANA offered to pay to HOA the sum of \$88.50,
22 which it unilaterally determined to be the amount of the super-priority portion of the HOA Lien.
23 See Exhibit 8. HOA Trustee thereafter expressly rejected the proposed payment, stating in detail
24 the reasons for its rejection. To the extent that the payment was rejected, it is readily apparent
25 that a good faith dispute existed regarding the amounts due and owing. Under such
26 circumstances, even a tender of the proper amount will not operate to discharge a lien. *Segars v.*
27 *Classen Garage and Service Co.*, 612 P.2d 293, 295 (Okla. Ct. App. 1980). Moreover, BANA
28

1 failed to notify the public of its purported attempted payment. As a result, it is undisputed that
2 LVDG possessed no notice whatsoever of BANA's attempted payment.

3 After HOA Trustee rejected BANA's attempted payment on or about February 4, 2010,
4 BANA and Miles Bauer did absolutely nothing. Although they possessed actual knowledge that
5 the attempted payment was declined, they sat on their hands for over a year and allowed the
6 Property to ultimately be auctioned on March 2, 2011. This is the case although the First Deed of
7 Trust explicitly authorized BANA to take legal action to protect itself and its security interest and
8 although any and all associated costs could also be recovered pursuant to the terms of the First
9 Deed of Trust and PUD Rider.

10 HOA appeared at the HOA Foreclosure Sale in good faith and purchased the Property.
11 See Exhibit 5. Thereafter, LVDG purchased the Property from HOA. See Exhibit 6. LVDG did
12 so without any knowledge of the secret payment that BANA had purportedly offered to the HOA
13 and which was rejected. This would not have been the case had BANA simply recorded a
14 document evidencing its purported efforts. BANA could not be bothered to do so and instead
15 allowed HOA to purchase the Property. Moreover, BANA allowed the Property to thereafter be
16 transferred to LVDG in exchange for good and valuable consideration.

17 It is difficult to conceive how the balance of the equities could possibly weigh in favor of
18 the Bank as against LVDG. LVDG is a wholly innocent party while the Bank and/or its
19 predecessor, BANA, possessed the knowledge and means to prevent the HOA Foreclosure Sale
20 from taking place. LVDG paid valuable consideration to purchase the Property. BANA sat on
21 its hands and watched.

22 BANA is a sophisticated business entity with a market capitalization of hundreds of
23 billions of dollars. The Bank's own evidence indicates that BANA was fully aware of the fact
24 that the HOA Lien possessed priority over its First Deed of Trust and that its security interest
25 would be extinguished in the event that the HOA Foreclosure Sale took place. BANA was aware
26 that a dispute existed regarding the amount owed the HOA. Nonetheless, it did NOTHING after
27 its purported payment was rejected. BANA's inattention and inaction on the one hand can hardly
28

1 outweigh LVDG's good faith purchase where LVDG was denied any knowledge due to BANA's
2 failure and refusal to notify the public of its hidden and secret efforts.

3 Subsequent to allowing the First Deed of Trust to be extinguished, BANA apparently
4 transferred and assigned its extinguished security interest to the Bank. The Bank should be suing
5 BANA for selling to it a void and ineffective security interest – not engaging in litigation with
6 the rightful owner of the Property.

7 **IV.**

8 **CONCLUSION**

9 For the reasons set forth herein, the instant Motion must be denied. While the Bank is not
10 entitled to Summary Judgment, the Plaintiff should be granted Summary Judgment based upon
11 the Bank's lengthy delay, which caused its claims to become time-barred as a matter of law.
12 Because BONY no longer possesses any right nor means to contest the force and effect of the
13 HOA Foreclosure Sale, summary judgment must be entered in favor of the Plaintiff. BONY
14 cannot rebut the various presumptions that exist in favor of the Plaintiff because its claims are
15 time-barred. Judgment must be entered in favor of the Plaintiff, confirming that it is the owner
16 of the Property free and clear of any claimed interest of BONY. In the event that this Court finds
17 otherwise, at the very least, questions of material fact exist which preclude summary judgment.

18 DATED this 1st day of April, 2019.

19 ROGER P. CROTEAU & ASSOCIATES, LTD.

21 /s/ Timothy E. Rhoda

22 ROGER P. CROTEAU, ESQ.

23 Nevada Bar No. 4958

24 TIMOTHY E. RHODA, ESQ.

25 Nevada Bar No. 7878

26 9120 West Post Road, Suite 100

27 Las Vegas, Nevada 89148

28 (702) 254-7775

Attorney for Plaintiff

LAS VEGAS DEVELOPMENT GROUP, LLC

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 4th day of April, 2019, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-file and serve system.

 VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

 VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

 VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda
An employee of ROGER P. CROTEAU &
ASSOCIATES, LTD

EXHIBIT 1

EXHIBIT 1

25

20060419-0000609

Assessor's Parcel Number:
13909410021
After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.

Fee: \$38.00
N/C Fee: \$0.00
04/19/2006 09:01:35
T20060069285
Requestor:
NEVADA TITLE COMPANY
Frances Deane JKA
Clark County Recorder Pas: 25

MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423
Prepared By:
NANCY GONZALES
~~Recording Requested By:~~
I. Sandler

COUNTRYWIDE HOME LOANS, INC.

30

5613 DTC PARKWAY, SUITE 700
GREENWOOD VILLAGE
CO 80111

06-03-1011-MSL [Space Above This Line For Recording Data]

HERNANDEZ 00013254461804006
[Escrow/Closing #] [Doc ID #]
DEED OF TRUST
MIN 1000157-0006486545-0

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

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

VMP -6A(NV) (0507) CHL (11/05)(d)
VMP Mortgage Solutions, Inc.

Page 1 of 16

Form 3029 1/01

* 2 3 9 9 1 *

* 1 3 2 5 4 4 6 1 8 0 0 0 0 1 0 0 6 A *

(A) "Security Instrument" means this document, which is dated APRIL 10, 2006 together with all Riders to this document.

(B) "Borrower" is
DANIA V HERNANDEZ, A SINGLE WOMAN

Borrower is the trustor under this Security Instrument.

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

Lender is a
CORPORATION

organized and existing under the laws of NEW YORK
4500 Park Granada MSN# SVB-314
Calabasas, CA 91302-1613

Lender's address is

(D) "Trustee" is
RECON TRUST CO

225 W HILLCREST DR
THOUSAND OAKS, CA 91360

(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 APRIL 10, 2006

The Note states that Borrower owes Lender
TWO HUNDRED EIGHT THOUSAND and 00/100

Dollars (U.S. \$ 208,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than MAY 01, 2036

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

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

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

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

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

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

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

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

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

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

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

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

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

[Type of Recording Jurisdiction]

CLARK

[Name of Recording Jurisdiction]

LOT THIRTY TWO (32) OF HIDDEN CANYON HORIZONS PREMIER UNIT 3, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 61, OF PLATS, PAGE 61, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

which currently has the address of

1524 HIGHFIELD COURT, LAS VEGAS

[Street/City]

Nevada 89032 ("Property Address"):

[Zip Code]

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

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

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

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

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

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

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

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

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

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

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.

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. \$ 300.00

DOC ID #: 00013254461804006

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.

Dania V Hernandez (Seal)
DANIA V. HERNANDEZ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

____ (Seal)
____ -Borrower

STATE OF NEVADA

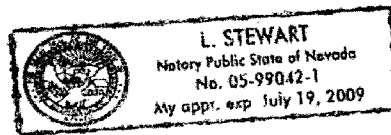
COUNTY OF CLARK

This instrument was acknowledged before me on April 12, 2006 by
Dania V Hernandez

L Stewart
L Stewart

Mail Tax Statements To:
TAX DEPARTMENT SV3-24

450 American Street
Simi Valley CA, 93065



INTEREST ONLY ADJUSTABLE RATE RIDER
(LIBOR Index - Rate Caps)

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423
PARCEL ID #:
13909410021

Prepared By:
NANCY GONZALES

HERNANDEZ
[Escrow/Closing #]

132544618
[Loan #]

MULTISTATE INTEREST ONLY ADJUSTABLE RATE RIDER - LIBOR INDEX

• BC - Interest Only ARM Rider
1E120-XX (02/04)(d)

Initials: DH

Page 1 of 5



LOAN #: 132544618

THIS INTEREST ONLY ADJUSTABLE RATE RIDER is made this TENTH day of APRIL, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Deed to Secure Debt (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to COUNTRYWIDE HOME LOANS, INC. (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

1524 HIGHFIELD COURT, LAS VEGAS, NV 89032
[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE THE 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. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 8.100 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of MAY, 2008, and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my 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 date 45 days before each Change Date is called the "Current Index."

Initials: DH

LOAN #: 132544618

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 SEVEN & 10/100 percentage point(s) (7.100 %) 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 9.600 % or less than 8.100 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than ONE & ONE-HALF percentage point(s) (1.500 %) from the rate of interest I have been paying for the preceding six months. My interest rate will never be greater than 15.100 % or less than 8.100 %.

(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 interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given 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 the Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment date after the ~~first Change Date~~ ^{sixtieth (60) scheduled monthly payment}

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

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

Initials: DH

LOAN #: 132544618

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 a 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 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

Initials: DH

LOAN #: 132544618

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 Interest Only Adjustable Rate Rider.

Dania V. Hernandez (Seal)
DANIA V. HERNANDEZ - Borrower

____ (Seal)
- Borrower

____ (Seal)
- Borrower

____ (Seal)
- Borrower

PLANNED UNIT DEVELOPMENT RIDER

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

PARCEL ID #:
13909410021

Prepared By:
NANCY GONZALES

HERNANDEZ 00013254461804006
[Escrow/Closing #] [Doc ID #]

THIS PLANNED UNIT DEVELOPMENT RIDER is made this Tenth day of
APRIL, 2006, and is incorporated into and shall be deemed to amend and supplement the
Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
VMP -7R (0411) CHL (11/04)(d) Page 1 of 4 Initials: DA
VMP Mortgage Solutions, Inc. (800)521-7291 Form 3150 1/01



DOC ID #: 00013254461804006

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

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

1524 HIGHFIELD COURT
LAS VEGAS, NV 89032
[Property Address]

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

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

[Name of Planned Unit Development]

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

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

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

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

Initials: DL

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

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

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

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

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

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

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

Initials: DH

DOC ID #: 00013254461804006

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

Dania V. Hernandez (Seal)
DANIA V. HERNANDEZ - Borrower

____ (Seal)
- Borrower

____ (Seal)
- Borrower

____ (Seal)
- Borrower

EXHIBIT 2

EXHIBIT 2

20090603-0003607

Fee: \$14.00
N/C Fee: \$0.00

06/03/2009 12:38:07
T20090194197

Requestor:
JUNES LEGAL SERVICES

Debbie Conway ADF
Clark County Recorder Pgs: 1

When recorded return to:

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

A.P.N. 139-09-410-021

Trustee Sale # 16246-1524

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

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

The property against which the lien is imposed is commonly referred to as **1524 Highfield Ct., N. Las Vegas, NV 89032** and more particularly legally described as: **Lot 32 Book 61 Page 61** in the County of **Clark**.

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

The mailing address(es) is: **1524 Highfield Ct., N. Las Vegas, NV 89032**

The total amount due through today's date is: **\$571.85**. Of this total amount **\$320.00** represent Collection and/or Attorney fees and **\$55.31** represent collection costs, late fees, service charges and interest. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **May 21, 2009**

By:


Thessa Elpidio - Legal Assistant

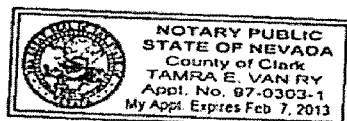
Alessi & Koenig, LLC on behalf of **Hidden Canyon Owners Association**

State of Nevada


County of Clark

SUBSCRIBED and SWORN before me May 21, 2009

(Seal)



(Signature)


NOTARY PUBLIC

BoNYM 0118

JA 0286

EXHIBIT 3

EXHIBIT 3

Inst#:200909020002186 Fees:\$15.00 N/C Fee:\$0.00 09/02/2009 11:42:04 AM
Receipt#:41785 Requestor:JUNES LEGAL SERVICES Recorded By:KGP Pgs:2 DEBBIE
CONWAY CLARK COUNTY RECORDER

②

When recorded mail to:

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

)
)
)
)
)
)

A.P.N. 139-09-410-021

Trustee Sale No. 16246-1524

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

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default is recorded. The date of recordation appears on this notice. The amount due is **\$1,404.49** as of **July 23, 2009** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact: **Hidden Canyon Owners Association, c/o Alessi & Koenig, LLC, 9500 West Flamingo Road, Suite 100, Las Vegas, NV 89147.**

THIS NOTICE pursuant to that certain Assessment Lien, recorded on **June 3, 2009** as document number **03607**, of Official Records in the County of **Clark**, State of Nevada.
Owner(s): **Dania Hernandez**

Of **Lot 32**, as per map recorded in **Book 61, Pages 61**, as shown on the Condominium Plan, Recorded on as document number as shown on the Subdivision map recorded in Maps of the County of **Clark**, State of Nevada.

PROPERTY ADDRESS: 1524 Highfield Ct., N. Las Vegas, NV 89032

If you have any questions, you should contact an attorney or the Association that maintains the right of assessment upon your property. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. **REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.**

NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated **June 3, 2009**, executed by **Hidden Canyon Owners Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions. A breach of, and default in, the obligation for which said Covenants, Conditions, and Restrictions as security has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, Association's fees and costs, trustee's fees and costs, and attorney's fees and costs.

Dated: **July 23, 2009**



Thessa Elpidio, Alessi & Koenig, LLC on behalf of **Hidden Canyon Owners Association**.

EXHIBIT 4

EXHIBIT 4

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

APN: 139-09-410-021
Title No. 082409-6-J TSN 16246-1524

Inst #: 201008090001324
Fees: \$14.00
N/C Fee: \$0.00
08/09/2010 09:05:00 AM
Receipt #: 457526
Requestor:
JUNES LEGAL SERVICES
Recorded By: KGP Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

NOTICE OF TRUSTEE'S SALE

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

NOTICE IS HEREBY GIVEN THAT:

On September 8, 2010, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on June 3, 2009, as instrument number 03607, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 4:00 P.M. at 930 S. 4th Street, Las Vegas Nevada 89101.

The street address and other common designation, if any, of the real property described above is purported to be: 1524 Highfield Ct., N. Las Vegas, NV 89032. The owner of the real property is purported to be: Dania Hernandez

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$2,862.23. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: July 29, 2010 

By: Branko Jetic on behalf of Hidden Canyon Owners Association

EXHIBIT 5

EXHIBIT 5

Inst #: 201103030003434
Fees: \$14.00 N/C Fee: \$0.00
RPTT: \$22.95 Ex: #
03/03/2011 01:17:31 PM
Receipt #: 694972
Requestor:
CAMCO
Recorded By: JRV Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
Hidden Canyon HOA
C/O CAMCO
PO Box 12117
N. Las Vegas, NV 89112

A.P.N. No.139-09-410-021

Trustee Sale No. 16246-1524 Space above for Recorder's Use

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was Foreclosing Beneficiary: **Hidden Canyon HOA**
The amount of unpaid debt together with costs (Real Property Transfer Tax Value): **\$4,310.82**
The amount paid by the Grantee (Buyer) at the Trustee's Sale: **\$4,310.82**
The Documentary Transfer Tax: **\$22.95**
Property address: **1524 Highfield Ct., N. Las Vegas, NV 89032**
Said property is in [] unincorporated area: **City of N. Las Vegas**
Trustor (Former Owner that was foreclosed on): **Dania Hernandez**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded June 3, 2009 as instrument number 03607, in Clark County, does hereby grant, without warranty expressed or implied to: **Hidden Canyon Owners Association (Grantee)**, all its right, title and interest in the property legally described as: **Lot 32, as per map recorded in Book 61, Pages 61 as shown in the Office of the County Recorder of Clark County Nevada.**

TRUSTEE STATES THAT:

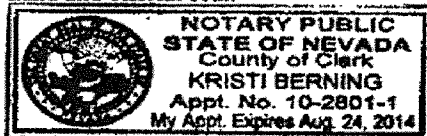
This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **March 02, 2011** at the place indicated on the Notice of Trustee's Sale.

Branko Jestic
Signature of AUTHORIZED AGENT for Alessi&Koenig, LLC

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me March 3, 2011

WITNESS my hand and official seal.
(Seal)



(Signature)

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

- a. 139-09-410-021
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____
Date of Recording: _____
Notes: _____

3. a. Total Value/Sales Price of Property \$ 4,310.82
b. Deed in Lieu of Foreclosure Only (value of property) ()
c. Transfer Tax Value: \$ 4,310.82
d. Real Property Transfer Tax Due \$ \$22.95

4. **If Exemption Claimed:**

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

5. Partial Interest: Percentage being transferred: _____ %

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

Signature: Kelly Mitchell

Capacity: Grantee

Signature: _____

Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Alessi & Koenig LLC
Address: 9500 W Flamingo Rd Ste 100
City: Las Vegas
State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Hidden Canyon OA
Address: PO Box 12117
City: Las Vegas
State: NV Zip: 89112

COMPANY REQUESTING RECORDING

Print Name: CAMCO
Address: PO Box 12117
City: Las Vegas

Escrow #: N/A foreclosure

State: NV Zip: 89112

As a public record this form may be recorded/microfilmed

EXHIBIT 6

EXHIBIT 6

Inst #: 201103310003138
Fees: \$15.00 N/C Fee: \$0.00
RPTT: \$453.90 Ex: #
03/31/2011 12:18:10 PM
Receipt #: 724339
Requestor:
CAMCO
Recorded By: GWC Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 139-09-410-021

WHEN RECORDED MAIL DEED AND
TAX STATEMENTS TO:

Las Vegas Development Group, LLC
397 3rd Ave, Ste A
Chula Vista CA 91910

SPACE ABOVE THIS LINE FOR RECORDER'S USE

QUITCLAIM DEED

THIS QUITCLAIM DEED made on **March 30, 2011**, between **Hidden Canyon HOA** c/o Absolute Collection Services, LLC, PO Box 12117, Las Vegas, NV 89112, and Las Vegas Development Group, LLC, 397 3rd Ave, Ste A, Chula Vista CA 91910.

That for and in the consideration of the sum of FOUR THOUSAND FIVE HUNDRED AND 00/100 (\$4,500.00) the receipt of which is hereby acknowledged, Hidden Canyon HOA does hereby release, remise and forever quitclaim unto Las Vegas Development Group, LLC all of his interest, if any, in that certain real property commonly known as:

**1524 Highfield Ct.
N Las Vegas NV 89032**

described as follows:

Lot 32 as per map recorded in Book 61, Pages 61, Unit 3 as shown in the Office of the County Recorder of Clark County Nevada

Together with all the tenements, hereditaments, and appurtenances thereunto belonging, and the reversions, remainders, rents, issues, and profits thereof. To have and to hold, all and singular the premises, with the appurtenances, unto Las Vegas Development Group, LLC and his/her heirs and assigns forever.

In witness whereof, Hidden Canyon HOA has hereunto this 30th day March and 2011 as set forth above.

State of Nevada)ss

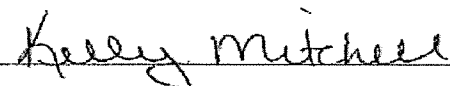
County of Clark)ss

I, Richard Kaye , being first duly sworn, deposes and says:

That I am the authorized representative of Hidden Canyon HOA in the above-entitled action: that I have read the foregoing and know the contents thereof, and that the same is true of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.


Richard Kaye, Agent for Hidden Canyon HOA

Subscribed and sworn to before me this 30th DAY OF March 2011.



Kelly Mitchell, Notary Public



STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

a. 139-09-410-021
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____

Date of Recording: _____

Notes: _____

3. a. Total Value/Sales Price of Property

\$ 4500.00

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

()

c. Transfer Tax Value:

\$ 88.560.00

d. Real Property Transfer Tax Due

\$ 453.90

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

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

Signature: [Signature]

Capacity: Member, Grantee

Signature: _____

Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Hidden Canyon HOA

Address: PO Box 12117

City: Las Vegas

State: NV Zip: 89112

COMPANY REQUESTING RECORDING

Print Name: CAMCO

Address: PO Box 12117

City: Las Vegas

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: CAS VEGAS DEVELOPMENT LLC ^{GROUP}

Address: 397 3RD AVE Suite A

City: CHULA VISTA

State: CA Zip: 91910

Escrow #: Foreclosed Purchase

State: NV Zip: 89112

As a public record this form may be recorded/microfilmed

Inst #: 201204260000422
Fees: \$19.00 N/C Fee: \$0.00
RPTT: \$0.00 Ex: #003
04/26/2012 09:53:10 AM
Receipt #: 1143307
Requestor:
CAMCO
Recorded By: KGP Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 139-09-410-021

WHEN RECORDED MAIL DEED AND
TAX STATEMENTS TO:

Las Vegas Development Group, LLC
397 3rd Ave, Ste A
Chula Vista CA 91910

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Corrective 20110331/0003138: legal description
QUITCLAIM DEED —

THIS QUITCLAIM DEED made on March 30, 2011, between Hidden Canyon HOA
c/o Absolute Collection Services, LLC, PO Box 12117, Las Vegas, NV 89112, and
Las Vegas Development Group, LLC, 397 3rd Ave, Ste A, Chula Vista CA 91910.

That for and in the consideration of the sum of FOUR THOUSAND FIVE HUNDRED
AND 00/100 (\$4,500.00) the receipt of which is hereby acknowledged, Hidden
Canyon HOA does hereby release, remise and forever quitclaim unto Las Vegas
Development Group, LLC all of his interest, if any, in that certain real property
commonly known as:

**1524 Highfield Ct.
N Las Vegas NV 89032**

described as follows:

Lot 32 as per map recorded in Book 61, Pages 61, Unit 3 as shown in the Office of
the County Recorder of Clark County Nevada

Together with all the tenements, hereditaments, and appurtenances thereunto
belonging, and the reversions, remainders, rents, issues, and profits thereof. To
have and to hold, all and singular the premises, with the
appurtenances, unto Las Vegas Development Group, LLC and his/her heirs and
assigns forever.

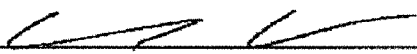
In witness whereof, Hidden Canyon HOA has hereunto this 30th day March and 2011 as set forth above.

State of Nevada)ss

County of Clark)ss

I, Richard Kaye , being first duly sworn, deposes and says:

That I am the authorized representative of Hidden Canyon HOA in the above-entitled action; that I have read the foregoing and know the contents thereof, and that the same is true of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.


Richard Kaye, Agent for Hidden Canyon HOA

Subscribed and sworn to before me this 30th DAY OF March 2011.

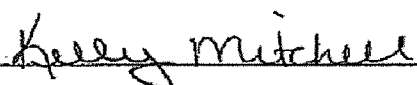

Kelly Mitchell, Notary Public



EXHIBIT "A"

LOT THIRTY TWO (32) OF HIDDEN CANYON HORIZONS PREMIER UNIT 3,
AS SHOWN BY MAP THEREOF ON FILE IN BOOK 61, OF PLATS, PAGE 61, IN
THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 139-09-410-021

b.

c.

d.

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3. a. Total Value/Sales Price of Property

\$ 4,500.00

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

c. Transfer Tax Value:

\$ 4,500.00

d. Real Property Transfer Tax Due

\$ 0.000

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section 3

b. Explain Reason for Exemption: Correct deed: 201103310003138 to include legal description.

5. Partial Interest: Percentage being transferred: _____ %

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

Signature

Healey Mitchell

Capacity: Grantor

Signature _____

Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Hidden Canyon HOA

Address: PO Box 12117

City: Las Vegas

State: NV

Zip: 89112

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Las Vegas Development Group LLC

Address: 397 3rd Ave, Ste A

City: Chula Vista

State: CA

Zip: 91910

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

Print Name: CAMCO

Address: PO Box 12117

City: Las Vegas

Escrow # N/A-foreclosure

State: NV

Zip: 89112

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Inst #: 201301280002187
Fees: \$19.00 N/C Fee: \$0.00
RPTT: \$0.00 Ex: #003
01/28/2013 11:30:08 AM
Receipt #: 1474401
Requestor:
ABSOLUTE COLLECTION SERVICE
Recorded By: MSH Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 139-09-410-021

WHEN RECORDED MAIL DEED AND
TAX STATEMENTS TO:

Las Vegas Development Group, LLC
397 3rd Ave, Ste A
Chula Vista CA 91910

SPACE ABOVE THIS LINE FOR RECORDER'S USE

(corrective deed 201204260000422; Grantor Name)

QUITCLAIM DEED

THIS QUITCLAIM DEED made on **March 30, 2011**, between **Hidden Canyon Owners Association c/o Absolute Collection Services, LLC**, 6440 Sky Pointe Dr, Box 140-154, Las Vegas, NV 89131 and **Las Vegas Development Group, LLC**, 397 3rd Ave, Ste A, Chula Vista CA 91910

That for and in the consideration of the sum of FOUR THOUSAND FIVE HUNDRED DOLLARS AND 00/100 CENTS (\$4,500.00) the receipt of which is hereby acknowledged, **Hidden Canyon Owners Association** does hereby release, remise and forever quitclaim unto **Las Vegas Development Group, LLC** all of his interest, if any, in that certain real property commonly known as:

1524 Highfield Ct, N Las Vegas NV 89032

Legally described as follows:

Lot **32** as per map recorded in Book **61**, Page **61**, Unit **3** as shown in the Office of the County Recorder of Clark County Nevada

Together with all the tenements, hereditaments, and appurtenances thereunto belonging, and the reversions, remainders, rents, issues, and profits thereof. To have and to hold, all and singular the premises, with the

appurtenances, unto **Las Vegas Development Group, LLC** and his/her heirs and assigns forever.


In witness whereof, **Hidden Canyon Owners Association** has hereunto this 30th day of March and 2011 as set forth above.

State of Nevada)ss

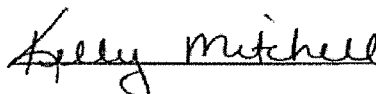
County of Clark)ss

I, Richard Kaye , being first duly sworn, deposes and says:

That I am the authorized representative of **Hidden Canyon Owners Association** in the above-entitled action: that I have read the foregoing and know the contents thereof, and that the same is true of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.


Richard Kaye, Agent for Hidden Canyon Owners Association

Subscribed and sworn to before me this 24th DAY OF January , 2013.



Kelly Mitchell, Notary Public

My Commission Expires: 7/10/16

Certificate No: 08-7504-1

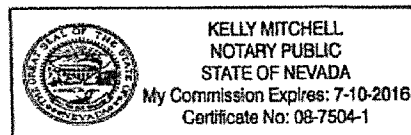


EXHIBIT A

LOT THIRTY TWO (32) OF HIDDEN CANYON HORIZONS
PREMIER UNIT 3 AS SHOWN BY MAP THEREOF ON FILE IN
BOOK 61 OF PLATS, PAGE 61 IN THE OFFICE OF THE COUNTY
RECORDER OF CLARK COUNTY, NEVADA

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

a. 139-09-410-021
b. _____
c. _____
d. _____

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY

Book _____ Page: _____
Date of Recording: _____
Notes: _____

3.a. Total Value/Sales Price of Property \$ 4,500.00
b. Deed in Lieu of Foreclosure Only (value of property (_____)
c. Transfer Tax Value: \$ 0.00
d. Real Property Transfer Tax Due \$ 0.00

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section 03
b. Explain Reason for Exemption: Re-recording deed to correct Grantor information
201204260000422

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

Signature Kelly Mitchell Capacity: Grantor
Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION

(REQUIRED)

Print Name: Hidden Canyon Owners Assoc.
Address: PO Box 12117
City: Las Vegas
State: NV Zip: 89112

BUYER (GRANTEE) INFORMATION

(REQUIRED)

Print Name: Las Vegas Development Group LLC
Address: 397 3rd Ave, Ste A
City: Chula Vista
State: CA Zip: 91910

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

Print Name: Absolute Collection Services LLC Escrow # n/a-foreclosure buyback
Address: 6440 Sky Pointe Dr. Box 140-154
City: Las Vegas State: NV Zip: 89131

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT 7

EXHIBIT 7

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.

///

1 On or about April 12, 2006, Oliver J. Siores (“Borrower”) purchased real property located
2 at 6906 Graceful Cloud Avenue, Henderson, NV 89011-4980; Parcel No. 161-35-213-104 (the
3 “Property”). Borrower financed ownership of the property by way of loan in the amount of
4 \$135,000.00 secured by a Deed of Trust dated April 12, 2006, executed in favor of non-party the
5 First National Bank of Arizona. The Deed of Trust was assigned to Plaintiff on January 7, 2010.
6 Siores defaulted under the terms of the note and Deed of Trust by failing to make all payments
7 due.

8 The Property was encumbered by a homeowners’ association lien in favor of the Mesa
9 Homeowners Association (“HOA”). Upon information and belief, Borrower purportedly failed to
10 pay the HOA all amounts alleged due to the HOA.

11 On October 16, 2012, the HOA, through its agent, Alessi & Koenig, LLC (“Alessi”),
12 recorded a Notice of Delinquent Assessment Lien. This Notice stated the amount due to the HOA
13 was \$4,140.65, consisting of \$4,065.65 in collection and/or attorneys’ fees, assessments, interest,
14 late fees, and service charges and \$75.00 in collection costs. The Notice did not identify the super-
15 priority amount claimed by the HOA.

16 On May 6, 2013, the HOA, through Alessi, filed a Notice of Default and Election to Sell
17 Under Homeowners Association Lien. This Notice of Default stated the amount due to the HOA
18 was \$5,634.11 but did not identify the super-priority amount claimed by the HOA.

19 After the Notice of Default was recorded, Bank of America, who then serviced the loan
20 secured by the Deed of Trust, through counsel at Miles Bauer Bergstrom & Winters (“Miles
21 Bauer”), contacted Alessi and requested a payoff ledger detailing the amounts owed in an attempt
22 to determine the super-priority amount. Alessi sent a payoff ledger, and informed Bank of America
23 that the last nine months of delinquent assessments for the Property—the super-priority amount—
24 was \$630.00. Accordingly, Bank of America, through Miles Bauer, tendered payment of \$630.00
25 to Alessi to satisfy the super-priority portion of the HOA’s lien on July 11, 2013. Alessi rejected
26 the payment.

27 ///

28 ///

1 On November 5, 2013, the HOA, through Alessi, recorded a Notice of Trustee's Sale,
2 setting the sale for December 4, 2013. This Notice of Sale stated the amount due to the HOA was
3 \$7,818.81. The Notice of Sale did not identify the super-priority amount claimed by the HOA.

4 The HOA non-judicially foreclosed on the Property on December 4, 2013, selling the
5 Property to Defendant for \$14,000.00.

6 In none of the recorded documents nor in any notice did the HOA or Alessi specify whether
7 it was foreclosing on the purported super-priority portion of its lien, if any, or on the sub-priority
8 portion of its lien. In none of the recorded documents nor in any notice did the HOA or Alessi
9 specify that the Deed of Trust would be extinguished by the HOA's foreclosure. The HOA's sale
10 of the property to Defendant was for approximately 10% of the value of the principal balance on
11 the senior deed of trust.

12 13 **III. PROCEDURAL BACKGROUND**

14 Plaintiff filed its Complaint on February 28, 2018. ECF No. 1.

15 Defendant filed the instant Motion to Dismiss on April 23, 2018. ECF No. 11. The Court
16 entered a scheduling order on June 5, 2018. ECF No. 18. Apart from one disputed deposition,
17 discovery concluded on October 22, 2018.

18 Plaintiff filed the instant Motion for Partial Summary Judgment on November 21, 2018.
19 ECF No. 35. Defendant filed the instant Motion for Summary Judgment on January 22, 2019.
20 ECF No. 40.

21 22 **IV. LEGAL STANDARD**

23 In order to state a claim upon which relief can be granted, a pleading must contain "a short
24 and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P.
25 8(a)(2). In ruling on a motion to dismiss for failure to state a claim, "[a]ll well-pleaded allegations
26 of material fact in the complaint are accepted as true and are construed in the light most favorable
27 to the non-moving party." Faulkner v. ADT Security Servs., Inc., 706 F.3d 1017, 1019 (9th Cir.
28 2013). To survive a motion to dismiss, a complaint must contain "sufficient factual matter,

1 accepted as true, to state a claim to relief that is plausible on its face,” meaning that the court can
2 reasonably infer “that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556
3 U.S. 662, 678 (2009) (citation and internal quotation marks omitted).

4 5 **V. DISCUSSION**

6 Defendant argues that Plaintiff’s claims are time barred. For statute of limitations
7 calculations, time is computed from the day the cause of action accrued. Clark v. Robison, 944
8 P.2d 788, 789 (Nev. 1997). The sale of the Property took place on December 4, 2013 and Trustee’s
9 Deed Upon Sale vesting title in Defendant was recorded on December 9, 2013. Plaintiff filed its
10 Complaint over four years later on February 28, 2018.

11 Plaintiff argues that the cause of action in fact accrued on September 18, 2014, the date of
12 the Nevada Supreme Court decision in SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408 (Nev.
13 2014). Plaintiff argues that it could not have been aware of its cause of action until the holding in
14 SFR Investments that Nevada Revised Statute (“NRS”) 116.3116 established a super-priority lien.
15 But the Nevada Supreme Court has held that SFR Investments applies retroactively and constitutes
16 an interpretation of NRS 116.3116 rather than a change in law. K&P Homes v. Christiana Trust,
17 398 P.3d 292, 295 (Nev. 2017). Moreover, a simple review of the plain text of the statute at the
18 time would have put Plaintiff on notice of its claim as the statute clearly references a super-priority
19 interest. NRS 116.3116. The Court finds that because NRS 116.3116 was in effect at the time of
20 foreclosure sale, the cause of action accrued at that time.

21 Plaintiff’s complaint seeks quiet title on the basis that: (1) NRS Chapter 116 facially
22 violates Plaintiff’s due process rights under the federal constitution; (2) the recorded notices failed
23 to describe the lien in sufficient detail required by Nevada law, including a failure to identify the
24 super-priority amount and the consequences for failure to pay the super-priority amount;
25 (3) Defendant wrongfully rejected Plaintiff’s tendered payment of the super-priority amount;
26 (4) the sale was oppressive and unfair; (5) the recorded notices failed to describe the lien in
27 sufficient detail required by constitutional due process, including a failure to identify the super-
28 priority amount and the consequences for failure to pay the super-priority amount; (6) Defendant’s

1 rejection of Plaintiff's payment of the super-priority amount violated Plaintiff's due process rights
2 under the federal constitution; and (7) Defendant does not qualify as a bona fide purchaser for sale.

3 The Court finds that all of Plaintiff's claims are foreclosed by the applicable statutes of
4 limitations. Actions upon a liability created by statute carry a three-year statute of limitations
5 pursuant to NRS 11.190(3)(a). To the extent Plaintiff argues that the recorded notices fail to
6 comply with Nevada law under NRS Chapter 116 or any other statute, the argument is foreclosed.
7 The Court finds that Plaintiff's argument that the recorded notices failed to describe the lien in
8 sufficient detail required by Nevada law, including a failure to identify the super-priority amount
9 and the consequences for failure to pay the super-priority amount, and its argument that Defendant
10 wrongfully rejected Plaintiff's tendered payment of the super-priority amount are subject to a
11 three-year statute of limitations as they derive from rights and process in NRS Chapter 116.

12 Plaintiff's remaining claims, including its constitutional claims regarding the facial
13 constitutionality of NRS Chapter 116, the as-applied constitutionality of the notices and rejected
14 tender in this case carry at most a four-year statute of limitations pursuant to the catch-all provision
15 at NRS 11.220. The four-year limitation of the catch-all provision similarly bars Plaintiff's
16 equitable claims related to tender, unfair sale, and bona fide purchaser status, as well as Plaintiff's
17 claim that the recorded notices fail to comply with Nevada law on bases other than statutory
18 provisions.

19 Plaintiff argues that its request for declaratory relief is not barred by the statute of
20 limitations. But because "[a] claim for declaratory relief is subject to a statute of
21 limitations generally applicable to civil claims," Zuill v. Shanahan, 80 F.3d 1366, 1369–70 (9th
22 Cir. 1996), the Court finds that statutes of limitations as outlined above apply to bar declaratory
23 relief. Facklam, relied upon by Plaintiff, holds only that a statute of limitations does not operate
24 to bar a nonjudicial foreclosure, as such a foreclosure is neither a civil nor a criminal judicial
25 proceeding, but Facklam does not hold that a statute of limitations cannot bar a judicial action
26 challenging a nonjudicial foreclosure. See Facklam v. HSBC Bank USA for Deutsche ALT-A
27 Sec. Mortg. Loan Tr., 401 P.3d 1068, 1070–71 (Nev. 2017) (en banc).

28 ///

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

1 Defendant conceded the ongoing validity of Plaintiff's trust. Plaintiff's argument suggests that
2 Defendant would have needed to bring its own lawsuit in order to avoid waiver of the statute of
3 limitations. The Court finds that no such requirement is supported by Nevada law and Plaintiff
4 has identified no Nevada precedent or statute which requires such action by Defendant. Defendant
5 did not have to take any action to extinguish Plaintiff's deed of trust, as the deed of trust was
6 extinguished at the HOA foreclosure sale pursuant to NRS 116.3116. Defendant did not have to
7 take any action at that time to preserve a statute of limitations defense in the present action.

8 Based upon the above findings, the Court thus declares that Plaintiff has no enforceable
9 lien, interest or property right in the real property located at 6906 Graceful Cloud Avenue,
10 Henderson, NV 89011-4980; Parcel No. 161-35-213-104. The Court further finds that there is no
11 basis to support the lis pendens in this case as Plaintiff has no existing interest in this property.
12 NRS 14.015. The lis pendens shall therefore be expunged.

13
14 **VI. CONCLUSION**

15 **IT IS THEREFORE ORDERED** that Defendant's Motion to Dismiss (ECF No. 11) is
16 GRANTED, that all other pending motions (ECF Nos. 35, 40) are DENIED as moot, and that
17 Plaintiff's Complaint is DISMISSED in its entirety with prejudice. The Clerk of Court shall enter
18 judgment accordingly in favor of Defendant and close this case.

19 **IT IS FURTHER ORDERED** that the lis pendens recorded against the Property in the
20 Official Records of the Clark County Recorder as Instrument No. 201803010002730 is expunged.
21 The Clark County Recorder is directed by this Order to expunge this lis pendens.

22 DATED: March 26, 2019.

23
24 

25 RICHARD F. BOULWARE, II
26 UNITED STATES DISTRICT JUDGE
27
28

EXHIBIT 8

EXHIBIT 8

MILES, BERGSTROM & WINTERS, LLP AFFIDAVIT

State of California }
 }ss.
Orange County }

Affiant being first duly sworn, deposes and says:

1. I am a managing partner with the law firm of Miles, Bergstrom & Winters, LLP formerly known as Miles, Bauer, Bergstrom & Winters, LLP (Miles Bauer) in Costa Mesa, California. I am authorized to submit this affidavit on behalf of Miles Bauer.

2. I am over 18 years of age, of sound mind, and capable of making this affidavit.

3. Miles Bauer uses ProLaw software to record and track all documents prepared and correspondence sent in connection to a particular file. ProLaw is recognized in the legal industry as a standard software platform for electronic document management and retention. Miles Bauer creates a separate electronic folder on ProLaw for each of its files. Within the folder, Miles Bauer maintains record of communications with its clients and third parties, including, but not limited to, borrowers and homeowners' associations. Miles Bauer also creates and records notes in its ProLaw folders, documenting the status and progress of the related files.

4. The information in this affidavit is taken from Miles Bauer's business records, including records maintained in ProLaw. I have personal knowledge of Miles Bauer's procedures for creating these records. They are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer to make such records. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed that the information in this affidavit is accurate by reading

the affidavit and attachments, and checking that the information in this affidavit matches Miles Bauer's records available to me.

5. Bank of America, N.A. (BANA) retained Miles Bauer to tender payments to homeowners associations (HOA) to satisfy super-priority liens in connection with the following loan:

Loan Number: [REDACTED] 4618

Borrower(s): Dania Hernandez

Property Address: 1524 Highfield Ct., North Las Vegas, NV 89032

6. Attached hereto as Exhibit 1 is a true and correct copy of the ProLaw screenshot of the folder created for this particular loan and borrower. This screenshot is taken directly from ProLaw and reflects Miles Bauer's activity for this particular loan and borrower. I have personal knowledge of Miles Bauer's procedures for creating ProLaw folders. They are: (a) made before or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information stored therein, or from information transmitted by persons with personal knowledge; (b) kept in the course of Miles Bauer's regularly conducted business activities; and (c) it is the regular practice of Miles Bauer to make such ProLaw folders to store and organize all Miles Bauer records for individual files. I have personal knowledge of Miles Bauer's procedures for creating and maintaining these business records. I personally confirmed the information in the ProLaw screenshot is an accurate representation of Miles Bauer's activity by reading the screenshot, and checking that the screenshot information matches Miles Bauer's records available to me.

7. Miles Bauer maintains records for the loan in connection with tender payments to HOA. As part of my job responsibilities for Miles Bauer, I am familiar with the type of records maintained by Miles Bauer in connection with the loan.

8. Based on Miles Bauer's business records, attached as Exhibit 2 is a copy of the Microsoft Word version of a letter from Jeremy Bergstrom, Esq., an attorney with Miles Bauer, to Hidden Canyon Owners Association, care of The Alessi & Koenig, LLC. Although the attached letter is incorrectly dated June 9, 2017 due to the "Automatic Date Change" function in Microsoft Word and date of reprinting of that letter, Miles Bauer's case management system includes a specific note evidencing the letter was sent to on or about October 20, 2009. A copy of a screenshot of the relevant case management note[s] confirming the letter was sent is attached as Exhibit 1.

9. Based on Miles Bauer's business records, attached as Exhibit 3 is a copy of a Statement of Account from Alessi & Koenig, LLC dated December 17, 2009 and received by Miles Bauer in response to the letter identified above.

10. Based on Miles Bauer's business records, attached as Exhibit 4 is a copy of a January 21, 2010 letter from Rock K. Jung, an attorney with Miles Bauer, to Alessi & Koenig, LLC enclosing a check for \$88.50.

///

///

///

///

///


///

///

11. Based on Miles Bauer's business records, attached as Exhibit 5 is a copy of a February 4, 2010 letter from Alessi & Koenig, LLC.

FURTHER DECLARANT SAYETH NOT.

Date: 6/20/17



Declarant Douglas E. Miles

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Orange

Subscribed and sworn to (or affirmed) before me on this 20th day of June, 2017,
by Douglas E. Miles, proved to me on the basis of satisfactory evidence to be
(Name of Signer)

the person who appeared before me.

Signature Amanda Maria Mendoza (Seal)
(Signature of Notary Public)

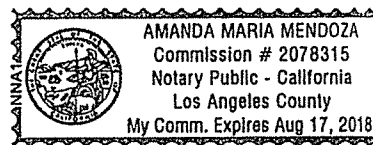


EXHIBIT 1

| | | | |
|--|-----------------------------|-------|---|
| Matter ID: | 09-L0716H | Desc: | Hernandez, Dania V. BAC v. Hernandez HOA |
| Client Sort: | BANK OF AMERICA, N.A. (CWF) | | |
| General Notes Billing Contacts Matters Events Inquiry Settlement Civil Contract Info Custom Deed Info New Invoice | | | |
| Date: (all) | | | |
| 1/1/2004 8/23/2004 | | | |
| <ul style="list-style-type: none"> <input checked="" type="checkbox"/> 10/5/2009: RCVD REFERRAL; OPENED 10/5/09 <input checked="" type="checkbox"/> 10/5/2009: EMF JB re: New Referral <input checked="" type="checkbox"/> 10/20/2009: 10/27 - letters to borrower and HOA sent 10/20. FU with HOA. <input checked="" type="checkbox"/> 10/20/2009: EMT Clint re: Attached is a letter we are sending to the borrower <input checked="" type="checkbox"/> 11/25/2009: 11/25 EMT CLIENT RE HOA UPDATE BUT NO PO OR SALE <input checked="" type="checkbox"/> 11/29/2009: FW 166 09-L0716 LOAN #132544618 1524 Highfield Court <input checked="" type="checkbox"/> 12/10/2009: 12/10 EMT CLIENT RE HOA UPDATE BUT STILL NO PO OR <input checked="" type="checkbox"/> 12/10/2009: FW 653 09-L0716 132544618 1524 Highfield Court .msg <input checked="" type="checkbox"/> 12/18/2009: 12/18 EMT CLIENT RE HOA UPDATE AND PO ATTACHED; <input checked="" type="checkbox"/> 12/18/2009: FW 912 09-L0716 132544618 1524 Highfield Court .msg <input checked="" type="checkbox"/> 1/6/2010: EMF Clint re: Wire request submitted for 88.50 on 1/6 <input checked="" type="checkbox"/> 1/20/2010: RCVD WIRE; F/U 1/28 CONFIRM FUNDS TO HOA <input checked="" type="checkbox"/> 1/22/2010: 1/22 CHECK SENT TO HOA; FU 2/19 SEE IF CHECK WAS <input checked="" type="checkbox"/> 2/18/2010: 2/18 CHECK RETURNED; F/U 5/9 MONITOR EX PARTE <input checked="" type="checkbox"/> 2/18/2010: EMF RKJ re: Status of Payoff funds, rejected <input checked="" type="checkbox"/> 1/24/2011: collection email <input checked="" type="checkbox"/> 4/4/2011: PROPERTY SOLD AT HOA SALE, NEW DEED RECORDED; <input checked="" type="checkbox"/> 4/14/2011: WAITING ON RESPONSE FROM OUTSIDE LAW FIRM <input checked="" type="checkbox"/> 4/27/2011: EMF JB re: response from Akerman law firm re spreadsheet <input checked="" type="checkbox"/> 7/19/2011: DOT sale postponed till 8/15 **DOT sale cancelled** <input checked="" type="checkbox"/> 10/17/2011: EMF RKJ re: continue to monitor <input checked="" type="checkbox"/> 5/14/2012: DEED CORRECTION RECORDED 4/26; F/U 8/10 SEE IF <input checked="" type="checkbox"/> 7/19/2012: EMF RKJ re: monitor for 3 more weeks, set reminder 8/9 <input checked="" type="checkbox"/> 8/10/2012: EMF RKJ re: reminder for 8/14 <input checked="" type="checkbox"/> 8/16/2012: EMF RKJ re: 3 questions to research & answer <input checked="" type="checkbox"/> 8/16/2012: RESEARCH 3 ITEMS FOR FILE; F/U 9/11 RESPOND <input checked="" type="checkbox"/> 9/5/2012: 3 items researched email <input checked="" type="checkbox"/> 11/12/2012: 11/12 EMT JB RESEARCH FINDINGS RE 3 ITEMS FOR FILE; <input checked="" type="checkbox"/> 11/12/2012: Status Update Research Answers Hernandez re 09-L0716.msg <input checked="" type="checkbox"/> 12/13/2012: 12/13 EMT JB STATUS UPDATE THAT NO CHANGE IN <input checked="" type="checkbox"/> 12/17/2012: EMF RKJ re: closing file <input checked="" type="checkbox"/> 12/18/2012: EMF JTB re: closing file <input checked="" type="checkbox"/> 12/26/2012: EMT CLNT w/excel spreadsheet & Dec. 12/19 & 12/20 invoices attached. <input checked="" type="checkbox"/> 1/7/2013: EMF CLNT (MRT) re: invoice submitted for payment processing | | | Docke Date Type Place Loc. Notes |

EXHIBIT 2

DOUGLAS E. MILES *
Also Admitted in Nevada and Illinois
RICHARD J. BAUER, JR.*
JEREMY T. BERGSTROM
Also Admitted in Arizona
FRED TIMOTHY WINTERS*
KEENAN E. McCLENNAN*
MARK T. DOMEYER*
Also Admitted in District of
Columbia & Virginia
TAMI S. CROSBY*
MATTHEW D. TOKARZ *
L. BRYANT JAQUEZ *
DANIEL L. CARTER *
BRIAN H. TRAN*
RYAN W. STOCKING *
GINA M. CORENA
BRUCE T. BAUER *
ROBIN L. LEWIS
Also Admitted in California



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

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

* CALIFORNIA OFFICE
1665 SCENIC AVENUE
SUITE 200
COSTA MESA, CA 92626
PHONE (714) 481-9100
FACSIMILE (714) 481-9141

Of Counsel
JOHN W. LISFI
Admitted in Utah

June 9, 2017

Hidden Canyon Owners Association
c/o THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 100
Las Vegas, NV 89147

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 1524 Highfield Ct., North Las Vegas, NV 89032*
MBBW File No. 09-L0716

Dear Sirs:

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

As you know, NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...
any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:
(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien.

1524 Highfield Ct., North Las Vegas, NV 89032

Page two of two

Subsection 2b of NRS 116.3102 clearly provides that an HOA lien "is prior to all other liens except a first security interest..." But such a lien is prior to a first security interest to the extent of the assessments for common expenses which would have become due during the 6 months before institution of an action to enforce the lien.

Based on Section 2(b), a portion of your HOA lien is arguably senior to BAC's first deed of trust, specifically the six months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated July 23, 2009. For purposes of calculating the six-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the six months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BAC should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.

Please let me know what the status of any HOA lien foreclosure sale is, if any. My client does not want these issues to become further exacerbated by a wrongful HOA sale and it is my client's goal and intent to have these issues resolved as soon as possible. Please refrain from taking further action to enforce this HOA lien until my client and the HOA have had an opportunity to speak to attempt to fully resolve all issues.

Thank you for your time and assistance with this matter. I may be reached by phone directly at (702) 942-0442. Please fax the breakdown of the HOA arrears to my attention at (702) 369-7143. I will be in touch as soon as I've reviewed the same with BAC.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP

Jeremy Bergstrom, Esq.

EXHIBIT 3

DAVID ALESSI*
 THOMAS BAYARD *
 ROBERT KOENIG**
 RYAN KERHOW****

* Admitted to the California Bar

** Admitted to the California, Nevada
 and Colorado Bars

*** Admitted to the Nevada Bar

**** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 100
 Las Vegas, Nevada 89147
 Telephone: 702-222-4033
 Facsimile: 702-222-4043
 www.alessikoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA
 PHONE: 818-733-9600

RENO NV
 PHONE: 775-626-2323
 &
 DIAMOND BAR CA
 PHONE: 909-843-6590

Nevada Licensed Qualified Collection
 Manager

AMANDA LOWER

FACSIMILE COVER LETTER

| | | | |
|----------|------------------|--------|-----------------------------|
| To: | Alexander Bahame | Re: | Escrow #1524 Highfield Ct |
| From: | Thessa Elpidio | Date: | Thursday, December 17, 2009 |
| Fax No.: | | Pages: | 1, including cover |
| | | HO #: | 16246 |

Dear Alexander Bahame:

This cover will serve as an amended demand on behalf of Hidden Canyon Owners Association for the above referenced escrow; property located at 1524 Highfield Ct., N. Las Vegas, NV. The total amount due through January, 1, 2010 is \$1,554.43. The breakdown of fees, interest and costs is as follows:

| | |
|---|-------------------|
| Notice of Delinquent Assessment Lien -- Nevada | \$295.00 |
| Notice of Default | \$395.00 |
| Total | \$690.00 |
| 1. Attorney and/or Trustees fees: | \$690.00 |
| 2. Costs (Notary, Recording, Copies, Mailings, Publication and Posting) | \$200.00 |
| 3. Interest Through December, 17, 2009 | \$0.00 |
| 4. Title Research (10-Day Mailings per NRS 116.31163) | \$285.00 |
| 5. Management Company Audit Fee | \$25.00 |
| 6. Management Document Processing & Transfer Fee | \$0.00 |
| 7. Late Fees Through December, 17, 2009 | \$0.00 |
| 8. Fines Through December, 31, 2009 | \$30.00 |
| 9. Assessments Through January, 1, 2010 @ \$118.00 Annual | \$324.43 |
| 10. Progress Payments: | \$0.00 |
| 12. RPIR-GI Report | \$0.00 |
| Sub-Total: | \$1,554.43 |
| Less Payments Received: | \$0.00 |
| Total Amount Due: | \$1,554.43 |

Please have a check in the amount of \$1,554.43 made payable to the Alessi & Koenig, LLC and mailed to the below listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

Resident Transaction Detail

Active Flag Yes

Void Flag No

HIDDEN CANYON

Account #: 83220

Property Address: 1524 HIGHFIELD CT

| Code | Date | Amount | Balance | Check# | Memo |
|--------|------------|---------|---------|------------|----------------------|
| MA | 1/1/2007 | 118.00 | 118.00 | | |
| LF | 2/28/2007 | 1.77 | 119.77 | | |
| LF | 3/30/2007 | 1.77 | 121.54 | | |
| LF | 4/30/2007 | 1.77 | 123.31 | | |
| LF | 5/30/2007 | 1.77 | 125.08 | | |
| Intent | 6/12/2007 | 50.00 | 175.08 | | INTENT TO LIEN |
| LF | 6/30/2007 | 1.77 | 176.85 | | |
| PMT | 7/9/2007 | -175.08 | 1.77 | 2002130774 | WAL MART MONEY ORDER |
| MA | 1/1/2008 | 118.00 | 119.77 | | Assessment |
| PMT | 1/4/2008 | -119.77 | 0.00 | 2004 | 010408.usb |
| MA | 1/1/2009 | 118.00 | 118.00 | | Assessment |
| LF | 1/30/2009 | 10.00 | 128.00 | | Late Fee Processed |
| LF | 1/30/2009 | 1.77 | 129.77 | | Late Fee Processed |
| Intent | 2/19/2009 | 15.00 | 144.77 | | LATE NOTICE |
| Intent | 3/24/2009 | 50.00 | 194.77 | | INTENT TO LIEN |
| LF | 3/30/2009 | 1.77 | 196.54 | | Late Fee Processed |
| LF | 5/30/2009 | 1.77 | 198.31 | | Late Fee Processed |
| LF | 5/30/2009 | 1.77 | 200.08 | | Late Fee Processed |
| LF | 7/30/2009 | 1.77 | 201.85 | | Late Fee Processed |
| LF | 8/30/2009 | 1.77 | 203.62 | | Late Fee Processed |
| LF | 9/30/2009 | 1.77 | 205.39 | | Late Fee Processed |
| LF | 10/30/2009 | 0.52 | 205.91 | | Late Fee Processed |
| LF | 11/30/2009 | 0.52 | 206.43 | | Late Fee Processed |
| MA | 1/1/2010 | 118.00 | 324.43 | | Assessment |

Count: 1

Total Units: 761

12/17/2009 10:11:04 AM

Page 1 of 1

Resident Transaction Detail

Active Flag Yes

Void Flag No

HIDDEN CANYON

Account #: 112126

Property Address: 1524 HIGHFIELD CT

| Code | Date | Amount | Balance | Check# | Memo |
|-----------|-----------|--------|---------|--------|------------------|
| Admin Ltr | 6/19/2009 | 15.00 | 15.00 | | Certified Letter |
| Admin Ltr | 8/3/2009 | 15.00 | 30.00 | | Certified Letter |

Count: 1

Total Units: 761

EXHIBIT 4

DOUGLAS E. MILES *
Also Admitted in Nevada and Illinois
RICHARD J. BAUER, JR. *
JEREMY T. BERGSTROM
Also Admitted in Arizona
FRED TIMOTHY WINTERS *
KEENAN E. McCLENAHAN *
MARK T. DOMEYER *
Also Admitted in District of
Columbia & Virginia
TAMI S. CROSBY *
MATTHEW D. TOKARZ *
L. BRYANT JAQUEZ *
DANIEL L. CARTER *
BRIAN H. TRAN *
RYAN W. STOCKING *
GINA M. CORENA
ROBIN L. LEWIS
Also Admitted in California
WAYNE A. RASII *
ROCK K. JUNG
VY T. PHAM *
SCOTT B. OLIFANT
Also Admitted in California



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

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

* CALIFORNIA OFFICE
1665 SCENIC AVENUE
SUITE 209
COSTA MESA, CA 92626
PHONE (714) 481-9100
FACSIMILE (714) 481-9141

Of Counsel
JOHN W. LISH
Admitted in Utah

January 21, 2010

ALESSI & KOENIG, LLC
9500 W. FLAMINGO ROAD, SUITE 100
LAS VEGAS, NV 89147

Re: *Property Address:* 1524 Highfield Court
HOA #: 16246
LOAN #: [REDACTED] 4618
MBBW File No. 09-L0716

Dear Sir/Madame:

As you may recall, this firm represents the interests of BAC Home Loans Servicing, LP fka Countrywide Home Loans, Inc. (hereinafter "BAC") with regard to the issues set forth herein. We have received correspondence from your firm regarding our inquiry into the "Super Priority Demand Payoff" for the above referenced property. The Statement of Account provided by in regards to the above-referenced address shows a full payoff amount of \$1,554.43 the beneficiary/servicer of the first deed of trust loan secured by the property and wishes to satisfy its obligations to the HOA. Please bear in mind that:

NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

...
any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section

While the HOA may claim a lien under NRS 116.3102 Subsection (1), Paragraphs (j) through (n) of this Statute clearly provide that such a lien is JUNIOR to first deeds of trust to the extent the lien is for fees and charges imposed for collection and/or attorney fees, collection costs, late fees, service charges and interest. See Subsection 2(b) of NRS 116.3116, which states in pertinent part:

2. A lien under this section is prior to all other liens and encumbrances on a unit except:
(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses...which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien.

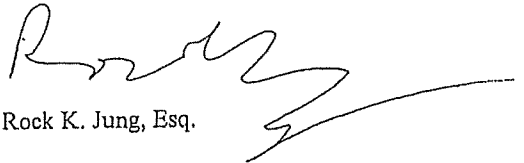
Based on Section 2(b), a portion of your HOA lien is arguably prior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment. As stated above, the payoff amount stated by you includes many fees that are junior to our client's first deed of trust pursuant to the aforementioned NRS 116.3102 Subsection (1), Paragraphs (j) through (n).

Our client has authorized us to make payment to you in the amount of \$88.50 to satisfy its obligations to the HOA as a holder of the first deed of trust against the property. Thus, enclosed you will find a cashier's check made out to Alessi & Koenig, LLC in the sum of \$88.50, which represents the maximum 9 months worth of delinquent assessments recoverable by an HOA. This is a non-negotiable amount and any endorsement of said cashier's check on your part, whether express or implied, will be strictly construed as an unconditional acceptance on your part of the facts stated herein and express agreement that BAC's financial obligations towards the HOA in regards to the real property located at 1524 Highfield Court have now been "paid in full".

Thank you for your prompt attention to this matter. If you have any questions or concerns, I may be reached by phone directly at (702) 942-0442.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP


Rock K. Jung, Esq.

Miles, Bauer, Bergstrom & Winters, LLP Trust Acct

Payee: Alessi & Koenig, LLC

Check #: 2490

09-L0716

Initials: TLC

Date: 1/14/2010 Amount: 88.50

| Inv. Date | Reference # | Description | Inv. Amount | Case # | Matter Description | Cost Amount |
|-----------|-------------|------------------------|-------------|--------|--------------------|-------------|
| 1/14/2010 | #16246 | To Cure HOA Deficiency | 88.50 | | | |

Miles, Bauer, Bergstrom & Winters, LLP
Trust Account
1665 Scenic Avenue - Suite 200
Costa Mesa, CA 92626
Phone: (714) 481-9100

Bank of America
1100 N. Green Valley Parkway
Henderson, NV 89074
16-66/1220
1020
09-L0716
Loan # 1618

2490

Date: 1/14/2010

Amount \$**** 88.50

Check Void After 90 Days

Pay \$*****Eighty-Eight & 50/100 Dollars
to the
order
of Alessi & Koenig, LLC

Security Features Included. Details on back.

EXHIBIT 5

DAVID ALESSI*
THOMAS BAYARD*
ROBERT KOENIG**
RYAN KERBOW***
* Admitted to the California Bar
** Admitted to the California, Nevada
and Colorado Bar
*** Admitted to the California and Nevada Bar

**ALESSI
KOENIG**
A Multi-Jurisdictional Law Firm
9500 West Flamingo Road, Suite 100
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES

AGOURA HILLS, CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2323
&
DIAMOND BAR CA
PHONE: 909-843-6590

Nevada Licensed Qualified Collection Manager
AMANDA LOWER

February 4, 2010

Miles, Bauer, Bergstrom & Winters
2200 Paseo Verde Parkway, Suite 250
Henderson, NV 89052

Re: Rejection of Partial Payments

Gentlepersons,

This letter will serve to inform you that we are unable to accept the partial payments offered by your clients as payment in full. While we understand how you read NRS 116.3116 as providing a super priority lien only with respect to 9 months of assessments, case authority exists which provides that the association's lien also includes the reasonable cost of collection of those assessments. (see *Korbel Family Trust v. Spring Mountain Ranch Master Association*, Case No. 06-A-523959-C.)

If the association were to accept your offer that only includes assessments, Alessi & Koenig would be left with a lien against the association for our substantial out-of-pocket expenses and fees generated. The association could end up having *lost* money in attempting to collect assessments from the delinquent homeowner.

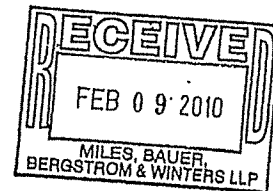
It has come to my attention that our office inadvertently posted some of the checks sent from Miles Bauer that contained only partial payments. We are therefore refunding that money, as our clients have not authorized us to take payments that amount to a small fraction of their total liens. We apologize for an inconvenience this may cause you.

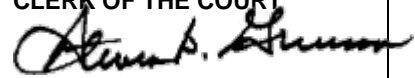
If you would like to discuss these matters further, please do not hesitate to call.

Sincerely,



Ryan Kerbow, Esq.





1 ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
2 TENESA POWELL, ESQ.
Nevada Bar No. 12488
3 AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
4 Telephone: (702) 634-5000
Facsimile: (702) 380-8572
5 Email: ariel.stern@akerman.com
Email: tenesa.powell@akerman.com
6

7 *Attorneys for The Bank of New York Mellon f/k/a The*
8 *Bank of New York, as Trustee for the*
9 *Certificateholders of CWABS, Inc., Asset-Backed*
10 *Certificates, Series 2006-7*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 LAS VEGAS DEVELOPMENT GROUP, LLC,
14 a Nevada limited liability company,

15 Plaintiff,

16 vs.

17 DANIA V. HERNANDEZ, an individual; THE
18 BANK OF NEW YORK MELLON F/K/A THE
19 BANK OF NEW YORK, AS TRUSTEE FOR
20 THE CERTIFICATEHOLDERS OF CWABS,
21 INC., ASSET-BACKED CERTIFICATES,
22 SERIES 2006-7, a national banking association;
DOE individuals I through XX; and ROE
CORPORATIONS I through XX,

23 Defendants.

24 THE BANK OF NEW YORK MELLON F/K/A
25 THE BANK OF NEW YORK, AS TRUSTEE
26 FOR THE CERTIFICATEHOLDERS OF
27 CWABS, INC., ASSET-BACKED
28 CERTIFICATES, SERIES 2006-7,

Counterclaimant,

vs.

LAS VEGAS DEVELOPMENT GROUP, LLC,
a Nevada limited liability company,

Counterdefendant.

Case No.: A-17-756215-C
Dept. No.: XIII

**REPLY SUPPORTING MOTION FOR
SUMMARY JUDGMENT**

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 LVDG does not that BAC's tender was sufficient or delivered. Instead, it raises a number of
2 legal arguments which the Nevada supreme court has already rejected. LVDG next claims BoNYM's
3 counterclaim is time barred. But the Nevada supreme court has already ruled that a lender need not
4 file suit to in order to validate a tender. Even if this court finds BoNYM's claims are time barred, it
5 cannot grant affirmative declaratory relief in LVDG's favor. LVDG waited more than six years to file
6 suit. BAC's tender preserved the deed of trust by operation of law and the court should enter judgment
7 in BoNYM's favor.

8 **I. RESPONSE TO STATEMENT OF UNDISPUTED FACTS**

9 BoNYM disputes those "facts" which are legal conclusions contained within LVDG's
10 statement of undisputed facts. *See, e.g.*, 4:23-25.

11 **II. ARGUMENT**

12 **A. BoNYM's claims are timely.**

13 1. *BoNYM is not subject to any limitation under City of Fernley.*

14 A lender that requests declaratory relief that its deed of trust is valid and may be foreclosed is
15 not subject to any statute of limitations. *City of Fernley v. State Dep't of Tax.*, 366 P.3d 699 (Nev.
16 2016). *City of Fernley* holds there is no statute of limitations on suits "for injunctive and declaratory
17 relief" seeking to establish parties' current and future rights and duties. *City of Fernley*, 366 P.3d at
18 707-08. The opinion held:

19 The statute of limitations applies differently depending on the type of relief sought.
20 *Taxpayers Allied for Constitutional Taxation v. Wayne Cty.*, 450 Mich. 119, 537
21 N.W.2d 596, 599 (1995); *Kirn v. Noyes*, 262 A.D. 581, 31 N.Y.S.2d 90, 93 (1941)
22 (holding that **no statutory limitation applies "when a declaratory judgment will**
23 **serve a practical end in determining and stabilizing an uncertain or disputed jural**
24 **question, either as to present or prospective obligations"**). There are two types of
25 relief: retrospective relief, such as money damages, and **prospective relief, such as**
26 **injunctive or declaratory relief**. *Tenneco, Inc. v. Amerisure Mut. Ins. Co.*, 281
27 Mich.App. 429, 761 N.W.2d 846, 862–63 (2008).

28 *Id.* at 707 (emphasis added).

29 In *City of Fernley*, Fernley challenged the constitutionality of a tax law. The Nevada supreme
30 court found that because Fernley was aware of the issue as of its incorporation in 2001, the limitations
31 period began to run in 2001 and NRS 11.220 barred the claim for *retrospective* relief in the form of
32 damages. *Id.* at 108. As to Fernley's request for injunctive and declaratory relief, the court held that

1 the statute of limitations did *not* bar it from seeking to prevent future violations of its constitutional
2 rights. *Id.* The opinion's underlying rationale is that *all* declaratory actions "serve a practical end in
3 determining and stabilizing an uncertain or disputed jural question" as to the parties' current or future
4 obligations. *Id.* at 706.

5 That is precisely what happens when a mortgage lender files a declaratory relief action: the
6 suit serves a practical end in determining a disputed jural question—whether the lender can foreclose
7 on its deed of trust without future challenge from a litigious investor like LVDG. The potential
8 complications from foreclosing the deed of trust without a declaratory judgment illustrate practicality
9 of declaratory relief in this context. BoNYM can foreclose because it has a valid deed of trust.
10 However, a buyer like LVDG is likely to challenge BoNYM foreclosure post-sale, and the ongoing
11 uncertainty from such litigation would chill the post-sale market, would complicate eviction
12 proceedings involving LVDG's tenant, would make title insurance difficult to obtain, etc. A pre-
13 foreclosure declaratory judgment simplifies these complications, confirming declaratory judgment has
14 a practical, prospective effect. Under *City of Fernley*, this is prospective relief; there is no time bar.

15 **B. There is no presumption the deed of trust was extinguished.**

16 There is nothing in NRS 116, the text or commentary to the Uniform Common Interest
17 Ownership Act, or the Nevada supreme court's precedents creating a presumption that an HOA
18 foreclosure involves a superpriority component, or that the deed of trust is extinguished through an
19 HOA foreclosure. Nothing in the statute requires a mortgagee to get a court order before foreclosing
20 its own lien. Just because extinguishment of a deed of trust is a possible outcome does not mean it is
21 the presumptive outcome. LVDG has to prove the sale involved a superpriority lien. As the Nevada
22 supreme court recently held, a party asserting title has the burden of showing good title in itself.
23 *Resources Group, LLC v. Nev. Assoc. Servs., Inc.*, 135 Nev. Adv. Op. 8, 437 P.3d 154 (Nev. Mar. 14,
24 2019) (each party has a respective burden to establish good title).

25 In *Resources Group*, the purchaser at an HOA foreclosure sale filed a quiet title action against
26 the former owner after the HOA's foreclosure trustee, Nevada Association Services, Inc. (NAS),
27 refused to provide it with a foreclosure deed. *Resources Group*, 437 P.3d at 156-57. Shortly after the
28 sale, NAS discovered a check at its office from the former owner for the full outstanding balance, and

1 refused to issue the deed because it was unclear whether the check arrived before or after the sale. *Id.*
2 The main issue was whether the parties met their respective burdens to establish good title. The former
3 owner argued the purchaser held the burden to demonstrate the former owner's check arrived *after* the
4 foreclosure sale. The purchaser argued the former owner had the burden to demonstrate the payment
5 arrived *before* the sale. The court emphasized that "each party in a quiet title action has the burden of
6 demonstrating superior title in himself or herself." *Id.* at 157-58. But, when one party asserts payment
7 as an affirmative defense to the other party's quiet title claim, the party asserting payment has the
8 burden of proving that payment. *Id.* at 158-59.

9 The court applied a procedure-based rule of evidence to reach its decision, not a substantive
10 rule of law. In determining the former owner bore the burden of proof to establish the payment, it cited
11 NRCP 8(c), which lists "payment" as an affirmative defense. *Id.* A defendant's burden to prove each
12 element of its affirmative defense is nothing new. This is the general rule under both state and federal
13 rules of civil procedure. *See Schwartz v. Schwartz*, 95 Nev. 202, 206 n.2, 591 P.2d 1137, 1140 n.2
14 (1979); *see also Adobe Sys. Inc. v. Christenson*, 809 F.3d 1071, 1078 (9th Cir. 2015).

15 In the context of HOA foreclosure sales, LVDG's false logic says that because the tendering
16 party has the burden to prove payment if there is litigation, there must also be a substantive
17 presumption that no tender occurred. LVDG takes that false logic even further by arguing its non-
18 payment presumption exists independently, outside of litigation—thereby requiring a mortgage lender
19 that paid the superpriority lien to obtain a court order before it can foreclose. LVDG's argument is not
20 only fallacious, it is groundless. The Nevada supreme court has not once held, in a published or
21 unpublished case, that there is a *presumption* of non-tender of the superpriority lien. It merely held
22 the burden of proof for a defendant asserting the affirmative defense of payment is on the party who
23 alleges it—at least where the "payment" is for the full amount, resulting in an entirely void sale.

24 To the extent there is any presumption regarding payment, it is that the secured lender paid the
25 superpriority component. *See SFR Invs. v. U.S. Bank*, 334 P.3d 408, 41. (holding only that "proper
26 foreclosure [of a *superpriority lien*] will extinguish a first deed of trust."). The comments to the
27 Uniform Common Interest Ownership Act, which the Nevada supreme court has already relied-on to
28 interpret NRS 116.3116, make this clear: "as a practical matter, secured lenders will most likely pay

1 the 6 [in Nevada nine . . .] months' assessments demanded by the association.'" *SFR Invs. Pool 1 v.*
2 *U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 413 (2014) (quoting official commentary to Uniform
3 Common Interest Ownership Act). Similarly, the Report of the Joint Editorial Board for the Uniform
4 Real Property Acts explained that a *fundamental assumption* of the split-lien approach was that "if an
5 association took action to enforce its lien and the unit/parcel owner failed to cure its assessment
6 default, the first mortgage lender would promptly . . . pay the prior six [here, nine] months of unpaid
7 assessments to the association to satisfy the limited priority lien." *See Ex. A*, p. 4. If the statute
8 includes any presumption, it is the presumption that the senior lender paid the superpriority amount
9 before the sale, preserving its lien priority. That is what the drafters of the uniform statute expected
10 would happen.

11 But even if LVDG's false logic was correct that it is entitled to a *presumption* of non-payment
12 of the superpriority amount, that presumption is nothing more than a rule of evidence, not a substantive
13 rule of law entitling LVDG to clear title automatically. *See Tatum v. Tatum*, 241 F.2d 401, 406 (9th
14 Cir. 1957) ("[a] presumption, not being conclusive, is simply a rule of evidence, not one of law. It may
15 be rebutted. Its effect is merely to cast upon the opposing party the burden of overcoming it.")
16 Presumptions and burdens of proof only apply in the context of litigation. Without litigation, there is
17 no one to determine which presumptions and burdens apply or when.

18 **C. The deed recitals do not create a presumption of a superpriority foreclosure.**

19 The deed recitals do not establish a presumption of a superpriority foreclosure. The Nevada
20 supreme court noted the deed recitals outlined in NRS 116.3116 concern only "default, notice, and
21 publication of the" notice of sale, and thus do not provide any presumption regarding other aspects of
22 the foreclosure. *Shadow Wood Homeowners Assoc., Inc. v. New York Cmty. Bancorp, Inc.*, 366 P.3d
23 1105, 1110 (Nev. 2016).

24 While the Nevada supreme court in *Shadow Canyon* stated that "[the Bank] has the burden to
25 show that the sale should be *set aside* in light of [SFR's] status as a record title holder," this burden
26 only applies in the *equitable* context where the bank is seeking to set the sale aside as void. *See*
27 *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641 (Nev.
28 2017). It does not apply to an argument that the sale transferred the property subject to the bank's deed

1 of trust where a tender extinguished the superpriority lien before the sale. Similarly, while *Shadow*
2 *Wood* held the mere possibility of a post-sale challenge, which exists in every foreclosure sale, is not
3 enough to deprive foreclosure buyers of their *bona fide* purchase, this too was in the context of an
4 *equitable* challenge resulting in the purchaser's title being invalidated. In *Shadow Wood*, the bank had
5 already foreclosed, and it contested the HOA foreclosure not as the holder of a deed of trust but as the
6 title owner of the property. *Id.* at 1107. Because the bank no longer held a deed of trust, it was clear
7 from the public record its interest was junior to the HOA's. And, because the bank no longer held a
8 deed of trust, buyers did not need to ask the question later decided in *SFR Investments*: whether the
9 HOA's nonjudicial foreclosure sale could extinguish the bank's deed of trust. In *Shadow Wood*, any
10 foreclosure buyer who examined the property's chain of title and the HOA's public notices would have
11 rightly expected the HOA's sale to extinguish the bank's title. Unless the buyer had some reason to
12 expect the bank to contest foreclosure—it would take the property without "notice of any potential
13 future dispute as to title." *Id.* at 1116.

14 The court should disregard LVDG's so-called presumption of extinguishment, giving it no
15 weight. *See also Centeno v. Mortg. Elec. Registration Sys., Inc.*, No. 64998, 2016 WL 3486378, at *2
16 (Nev. 2016) (unpublished) ("Here, [the purchaser] failed to, by affidavit or otherwise, establish that a
17 valid notice of trustee's sale was recorded at the time of foreclosure to support the deed's recitals of
18 notice compliance. [The purchaser] *thereby failed to meet* [its] *burden to prove that BOA's first deed*
19 *of trust was properly extinguished.*") (emphasis added) (citing *SFR Invs. Pool 1, LLC v. U.S. Bank,*
20 *N.A.*, 334 P.3d 408, 419 (Nev. 2014) ("*proper* foreclosure [of a superpriority lien] will extinguish a
21 first deed of trust").

22 **D. A judicial declaration is not required to non-judicially foreclose.**

23 As explained above, LVDG bases its motion on a fallacy: the critical—but mistaken—
24 assumption that BoNYM needed to obtain a judgment confirming its deed of trust survived the HOA's
25 sale as a condition precedent to *non-judicial* foreclosure. LVDG's assumption is wrong; nothing in
26 NRS Chapter 116, the official commentary to the Uniform Common Interest Ownership Act, or the
27 Nevada supreme court's precedents, requires BoNYM to obtain a judicial declaration before it can
28 foreclose. Non-judicial foreclosure is independent of the judiciary—a judicial action is not necessary

1 to perfect the right to foreclose.

2 The Nevada supreme court has rejected any notion that a lender must file suit to validate its
3 tender. In *Bank of Am., N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113, 134 Nev. Adv. Op. 72 (Sept.
4 13, 2018) (amended Nov. 13, 2018) (***Diamond Spur***), the court held "Bank of America's tender cured
5 the default and prevented foreclosure as to the superpriority portion of the HOA's lien **by operation of**
6 **law.**" *Id.* at 120 (emphasis added). No suit is necessary to restore the deed of trust because BoNYM's
7 tender satisfied the superpriority component and preserved the deed of trust "by operation of law."
8 *Diamond Spur* also rejected any notion that a tendering lender is required to keep a tender good by
9 paying the amount into court:

10 Neither NRS 116.3116, the related statutes in NRS Chapter 116, nor the UCIOA,
11 indicates that a party tendering a superpriority portion of an HOA lien must pay
12 the amount into court to satisfy the lien.

13 To judicially impose such a rule would only obstruct the operation of the split-
14 lien scheme. The practical effect of requiring the first deed of trust holder to pay
15 the tender into court is that a valid tender would no longer serve to discharge the
16 superpriority portion of the lien. Instead, the tendering party would have to bring
17 an action showing that the tender is valid and paid into court before the lien is
18 discharged. With such conditions, ***a tendering party could only achieve***
19 ***discharge of the superpriority portion of the lien by litigation. This process***
20 ***negates the purpose behind the unconventional HOA split-lien scheme: prompt***
21 ***and efficient payment of the HOA assessment fees on defaulted properties.***

17 *Id.* at 120-21 (emphasis added).

18 LVDG's "presumption of extinguishment" creates exactly the same problem—it requires banks
19 who paid the superpriority component to sue for a declaratory order. There is no reason to impose a
20 judicial-action requirement, and *Diamond Spur* directly rejects any judicial-action requirement before
21 a bank's tender becomes effective.

22
23 **E. LVDG Is not entitled to quiet title because the bank tendered.**

24 The Nevada supreme court has confirmed a mortgagee's tender of the superpriority amount
25 results in the foreclosure sale purchaser taking title subject to the deed of trust, even if the tender is
26 rejected. *Diamond Spur*, 427 P.3d at 116 (Nev. 2018). *Diamond Spur* is dispositive.

27 In *Diamond Spur*, Bank of America contacted the HOA seeking to clarify the superpriority
28 amount and offering to pay it. *Diamond Spur*, 427 P.3d at 116. The HOA provided a ledger in

1 response showing nine months' worth of assessments totaled \$720, and "did not indicate that the
2 property had any charges for maintenance or nuisance abatement." *Id.* at 118. Based on the ledger,
3 Bank of America tendered \$720—nine months' worth of common assessments—with a letter stating
4 acceptance is an "express agreement that [Bank of America]'s financial obligations towards the HOA
5 in regards to [the property] have now been 'paid in full.'" *Id.* The HOA rejected the payment, claiming
6 it did not satisfy both the superpriority and subpriority portions of its lien, and sold the property to a
7 third party buyer. *Id.* at 116-17.

8 On appeal, Bank of America argued its tender satisfied the superpriority lien. *Id.* at 117. The
9 buyer took the opposite position, asserting the tender had no effect because (1) it was conditional, (2)
10 it was rejected in good faith, (3) it was not "kept good;" and (4) it could have no effect on a *bona fide*
11 purchaser. *Id.* at 118-21. The Nevada supreme court sided with Bank of America, rejecting each
12 argument the buyer made.

13 The Nevada supreme court rejected the buyer's "conditional tender" argument, explaining
14 "[V]alid tender must be unconditional, or with conditions on which the tendering party has a right to
15 insist." *Id.* at 118. It found Bank of America's tender, which included a letter with similar language
16 to the one in this case, valid under the second part of that test: "Bank of America's letter stated that
17 acceptance of the tender would satisfy the superpriority portion of the lien, preserving Bank of
18 America's interest in the property. Bank of America had a legal right to insist on this." *Id.*

19 The court rejected the buyer's "good faith rejection" argument, holding any disagreement about
20 the amount Bank of America had to pay was not reasonable: "A plain reading of [the statute] indicates
21 that the superpriority portion of an HOA lien includes only charges for maintenance and nuisance
22 abatement, and nine months of unpaid assessments." *Diamond Spur*, 427 P.3d at 117. "[A] plain
23 reading of NRS 116.3116 indicates that at the time of Bank of America's tender, tender of the
24 superpriority amount . . . was sufficient to satisfy that portion of the lien. Thus, this issue was not
25 undecided [at the time of Bank of America's tender]." *Id.* at 118.

26 The court also rejected the buyer's argument Bank of America had to record its tender. It
27 explained NRS 111.315, which states "[e]very conveyance of real property . . . shall be recorded,"
28 does not apply in this context because tendering the superpriority portion of an HOA lien does not

1 create, alienate, assign or surrender a property interest." *Id.* at 119. It held NRS 106.220, which
2 provides "[a]ny instrument by which any mortgage or deed of trust of, lien upon or interest in real
3 property is subordinated or waived as to priority, must . . . be recorded" does not apply either, because
4 Bank of America's tender "cured the [superpriority] default and prevented foreclosure as to the
5 superpriority portion of the HOA's lien by operation of law." *Id.* at 119-20.

6 The court rejected the buyer's argument Bank of America had to keep its tender "good" by
7 paying it into the court, reasoning a "keep good" requirement would obstruct the purpose behind "the
8 unconventional HOA split-lien scheme: prompt and efficient payment of the HOA assessment fees on
9 defaulted properties, since a tendering party "would have to bring any action showing that the tender
10 is valid and paid into the court to avoid loss of its position through foreclosure of the superpriority
11 portion of the lien." *Id.* at 121.

12 Finally, the court found the foreclosure buyer's claimed bona fide purchaser status
13 inconsequential: "A party's status as a [bona fide purchaser] is irrelevant when a defect in the
14 foreclosure proceeding renders the sale void," and "[a]fter a tender of the superpriority portion of an
15 HOA lien, a foreclosure sale on the entire lien is void as to the superpriority portion, because it cannot
16 extinguish the first deed of trust on the property." *Id.* at 121. The court concluded, "Because [Bank
17 of America]'s valid tender cured the default as to the superpriority portion of the HOA's lien, the HOA's
18 foreclosure on the entire lien resulted in a void sale as to the superpriority portion . . . [and] the Bank
19 of America's first deed of trust remained after foreclosure." *Id.*

20 As in *Diamond Spur*, BoNYM's servicer, through counsel, sent a letter to confirm the
21 superpriority amount and offered to pay it. Mot. at Ex. 6. Alessi provided a full account statement in
22 response. *Id.* Miles Bauer tendered payment of \$88.50, in excess of the true superpriority of \$58.98.
23 *Id.* Alessi rejected the tender. *Id.* As *Diamond Spur* explains, the rejection is immaterial: "[T]ender
24 of the superpriority amount results in the buyer at foreclosure taking the property subject to the deed
25 of trust." *Diamond Spur*, 427 P.3d at 116.

26 **F. "Good faith rejection" is immaterial.**

27 LVDG claims Alessi rejected the tender in good faith based on its reliance on the *Korbel*
28 *Family Trust* case. Opp'n at 15-17. The Nevada supreme court has repeatedly rejected this argument

1 and this court should do the same.

2 The argument the law was "uncertain" asks the court to find the tender insufficient because, in
3 hindsight, Alessi took an incorrect position. The Nevada supreme court described the argument the
4 superpriority amount was "legally unsettled" provided a valid basis to reject a superpriority tender as
5 "unpersuasive" in *Diamond Spur*. There, the tender letter stated accepting Bank of America's check
6 totaling nine months of assessments "would satisfy the superpriority portion of the lien, preserving
7 [BANA's] interest in the property." *Bank of Am., N.A.*, 427 P.3d at 118. SFR argued this language
8 made the letter impermissibly conditional "because the payment required to satisfy the superpriority
9 portion of an HOA lien was legally unsettled [.]" *Id.* The Nevada supreme court disagreed, explaining
10 "this issue was not undecided" because a "plain reading of the statute indicates that the superpriority
11 portion of an HOA lien includes only charges for maintenance and nuisance abatement, and nine
12 months of unpaid assessments." *Id.* at 118.

13 To the extent *Diamond Spur* does not completely foreclose the "good faith" argument,
14 subsequent decisions do. In *Fiducial*, for instance, the court held the "subjective good faith for
15 rejecting [a] tender is legally irrelevant, as [a] tender cure[s] the default as to the superpriority portion
16 of the HOA's lien by operation of law." *Fiducial, LLC v. The Bank of N.Y. Mellon Corp.*, 432 P.3d
17 718, 718 (Nev. 2018). And more recently, the Nevada supreme court rejected the argument the HOA
18 had a "good-faith basis" for rejecting a tender because it "believed collection costs made up part of the
19 superpriority portion of the HOA's lien," again noting "subjective good faith in rejecting the tender is
20 legally irrelevant, as the tender cured the default as to the superpriority portion of the HOA's lien by
21 operation of law." *TRP Fund IV, LLC v. The Bank of N.Y. Mellon*, 434 P.3d 926, 926 (Nev. Feb. 20,
22 2019).¹

23 . . .

24 _____
25 ¹ The Nevada supreme court has repeatedly found that "good faith rejection" is "legally irrelevant" where there is a valid
26 tender. See *Bank of America v. SFR Investments Pool 1, LLC*, Case No. 70903 (Dec. 4, 2018), *Deutsche Bank National*
27 *Trust v. Premier One Holdings, LLC*, Case No. 69167 (Dec. 4, 2018), *Fiducial v. BoNYM*, Case No. 71864 (Dec. 11,
28 2018), *SFR Investments Pool 1, LLC v. MERS*, Case No. 72222 (Dec. 4, 2018), *Bank of America v. BDJ Investments*, Case
No. 69856 (Dec. 4, 2018), *Sage Realty v. BoNYM*, Case No. 73735 (Dec. 11, 2018), *Pawlik v. BoNYM*, Case No. 71681
(Dec. 11, 2018), *SFR Investments Pool 1, LLC v. Green Tree Servicing*, Case No. 71681 (Dec. 27, 2018), *Nationstar v.*
Jackel Props., Case No. 75040 (Mar. 15, 2019), *Wimbledon Drive Trust v. Bank of America*, Case No. 74840 (Mar. 15,
2019), *Daisey Trust v. Green Tree Servicing*, Case No. 74110 (Mar. 15, 2019).

1 **G. *Diamond Spur* is dispositive of LVDG's remaining tender challenges.**

2 LVDG argues BAC failed to keep the tender good, that the tender was conditional, and BAC
3 "did nothing" after the tender was rejected. Opp'n at 18-21. As an initial matter, LVDG's "keep good"
4 argument is irrelevant, because BAC *actually tendered payment*. That BAC tendered a check rather
5 than a cashier's check is also of no consequence and certainly does not raise any genuine issue of fact
6 for trial. As for LVDG's remaining tender challenges, the tender in this case is nearly identical to the
7 tender letter the Nevada supreme court reviewed in *Diamond Spur*. 427 P.3d 113 (Nev. 2018).

8 The *Diamond Spur* court concluded that the condition contained in the letter was a condition
9 that Bank of America had a right to insist upon. *Id.* at 118. LVDG argues that acceptance of the tender
10 "could mean" a number of things, *none* of which it provides any evidence was the case here. Opp'n at
11 19. LVDG cannot defeat summary judgment with speculative argument. Bank of America's letter did
12 not ask the HOA to waive anything. *See Alliant Commercial LLC v. BoNYM*, 2019 WL 2725620
13 (table decision) (Nev. June 17, 2019) (rejecting conditional tender argument where "it did not require
14 anything of the HOA" to accept the tender); *Wimbledon Drive Trust v. Bank of America*, 435 P.3d
15 1225 (table decision) (Nev. Mar. 15, 2019) (rejecting argument tender letter precluded HOA from
16 collecting future amounts). Finally, as outlined above, the *Diamond Spur* court rejected the argument
17 that BAC needed to validate its tender or "do more" after rejection as LVDG argues. The court should
18 do the same here.

19 **H. LVDG is not entitled to quiet title because its claim is time-barred.**

20 The five-year quiet title statute of limitations, NRS 11.080, governs quiet title actions brought
21 by purchasers at HOA foreclosure sales under NRS 116. *See Saticoy Bay LLC Series 2021 Gray Eagle*
22 *Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d 226, 232 (Nev. 2017).

23 *Gray Eagle* is a Nevada HOA foreclosure case. 388 P.3d at 226. Saticoy Bay allegedly
24 obtained title through an HOA foreclosure sale in August 2013. *Id.* at 228. Saticoy Bay filed a
25 complaint seeking an order the sale extinguished the deed of trust. *Id.* After Saticoy Bay failed to
26 prosecute its claims, the district court dismissed the action and concluded Saticoy Bay could not refile
27 a subsequent action because the statute of limitations had run on the claims. *Id.* at 232.

28 The Nevada supreme court held NRS 11.080 applied to Saticoy Bay's claims, which began to

1 run at the time Saticoy Bay purchased the property in 2013. *Id.* The court held the statute of limitations
2 for Saticoy Bay's quiet title action would not run until 2018. *Id.*

3 LVDG's claims are the same as Saticoy Bay's in *Gray Eagle*. Its claims are subject to a five-
4 year statute of limitations, which began to run as of the date of the HOA foreclosure sale on March 2,
5 2011.² The statute of limitations on LVDG's claims ran on March 2, 2016. LVDG filed its complaint
6 too late, on May 31, 2017. The court cannot quiet title in its favor.

7 **I. Bona Fide Purchaser is irrelevant.**

8 The court need not weigh the equities based on BAC's tender. *Diamond Spur*, 427 P.3d 113.
9 If the court does weigh the equities, they tip in BoNYM's favor. As outlined in BoNYM's motion and
10 above, it would be unfair and oppressive to extinguish the deed of trust under these circumstances.

11 LVDG claims it is a bona fide purchaser. Opp'n at 23-24. BAC's tender preserved the deed of
12 trust by operation of law, making any bona fide purchaser argument irrelevant. *Diamond Spur*, 427
13 P.3d at 121 (bona fide purchaser status is irrelevant given bank's tender).

14 Even if bona fide purchaser were relevant, LVDG is not a bona fide purchaser. LVDG has the
15 burden to show that it is a *bona fide* purchaser. *RLP-Ampus Place, LLC v. U.S. Bank*, Case 71883
16 (Nev. Dec. 22, 2017) (unpublished) (citing *Berge v. Fredericks*, 95 Nev. 183, 187, 591 P.2d 246, 247
17 (1970) (burden is on party claiming to be a *bona fide* purchaser); *Hewitt v. Glaser Land & Livestock*
18 *Co.*, 97 Nev. 207, 208, 626 P.2d 268, 268-69 (1981) (the party claiming to be a bona fide purchaser
19 has the burden to prove such status). Here, LVDG has offered *zero* evidence that it is a bona fide
20 purchaser. For this reason alone, the court cannot find LVDG a bona fide purchaser. *See RLP-Ampus*,
21 at *3 ("appellant failed to produce even an affidavit supporting its putative BFP status, meaning that
22 there was no admissible evidence as to this issue.").

23 To be a bona fide purchaser, one must take property "for a valuable consideration and without
24 notice of the prior equity, and *without notice of facts which upon diligent inquiry would be indicated*
25 *and from which notice would be imputed to him, if he failed to make such inquiry.*" *Shadow Wood*,
26 366 P.3d at 1115 (citing *Bailey v. Butner*, 176 P.2d 226, 234 (Nev. 1947) (emphasis added)). A party
27

28 ² Or, alternatively, the date of the quitclaim deed, March 30, 2011. Under either calculation, LDVG's claim is untimely.

1 has constructive notice of any recorded interest in the real property records—regardless of whether
2 the party searched the real property records. *Tai-Si Kim v. Kearney*, 838 F. Supp. 2d 1077, 1086-88
3 (D. Nev. 2012)(noting the purpose of Nevada's recording statute is to provide constructive notice of
4 all recorded instruments to any subsequent purchaser or mortgagee). A person has constructive notice
5 of a senior deed of trust's interest in the property if the deed of trust or an assignment is recorded in
6 the real property records. *Fed. Nat'l Mortg. Ass'n v. SFR Invs. Pool 1, LLC*, No. 2:14-cv-02046, 2015
7 WL 5723647, at *3 (D. Nev. Sept. 28, 2015).

8 LVDG had actual and constructive notice of the deed of trust. The senior deed of trust was
9 recorded in 2006—years before the foreclosure sale. The deed of trust put LVDG on inquiry notice
10 of BAC's payment. The deed of trust was enough to "put a prudent man on inquiry which if
11 prosecuted with ordinary diligence would lead to actual knowledge of some right or title in conflict
12 with the title he is about to purchase." *Allison Steel Mfg. Co. v. Bentonite, Inc.*, 86 Nev. 494,498,
13 471 P.2d 666,668 (1970). LVDG is "charge[d] with actual knowledge of what the inquiry would
14 have disclosed." *Id.*

15 LVDG took title via a quitclaim deed without warranties. It cannot now shield itself with the
16 bona fide purchaser doctrine by intentionally seeking to remain in the dark about what exactly it was
17 purchasing. LVDG knew the risks it was accepting in purchasing an HOA foreclosure property and
18 acted to its own peril when they purchased a warrantless deed. LVDG has also enjoyed unfettered
19 use of the property since the foreclosure sale and recovered its investment many times over. It
20 cannot be harmed if the court finds its interest is subject to the deed of trust.

21 . . .

22 . . .

23 . . .

24 . . .

25 . . .

26 . . .

27 . . .

28 . . .

1 **IV. CONCLUSION**

2 BAC's tender preserved the deed of trust by operation of law. LVDG's interest is subject to
3 the deed of trust and the court should grant judgment in BoNYM's favor.

4 Dated: July 5, 2019.

5 **AKERMAN LLP**

6 */s/ Tenesa S. Powell*

7 ARIEL E. STERN, ESQ.

8 Nevada Bar No. 8276

9 TENESA POWELL, ESQ.

10 Nevada Bar No. 12488

11 1635 Village Center Circle, Suite 200

12 Las Vegas, Nevada 89134

13 *Attorneys for The Bank of New York Mellon f/k/a The*
14 *Bank of New York, as Trustee for the Certificateholders*
15 *of CWABS, Inc., Asset-Backed Certificates, Series 2006-*
16 *7*

17 **CERTIFICATE OF SERVICE**

18 I HEREBY CERTIFY that on this 5th day of July, 2019 and pursuant to NRCP 5(b), I served
19 via the Clark County electronic filing system a true and correct copy of the foregoing **REPLY**
20 **SUPPORTING MOTION FOR SUMMARY JUDGMENT**, addressed to:

21 **Roger P. Croteau & Associates, Ltd.**

22 Roger P. Croteau croteaulaw@croteaulaw.com

23 Croteau Admin receptionist@croteaulaw.com

24 */s/Jill Sallade*

25 An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A

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

JUNE 1, 2013

The Joint Editorial Board for Uniform Real Property Acts (the “Board”) provides guidance to the Uniform Law Commission (ULC) and others regarding potential subjects for uniform laws relating to real estate, as well as advice regarding potential amendments to existing uniform laws relating to real estate. The Board is comprised of representatives of the ULC, the American Bar Association Real Property, Trust and Estate Law Section, and the American College of Real Estate Lawyers, as well as liaisons from the American College of Mortgage Attorneys, the American Land Title Association, and the Community Associations Institute.

JOINT EDITORIAL BOARD FOR UNIFORM REAL PROPERTY ACTS

Co-Chairs

William R. Breetz, Jr., Hartford, CT
Barry B. Nekritz, Chicago, IL

Uniform Law Commission Members

William R. Breetz, Hartford, CT
Barry C. Hawkins, Stamford, CT

American College of Real Estate Lawyers Members

Ann M. Burkhart, Minneapolis, MN
Ira Waldman, Los Angeles, CA

American Bar Association, Real Property, Trust and Estate Law Section Members

Ira Meislik, Montclair, NJ
Barry B. Nekritz, Chicago, IL

American College of Mortgage Attorneys Liaison

Mark A. Manulik, Portland, OR

American Land Title Association Liaison

Steve Gottheim, Washington, DC

Community Associations Institute Liaison

Robert M. Diamond, Falls Church, VA

Emeritus Members

Carl H. Lisman, Burlington, VT
Dale A. Whitman, Columbia, MO

Executive Director

R. Wilson Freyermuth, Columbia, MO

JOINT EDITORIAL BOARD FOR UNIFORM REAL PROPERTY ACTS

THE SIX-MONTH “LIMITED PRIORITY LIEN” FOR ASSOCIATION FEES UNDER THE UNIFORM COMMON INTEREST OWNERSHIP ACT

Introduction

Role of Association Assessments. In the modern common interest community (the most common forms of which are the condominium, the planned community, and the cooperative), each unit/parcel is subject to an assessment for its proportionate share of the common expenses needed to operate the owners’ association (the “association”) and to maintain, repair, replace, and insure the community’s common elements and amenities. Assessments constitute the primary source of revenue for the community, and the ability to collect assessments is crucial to the association’s ability to provide the maintenance and services expected by community residents. If some owners do not pay their proportionate share of common expenses, the association will be forced to shift the burden of delinquent assessments to the remaining unit owners through increased assessments or reduced services and maintenance, potentially threatening property values within the community.

Statutory Lien. To facilitate the association’s ability to collect assessments, assessments unpaid by an owner constitute a lien on the owner’s unit/parcel. In theory, the lien provides the association with the leverage needed to assure timely collection of assessments. If an owner fails to pay assessments, the association can institute an action to foreclose on the owner’s interest in the unit/parcel and can use the proceeds of the foreclosure sale to satisfy the balance of the unpaid assessments (along with interest, costs, and to the extent authorized by the declaration and applicable law, attorney’s fees incurred by the association in enforcing its lien).

Uniform Law Treatment. The Uniform Common Interest Ownership Act (UCIOA) — along with its predecessor acts, the Uniform Condominium Act, the Model Real Estate Cooperative Act, and the Uniform Planned Community Act (collectively, the “Uniform Laws”) — facilitate an association’s ability to collect common expense assessments by providing that, subject to limited exceptions, the association’s lien is prior to all encumbrances that arise after the recording of the declaration. The rationale for this approach lies in the realization that (1) the association is an involuntary creditor that is obligated to advance services to owners in return for a promise of future payments; and (2) the owners’ default in these payments could impair the association’s financial stability and its practical ability to provide the obligated services. The priority of the association’s lien is critical because if there is insufficient equity in a unit/parcel to provide a full recovery of unpaid assessments, the association must (as explained above) either reassess the remaining unit owners or reduce maintenance and services. The potential impact of these acts on the community and the association’s status as an

involuntary creditor argue in favor of providing the association lien with priority vis-à-vis competing liens.

Nevertheless, many practical and regulatory barriers militate against complete priority for an association's assessment lien. Because the interests of the general public outweigh the interests of the community alone, real estate tax liens and other governmental charges should have priority over an association's assessment lien. Likewise, complete priority for association liens could discourage common interest community development. Traditional first mortgage lenders might be reluctant to lend from a subordinate lien position if there was no "cap" on the potential burden of the an association's assessment lien. In addition, some federally- or state-regulated lenders face regulatory restrictions on the amount of mortgage lending they can undertake involving security other than first lien security.

For these and other reasons, the general rule in the Uniform Laws (granting the association's lien priority as of the recording of the declaration) does not apply to first mortgages. Instead, the priority of the association's lien with respect to first mortgages is a function of the time the assessment becomes due. If the assessment becomes due after a first mortgage is of record, the assessment lien is generally subordinate to the lien of the first mortgage. However, this subordination is not absolute; under UCIOA § 3-116(c), the association's lien is given a limited or "split" priority over the first mortgage lien to the extent of six months' worth of assessments based on the association's periodic budget:¹

A lien under this section is also prior to [a first mortgage lien] to the extent of both the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien.

In this way, the Uniform Laws mark a substantial deviation from prior law, striking what the drafters described as "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." UCIOA § 3-116, comment 1. Since its introduction in 1976, the six-month priority for association liens has been adopted in more than twenty

¹ Comparable priority provisions appear in the Uniform Condominium Act [UCA § 3-116], the Model Real Estate Cooperative Act [MRECA § 3-115], and the Uniform Planned Community Act [UPCA § 3-116].

jurisdictions, either through adoption of the UCA, UCIOA, or in nonuniform legislation comparable in substance to UCIOA § 3-116.²

The drafters of § 3-116(c) believed that the six-month association lien priority struck a workable and functional balance between the need to protect the financial integrity of

² The relevant Uniform Laws include Ala. Code § 35-8A-316(b) (six-month limited priority for assessment lien for condominium association); Alaska Stat. Ann. § 34.08.470(b) (six-month limited priority for assessment lien for common interest community association); Colo. Rev. Stat. Ann. § 38-33.3-316(b) (six-month limited priority for assessment lien for common interest community association); Conn. Gen. Stat. Ann. § 47-258(b) (six-month limited priority for assessment lien for common interest community association, plus association's costs and attorney fees in enforcing its lien); Del. Code Ann. tit. 25, § 81-316(b) (six-month limited priority for assessment lien for common interest community association); Minn. Stat. Ann. § 515B.3-116(c) (six-month limited priority for assessment lien for common interest community association); Vernon's Ann. Mo. Stat. § 448.3-116(2) (limited priority for six months of condominium association assessments and fines which are due at time of subsequent refinancing); Nev. Rev. Stat. Ann. § 116.3116(2) (nine-month limited priority for assessment lien for common interest community association; although duration may be reduced to six months if required by federal regulation); Purdon's Pa. Cons. Stat. Ann. tit. 68, § 5315(b) (six-month limited priority for assessment lien for planned community association); *id.* § 3315(b) (six-month limited priority for assessment lien for condominium association); *id.* § 4315(b) (six-month limited priority for assessment lien for cooperative association); R.I. Gen. Laws Ann. § 34-36.1-3.16(b) (six-month limited priority for assessment lien for condominium association); Vt. Stat. Ann. tit. 27A, § 3-116(b) (six-month limited priority for assessment lien for common interest community association); Rev. Code Wash. Ann. § 64.34.364(3) (six-month limited priority for assessment lien for condominium association); W. Va. Code § 36B-3-116(b) (six-month limited priority for assessment lien for common interest community association).

Jurisdictions that have not enacted one of the Uniform Laws, but that have adopted a limited priority lien provision, include the District of Columbia, D.C. Code § 42-1903.13(a)(2) (six-month limited priority for assessment lien for condominium association); Florida, Fla. St. Ann. §§ 718.116(1)(b), 720.3085(2)(c) (priority for assessment lien for association limited to twelve months of assessments or one percent of the original mortgage debt); Illinois, 765 Ill. Comp. Stat. § 605/9(g)(4) (six-month limited priority for assessment lien for condominium association); Maryland, Md. Code Real Prop. § 11B-117(c) (four-month limited priority for assessment lien of homeowners association); Massachusetts, Mass. Gen. Laws Ann. ch. 183A, § 6(c) (six-month limited priority for assessment lien for condominium association); New Hampshire, N.H. Rev. Stat. § 356-B:46(l) (six-month limited priority for assessment lien for condominium association); New Jersey, N.J. Stat. Ann. § 46:8B-21 (six-month limited priority for assessment lien for condominium association); and Tennessee, Tenn. Code Ann. § 66-27-415(b) (six-month limited priority for assessment lien for condominium association).

Although Kentucky, Maine, Nebraska, New Mexico, North Carolina, Texas, and Virginia each adopted versions of the UCA, those states did not enact the six-month limited-priority for condominium association liens. Ky. Rev. Stat. Ann. § 381.9193; Me. Rev. Stat. Ann. tit. 33, § 1603-116(b); Neb. Rev. Stat. § 76-874; N.M. Stat. Ann. § 47-7C-16; N.C. Gen. Stat. § 47C-3-116; Tex. Prop. Code § 82.113(b); Va. Code Ann. § 55-79.84.

the association and the legitimate expectations of first mortgage lenders. Fundamental to that belief was the assumption that, if an association took action to enforce its lien and the unit/parcel owner failed to cure its assessment default, 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. The drafters further understood — based on circumstances then existing — that the first mortgage lender’s foreclosure proceeding would likely be completed within six months (particularly in jurisdictions with nonjudicial foreclosure) or a reasonable period of time thereafter, minimizing the period during which unpaid assessments would accrue for which the association would not have first lien priority. Finally, the drafters anticipated that the unit/parcel would, in the typical situation, have a value sufficient to enable the first mortgagee to recover the both the unpaid mortgage balance and the cost of six months of assessments. Once a buyer was in place — whether the foreclosing first mortgagee or a third party — that buyer would have to begin making monthly assessment payments, thus preserving the association’s ability to carry out its maintenance and services obligations.

Today’s Marketplace. The real estate market facing common interest communities today is quite different from the one contemplated by the drafters of the Uniform Laws:

- Many units/parcels in common interest communities are “underwater,” with values below the outstanding first mortgage balance.
- More significantly — particularly in states with judicial foreclosure — there are long delays in the completion of foreclosures. During this time, neither the unit/parcel owner nor the mortgagee typically pays the common expense assessments — the unit/parcel owner is unable or unwilling to do so, and the mortgagee is not legally obligated to do so prior to acquiring title.

If it takes 24 months for a mortgagee to complete a foreclosure, but the association has a first priority lien for only the immediately preceding six months of unpaid assessments, the consequences for the association can be devastating. The association may receive payment of six months worth of assessments, but because of depressed unit/parcel values, the sale will not generate surplus proceeds from which the association could satisfy the subordinate portion of its lien — and the association likely could not collect a judgment against the unit/parcel owner for that unpaid balance.

Because an association’s sources of revenues are usually limited to common assessments, the remaining residents of the community bear the consequences of default by a unit/parcel owner of its assessment obligations, unless the state’s statute requires the mortgagee to bear some portion of that cost. As suggested above, § 3-116(c)’s “split” priority for association liens was premised on the assumption that the six-

month limited priority lien would protect the mortgagee's expected first lien position while enabling an association to recover a substantial portion of the common expense costs that would accrue during a period in which the first mortgagee was foreclosing on the unit/parcel. However, if foreclosure takes substantially longer than six months and foreclosure proceeds are inadequate to pay off the first mortgage, the association can collect only a fraction of unpaid assessments from the mortgagee, effectively forcing the remaining owners to bear increased assessments or decreased maintenance/services.

This problem has become extreme in the current economic environment, in which long foreclosure delays have become commonplace. In some cases, delay is attributable to the size of defaulted mortgage portfolios having overwhelmed the capacity of lenders and their servicers. Faulty record-keeping and transaction practices by both lenders and servicers have prompted statutory and judicial responses that have lengthened the foreclosure timeline in judicial foreclosure states.³ Further, anecdotal evidence suggests that some mortgage lenders are delaying the institution of foreclosure proceedings on units/parcels affected by common interest assessments. If the lender acquires such a unit/parcel at a foreclosure sale via credit bid, the lender (as a successor owner of the unit/parcel) becomes legally obligated to pay assessments arising during the lender's period of ownership. The lender may fear that it may be unable to resell the unit/parcel quickly and for an appropriate return in a depressed housing market — recognizing that it will incur liability for assessments during any period in which it holds the unit/parcel for resale. Thus, for two reasons, the lender has a substantial economic incentive to delay the foreclosure. First, the lender may benefit from a higher recovery in the event that the local housing market experiences any recovery during the period of delay. Second, the delay enables the lender to avoid incurring any legal obligation to pay common expense assessments on the unit/parcel as those assessments accrue during the delay prior to foreclosure.

While the existing legal infrastructure gives the mortgage lender a substantial economic incentive to delay foreclosure, the consequences of this delay are devastating to the community and the remaining residents. To account for the unpaid assessments, the association must either increase the assessment burden on the remaining

³ The Federal Housing Finance Authority, conservator for Fannie Mae and Freddie Mac, has published foreclosure timelines for all 50 states, reflecting the “periods within which Enterprise servicers are expected to complete the foreclosure process for mortgages that did not qualify for loan modification or other loss mitigation alternatives.” Notice, State-Level Guarantee Fee Pricing, Federal Housing Finance Agency (September 25, 2012), 77 Fed. Reg. 58991, 58992. FHFA prepared these timelines from an analysis of the actual experience of Fannie Mae and Freddie Mac with foreclosure processing in each state, as adjusted for each state's statutory requirements and changes in law or practice in response to the foreclosure crisis. *Id.* The national average of the FHFA timelines is 396 days, ranging from 270 days (a common timetable in nonjudicial foreclosure states such as Georgia, Michigan, Minnesota and Missouri) to 750 days in New Jersey and 820 days in New York. *Id.* at 58992, 58993.

unit/parcel owners or reduce the services the association provides (e.g., by deferring maintenance on common amenities). If the other community residents have to pay the burden of increased assessments to preserve community services/amenities, the delaying lender receives a benefit — the value of its collateral is preserved, to some extent, while the lender waits to foreclose. Yet this preservation of the mortgage lender's collateral value comes through the community's imposition of assessments that the lender does not have to pay or reimburse. This benefit arguably constitutes unjust enrichment of the mortgage lender, particularly to the extent that the lender enjoys this benefit by virtue of a conscious decision to delay instituting or prosecuting a foreclosure. See generally Andrea Boyack, *Community Collateral Damage: A Question of Priorities*, 43 Loy.U.Chi.L.Rev. 53 (2011).

THE PURPOSE OF THIS REPORT

The Board has two primary purposes in issuing this Report. The first purpose is to address the appropriate interpretation of the existing six-month limited priority lien provision in the Uniform Acts. In states that have adopted § 3-116(c) or a provision substantially comparable to it, the pressures described in the Introduction have produced an increasing volume of litigation between associations and first mortgage lenders regarding the proper scope of the association's lien priority. This litigation may include not only questions regarding the effect of foreclosure proceedings by the association and/or the first mortgage lender, but also questions regarding whether an association can assert its six-month assessment lien priority only on a one-time basis or on a recurring basis (i.e., each time it brings an action to enforce its lien for unpaid assessments). As a result, the Board has prepared this Report to clarify, for the benefit of parties and courts faced with these disputes, the intended application of § 3-116(c) in a variety of scenarios in which priority disputes might arise.

The second purpose is to acknowledge — as addressed in the Introduction — that the existing law governing the relative priority of association liens and first mortgage liens is unsatisfactory. In a slight majority of states, association liens are subordinate to first mortgage liens and mortgage lenders have no obligation to pay or reimburse assessments that accrued prior to the lender's acquisition of title in a foreclosure sale. As a result, first mortgage lenders effectively can shift the costs of preserving the value of their collateral onto the remaining unit/parcel owners. Even in states that have adopted § 3-116(c) or a comparable limited priority rule for association liens, the six-month period of limited priority has proven insufficient to protect the community's financial interests. The Board thus encourages the ULC to consider preparing a uniform law that would strike a more appropriate balance between the interests of first mortgage lenders and common interest community associations and their residents.⁴

⁴ In a state that has adopted § 3-116(c) of the Uniform Laws or a similar provision, the new uniform law would effectively function as an amendment to the existing state statute. In states

APPLICATION OF § 3-116(c) AND THE SIX-MONTH LIMITED PRIORITY LIEN

This portion of the Report addresses the intended application of § 3-116(c) through examining a series of examples, the facts of which are reflective of those in judicial opinions addressing the relative priority of association liens and mortgage liens under § 3-116(c). Each example presumes the following facts: Pinecrest is a common interest community created by virtue of a recorded declaration pursuant to UCIOA. Under the declaration, parcels or units within Pinecrest are subject to a mandatory annual common expense assessment of \$3,000, payable to Pinecrest Property Owners Association (PPOA) in monthly installments of \$250. The assessments pay for operating expenses of PPOA, including the maintenance and insurance of common facilities and recreational areas within Pinecrest.

Unpaid assessments constitute a lien in favor of PPOA upon the affected parcel or unit. Homeowner is the owner of a parcel or unit within Pinecrest, which parcel or unit is subject to a properly recorded mortgage or deed of trust in favor of Bank, securing the repayment of the unpaid balance of Homeowner's mortgage debt to Bank in the amount of \$200,000. In each example, Homeowner is in default to Bank on its debt secured by a mortgage or deed of trust, and is also in default to PPOA in payment of assessments.

Example One: Homeowner has failed to pay both its common expense assessments and its mortgage for a period of 12 months, Bank institutes a foreclosure proceeding, joining PPOA as a party. Bank ultimately proceeds with a proper foreclosure sale, at which Buyer purchases the unit/parcel for \$150,000.

Section § 3-116(c) establishes that the association's assessment lien is "prior to" even the lien of a first mortgage to the extent of "common expense assessments ... which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien." This means that prior to the sale, PPOA had a first priority lien in the unit/parcel to secure the payment of the preceding six months of common expense assessments (\$1,500); Bank effectively had a second priority lien to secure the outstanding mortgage balance (\$200,000); and PPOA had a third priority lien to secure the payment of the additional six months of unpaid assessments (\$1,500).

When Bank forecloses its mortgage in this context, the foreclosure sale extinguishes its mortgage and PPOA's subordinate lien, with these liens being transferred to the sale proceeds. Bank's foreclosure sale does not extinguish PPOA's first priority "limited priority lien" for the immediately preceding six months of assessments, as that lien is senior under § 3-116(c) and is thus unaffected by Bank's foreclosure sale. Buyer will thus take title to the unit/parcel subject to PPOA's six-month limited priority lien; Buyer

that do not currently have a limited priority provision for association liens, the new uniform law could be enacted as a freestanding statute.

must pay \$1,500 to PPOA to extinguish this lien and clear her title.⁵ The \$150,000 sale proceeds will be applied first to costs of sale, then to the unpaid balance of Bank's mortgage. As the sale proceeds are insufficient to satisfy Bank's claim, PPOA is left with an unsecured claim for unpaid assessments beyond its six-month priority.

In Example One, it is conceivable that PPOA and Bank may agree, in advance, that the foreclosure sale will deliver clear title to the foreclosure sale purchaser. If PPOA and Bank so agree, the sale would also extinguish PPOA's six-month limited priority lien. If that sale produced a price of \$151,500,⁶ the proceeds would be applied first to costs of sale; the next \$1,500 would be distributed to PPOA on account of its limited priority lien, and the balance would be distributed to Bank to be applied to the unpaid mortgage balance. Again, as the sale proceeds would be insufficient to satisfy Bank's claim, PPOA would be left with an unsecured claim for unpaid assessments beyond its six-month priority.

As described above, Example One involves a third party buying the property at Bank's foreclosure sale. It is perhaps more likely that Bank would end up as the foreclosure sale buyer by means of a credit bid, but this would not make a difference in terms of the appropriate application of § 3-116(c). If Bank buys the property for a credit bid in an amount less than or equal to the unpaid mortgage balance, Bank will receive clear title only if it pays PPOA \$1,500 to satisfy its assessment limited priority lien; to the extent Bank does not pay that amount, Bank will take title subject to PPOA's lien, which PPOA could enforce by bringing a foreclosure proceeding of its own.

Example Two: Homeowner has failed to pay its common expense assessment for 12 consecutive months (a total unpaid balance of \$3,000). PPOA brings an action to foreclose its lien, joining Homeowner and Bank as parties. Bank does not institute a foreclosure action. PPOA obtains a judgment allowing it to foreclose; neither Homeowner nor Bank takes steps to redeem their respective interests. At the sale, Buyer purchases Homeowner's interest for a cash bid of \$207,000. PPOA incurs costs and attorney's fees of \$5,000 in conjunction with the sale.

This example is based in part on the facts of *Summerhill Village Homeowners Association v. Roughley*, 270 P.3d 639 (Wash. Ct. App. 2012). In *Summerhill Village*, the association commenced an action against the unit owner and her mortgagee (GMAC) to obtain a judgment for unpaid assessments and to foreclose its lien. The association obtained a default judgment and sold the unit to a third-party buyer for

⁵ If Buyer redeems her title by paying off the lien before PPOA brings an action to enforce it, Buyer can redeem by paying only the six months of unpaid assessments. By contrast, if Buyer does not pay off the lien until after PPOA brings an action to enforce it, Buyer must also pay the costs and reasonable attorney's fees incurred by PPOA in its lien enforcement action.

⁶ In this context, the sale should produce a higher price (by an increment of \$1,500) as the foreclosure sale purchaser will receive clear title rather than title subject to PPOA's senior lien for \$1,500 worth of assessments.

\$10,302 (\$100 over the balance of the judgment). GMAC later sought to set aside the default judgment and establish the priority of its mortgage lien (or, in the alternative, to redeem the property). The Washington Court of Appeals held that under the six-month limited priority lien as incorporated in Washington's version of the Uniform Condominium Act, Rev. Code Wash. Ann. § 64.34.364(3), the association's foreclosure sale had extinguished the lien of the mortgagee. Under this view, the association's six-month limited priority lien constituted a true lien priority and not merely a distributional preference in favor of the association.

To the extent that *Summerhill Village* held that the association's foreclosure sale extinguished GMAC's mortgage lien,⁷ the decision is consistent with the proper understanding of the six-month limited priority lien reflected in § 3-116. Section 3-116(c) establishes that the association's lien is "prior to" even the lien of a first mortgage to the extent of both "common expense assessments ... which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien" and "reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien." A foreclosure sale of the association's lien (whether judicial or nonjudicial)⁸ is governed by the principles generally applicable to lien foreclosure sales, i.e., a foreclosure sale of a lien entitled to priority extinguishes that lien and any subordinate liens, transferring those liens to the sale proceeds. Nothing in the Uniform Laws establishes (or was intended to establish) a contrary result.⁹

⁷ The *Summerhill Village* court also concluded that under Washington's post-sale redemption statute, GMAC was not entitled to redeem the property. As the question of GMAC's right to redeem did not involve the interpretation of § 3-116(c), this Report expresses no opinion as to that aspect of the *Summerhill Village* decision.

⁸ The Uniform Laws provide that in a condominium or planned community, the association must foreclose its lien in the manner in which a mortgage is foreclosed. Thus, an association may foreclose its lien by nonjudicial proceedings if the state permits nonjudicial foreclosure. See UCIOA § 3-116(k), UCA § 3-116(a).

⁹ Two recent Nevada federal decisions interpreting Nevada's limited priority lien statute, Nev. Rev. Stat. § 116.3116(2)(c), rejected the reasoning of *Summerhill Village* and concluded that an association's nonjudicial foreclosure of its assessment lien did not extinguish the lien of the senior mortgage lender. See *Weeping Hollow Avenue Trust v. Spencer*, 2013 WL 2296313 (D. Nev. May 24, 2013); *Diakonos Holdings, LLC v. Countrywide Home Loans, Inc.*, 2013 WL 531092 (D. Nev. Feb. 11, 2013). For example, in *Weeping Hollow*, the court held that the limited priority lien provision did not create a true lien priority, but instead merely provided that the association's lien would continue to encumber the property following a foreclosure sale by the first mortgagee, to the extent of the assessments unpaid during the preceding nine months. *Weeping Hollow*, 2013 WL 2296313, at *5 ("Read in its entirety, NRS 116.3116(2)(c) states that an HOA's unpaid charges and assessments incurred during the nine months prior to the foreclosure of a first position mortgage continue to encumber the property after the foreclosure of the first position deed of trust.... However, the super priority lien does not extinguish the first position deed of trust."). These decisions misread and misinterpret the Uniform Laws limited

As a result, in Example Two, under a proper application of § 3-116(c), PPOA would have a first priority lien on Homeowner's unit/parcel to the extent of \$6,500, reflecting six months of unpaid assessments (\$1,500) and the reasonable costs and attorney's fees incurred by PPOA in its foreclosure (\$5,000). Bank would have a second priority lien on the unit/parcel to the extent of the \$200,000 unpaid balance of Homeowner's mortgage debt. PPOA would have a third priority lien to the extent of the unpaid assessments beyond the six-month threshold (a total of \$1,500).

PPOA's foreclosure sale in Example Two would extinguish both of its liens (the six month "limited priority lien" as well as the third-priority lien) as well as the Bank's mortgage lien, thereby delivering a clear title to Buyer. The extinguished liens would transfer to the \$207,000 sale proceeds in the same order of priority. PPOA would receive the first \$6,500 of the sale proceeds on account of its limited priority lien. Bank would receive the next \$200,000 in sale proceeds on account of its mortgage lien. PPOA would receive the final \$500 of sale proceeds on account of its third-priority lien, and the remaining \$1,000 of PPOA's claim would be unsecured.

Example Three. Because of a dispute over PPOA's enactment of parking rules and imposition of parking fines, Homeowner withheld payment of the monthly installment of assessments. After six months, PPOA brings an action to enforce its lien for the six preceding months of unpaid assessments and to collect fines (joining Bank as a party). Homeowner continues to withhold assessments. Six months later, while the first action is still pending, PPOA brings a second action to enforce another lien for the most recent six months of unpaid assessments and fines. Again, PPOA joins Bank as a party and seeks to establish its lien priority over Bank for the additional six months of unpaid assessments. Bank objects that PPOA is entitled to only one six-month limited priority lien and cannot extend its lien priority through successive actions.

Example Three is based upon the facts in *Drummer Boy Homes Association, Inc. v. Britton*, 2011 Mass. App. Div. 186 (2011). In *Drummer Boy*, the association commenced three successive actions, seeking to establish lien priority for a total of 18 months of unpaid assessments. The association argued that the six-month limited priority lien provision in the Massachusetts statute [Mass. Gen. Laws Ann. Ch. 183A, § 6(c)] did not explicitly forbid — and thus presumptively permitted — successive actions to extend the association's six-month lien priority. The court rejected this view, instead concluding that the association's lien priority was limited to only six months of unpaid assessments:

priority lien provision, which provides the association with priority to the extent of assessments accruing in the period immediately prior to the association's enforcement of its lien. As discussed in the text, this constitutes a true lien priority, and thus the association's proper enforcement of its lien would thus extinguish the otherwise senior mortgage lien.

Under the Association's theory, however, a condominium association could file successive suits and thereby enlarge the priority portion of its lien such that its entire lien, no matter how large and no matter how much time was encompassed, would be prior to the first mortgage. If the Legislature had intended to make the condominium lien prior to the first mortgage, it could have done so explicitly.... Recognizing that a condominium association's lien could be extinguished entirely by a foreclosing first mortgagee, the legislature gave condominium associations a limited six-month period of priority. This was meant to be 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 mortgage lenders." [quoting Uniform Condominium Act (1980) § 3-116, Comment 2.]

On its face, the language of § 3-116(c) does not explicitly address whether an association may file successive actions every six months to extend its limited priority lien priority. Section 3-116(c) provides, in pertinent part:

A lien under this section is also prior to [a first mortgage recorded prior to the due date of the unpaid assessments] to the extent of both the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien.

Nevertheless, the result reached by the court in *Drummer Boy* is consistent with the appropriate understanding of § 3-116(c). See also *Hudson House Condo. Ass'n v. Brooks*, 223 Conn. 610, 61 A.2d 862 (1992) (rejecting the view that Connecticut six-month limited priority lien statute permitted an association to institute a foreclosure proceeding every six months and thereby obtain perpetual superpriority over mortgagee). Section 3-116(c) provides an association with a first priority lien for the common expense assessments accruing during the six months preceding the filing of "an action" to foreclose (either an action by the association to foreclose its lien, or by the first mortgagee to foreclose the mortgage). The second and third lien foreclosure actions commenced by the association in *Drummer Boy* were not necessary to enforce the association's lien; only one such action is needed for the purpose of selling the unit/parcel and delivering clear title.¹⁰ Thus, the association's commencement of the successive actions could only have been to extend the association's lien priority beyond the six months reflected in § 3-116(c). In such a situation, a court should properly consolidate those successive actions into a single action — in which the association would receive first lien priority only for the immediately preceding six months of unpaid assessments.

¹⁰ Recognizing this, the court in *Drummer Boy* properly consolidated the three actions into a single action. *Drummer Boy*, 2011 Mass.App.Div. 186, at *1.

Thus, in Example Three, Bank can redeem its first mortgage lien from the burden of PPOA's limited priority lien by payment of \$1,500 (reflecting the immediately preceding six months of unpaid assessments) plus the costs (including reasonable attorney's fees) incurred by PPOA in bringing the action to enforce its lien).¹¹ Once Bank has paid this amount to PPOA, PPOA's foreclosure sale to enforce the balance of unpaid assessments would transfer title to the unit/parcel subject to the remaining balance of Bank's first mortgage. PPOA's lien for the unpaid assessment balance would transfer to the proceeds of the sale (if there are any proceeds).¹²

Once the Association Brings an Action to Enforce Its Lien, Is Its Lien Priority Limited to the Prior Six Months of Unpaid Assessments, or Does Its Priority Extend to Include Any Assessments that Accrue During the Pendency of the Lien Enforcement Action? Example Three addressed whether an association could extend its lien priority by filing successive lien enforcement actions every six months. In a recent set of Vermont decisions, however, several associations argued that once an association files an action to enforce its lien, its lien priority should extend not only to the unpaid assessments that had accrued during the preceding six months, but also to all assessments that accrued and remained unpaid during the pendency of the lien enforcement action. Two recent Vermont Superior Court decisions have accepted this argument. *Bank of America, N.A. v. Morganbesser*, No. 675-10-10 (Jan. 18, 2013); *Chase Home Finance, LLC v. Maclean*, <http://www.vermontjudiciary.org/20112015%20Tcddecisioncvl/2012-5-25-13.pdf> (Jan. 31, 2012). In the *Morganbesser* case, the court concluded that section 3-116(c) is "silent" as to the issue of continuing priority, and reasoned that continuing priority is justified because the association could "extend its superpriority merely by filing a new action for unpaid assessments which have come due every six months" and requiring the association "to repeatedly file new actions simply to extend its priority position serves no purpose." In addition, the court in *Morganbesser* justified its interpretation of section 3-116(c) by observing that "[e]xtending the superpriority from 6 months prior to institution through to the end of the action also provides the mortgage lender with an incentive, albeit a small one, to proceed as expeditiously as permitted in their foreclosure actions."

As explained in Example Three, however, section 3-116(c) does not (and was not intended to) authorize an association to file successive lien enforcement actions every six months as a means to extend the association's limited lien priority. Only one action

¹¹ In this situation, the court might reasonably conclude that the attorney fees incurred by PPOA in bringing a repetitive action were not reasonable and thus not secured by PPOA's superlien.

¹² If the value of the unit/parcel is less than the remaining balance due to Bank, of course, PPOA will have no substantial incentive to proceed with the foreclosure sale. No third party will agree to purchase the unit/parcel without an agreement by Bank to reduce the mortgage loan balance. PPOA could acquire the unit by credit bid, but this would obligate PPOA to pay ongoing assessments — accentuating the burden on the rest of the residents of the community, who will have to bear assessment increases or service decreases until PPOA could re-sell the unit/parcel.

is necessary to permit the association to enforce its lien, sell the unit/parcel, and deliver clear title; accordingly, successive actions would only serve to extend the association's lien priority beyond the six-month period expressed in section 3-116(c). Two other Vermont Superior Court decisions have disagreed with *Morganbesser* and *Maclean*, correctly concluding that section 3-116(c) places a six-month limit on the association's lien priority. See *Vermont Hous. Fin. Auth. v. Coffey*, S0367-11 CnC (Aug. 11, 2011) (Toor, J.); *EverHome Mtge. Co. v. Murphy*, No. 115-3-10 Bncv (Dec. 6, 2011) (Hayes, J.).

Example Four. Homeowner fails to pay common expense assessments and its mortgage debt for a period of six months. Both Bank and PPOA institute foreclosure proceedings. In response to PPOA's foreclosure proceeding, Bank redeems its lien position by tendering payment of \$3,500 to PPOA (\$1,500 for six months of unpaid common expense assessments plus \$2,000 in costs and attorney fees incurred to that date by PPOA in enforcing its lien). For the next six months, while Bank's foreclosure action is pending, Homeowner again fails to pay common expense assessments. PPOA brings another action to enforce its lien, once again joining Bank as a party.

Example Four is based upon the facts in *Lake Ridge Condominium Association, Inc. v. Vega*, No. NNHCV116021568S (Conn. Super. Ct. June 25, 2012). Example Four presents a question about the appropriate interpretation of UCIOA § 3-116(c). Is the six-month limited priority lien a “one-time” lien; i.e., once an association brings an action to enforce its limited priority lien and the mortgagee responds by redeeming that lien by paying six months of common expense assessments, does the association no longer have the right to assert the limited priority lien for any future unpaid assessments? Or is the six-month limited priority lien a potentially recurring lien; i.e., in Example Four, can PPOA assert the limited priority lien a second time, and thereby successfully obtain lien priority over Bank's mortgage lien to the extent of the most recent six months of unpaid assessments?

In *Lake Ridge*, the association commenced a second action to enforce its lien two years after the mortgagee had ostensibly redeemed the association's priority by paying off the then-immediately preceding six months of assessments. The association argued that under the text of the statute and sound policy, there was no bar on repetitive association foreclosures and that in each such proceeding the association should be permitted to assert a limited priority lien for assessments unpaid during the immediately preceding six months. The mortgagee disagreed, asserting that under UCIOA as adopted in Connecticut, Conn. Gen. Stat. § 47-258, the six-month limited priority lien created but a “one-time” lien priority over the mortgagee.

The Connecticut Superior Court agreed with the lender, stating that the association had “previously satisfied its 'superpriority' lien” and holding that the statute “allows the assertion of that lien only once during the pendency of either an action to enforce either

the association's lien or a security interest (first priority mortgage).” See also *Linden Condo. Ass’n, Inc. v. McKenna*, 247 Conn. 575, 726 A.2d 502 (1999) (statute prevents association from asserting limited priority lien more than once during the course of a foreclosure action by the mortgagee).

The result reached by the court in *Lake Ridge* is consistent with the appropriate understanding of § 3-116(c) as drafted. Section 3-116(c) provides an association with first lien priority only to the extent of the six months of unpaid common expense assessments that accrued immediately preceding a lien foreclosure action by either the association or the first mortgagee. In Example Four, Bank had a foreclosure action pending at the time it made the \$3,500 payment to redeem its mortgage from PPOA’s limited priority lien, and that action remained pending at the time of PPOA’s second lien enforcement proceeding. By its terms, § 3-116(c) does not permit PPOA to assert a first lien priority for more than six months of unpaid common expense assessments in the context of the same foreclosure proceeding by Bank.

As discussed in the Introduction, in fashioning the six-month limited priority lien, the drafters of UCIOA § 3-116(c) did not contemplate the now-common scenario in which the first mortgagee’s foreclosure action might remain pending for two years or more. In such a situation, the mortgagee’s delay in foreclosure may unreasonably force the community residents to bear either increased assessments or decreased maintenance/services.

Example Five. Homeowner fails to pay common expense assessments for a period of six months. PPOA notifies Bank that Homeowner has not paid those assessments. Before PPOA commences an action to enforce its lien, Bank pays PPOA an amount equal to the preceding six months of common expense assessments. For the ensuing six months, Homeowner again fails to pay its common expense assessments. PPOA then commences an action to enforce its lien and joins Bank as a party. Bank responds by instituting a proceeding to foreclose its mortgage lien.

In Example Five, Bank’s payment of the unpaid common charges to PPOA does not prevent PPOA from now asserting its six-month limited priority lien. Under § 3-116(c), PPOA can assert a limited priority lien to the extent of “common expense assessments ... which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien.” Under the proper understanding of § 3-116(c), PPOA can thus assert a limited priority lien either in (a) an action by PPOA to enforce its association lien, or (b) an action by Bank to foreclose its mortgage lien. In Example Five, at the time of Bank’s payment of the unpaid common expense assessments, PPOA had not commenced an action to enforce its lien, nor had Bank instituted a foreclosure proceeding. Bank’s payment of the unpaid common charges was a voluntary business decision which Bank was not compelled to make to

protect its lien priority.¹³ As a result, the payment does not prevent PPOA from asserting its limited priority lien in PPOA's subsequent lien enforcement action. To redeem its lien priority in PPOA's action, Bank will have to pay PPOA the immediately preceding six months of unpaid common expense assessments, as well as costs and reasonably attorney's fees incurred by PPOA in its lien enforcement action.

CONCLUSION: A PROPOSAL FOR A NEW UNIFORM LAW

As discussed above, existing law governing the relative priority of association liens and first mortgage liens is unsatisfactory. In many states, association liens are entirely subordinate to first mortgage liens, and mortgage lenders have no obligation to pay or reimburse assessments that accrued prior to the time that the lender acquired title in a foreclosure sale. This permits first mortgage lenders to delay in foreclosing mortgages on common interest units/parcels, while effectively and unjustly shifting the cost of preserving the value of their collateral onto the remaining unit/parcel owners. Even in states that have adopted § 3-116(c) or a comparable limited priority rule for association liens, the six-month period of limited priority has proven insufficient to protect the community's financial interests.

The Board thus encourages the ULC to consider preparing a uniform law that would strike a more appropriate balance between the interests of first mortgage lenders and common interest community associations and their residents. A new uniform law might take a number of potential approaches:

- It might simply extend the association's existing limited priority lien from six months to a longer fixed duration, such as one year or more. A uniform law taking this approach might reflect a more appropriate response to the longer foreclosure timetables that have resulted in the wake of the mortgage crisis.¹⁴
- It might establish alternatives for the duration of association's limited priority lien, such that the duration of the association's lien priority might vary from state to state. A uniform law taking this approach might acknowledge that differences in local circumstances (i.e., the duration of a state's foreclosure

¹³ Bank likely can add this payment to the balance of the Homeowner's mortgage debt as an amount advanced to protect Bank's security, at least to the extent permitted by the terms of Bank's mortgage or deed of trust (which typically provides that the lien shall secure such advances).

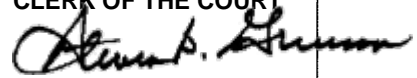
¹⁴ It is worth noting that Florida's limited priority lien provides the association with priority to the extent of the lesser of twelve (12) months' worth of unpaid association assessments or one percent (1%) of the outstanding mortgage loan amount. Fla. Stat. Ann. § 718.116. Professor Andrea Boyack has observed that given the delays customarily experienced in Florida foreclosures, even this expanded lien priority has not been sufficient to permit Florida associations to recover all unpaid assessments. Andrea J. Boyack, *Community Collateral Damage: A Question of Priorities*, 43 Loy.U.Chi.L.Rev. 53, 116 (2011).

timetable, or the extent of decreases in unit values) might warrant local differences in the duration of an association's lien priority.

- It might preserve the state's existing priority rule as a general matter, but require that if the first mortgage lender delays foreclosure beyond a defined period of time, the lender must pay assessments as they accrue during that period of delay (or some portion of those assessments). This would permit a first mortgage lender to make a determination to delay in foreclosing if the lender concludes that delay is justified, but would prevent the lender from being unjustly enriched by forcing the remaining unit/parcel owners to bear the increased cost of preserving the lender's collateral.
- It might preserve the state's existing priority rule as a general matter, but require that if the first mortgage lender delays foreclosure beyond a defined period of time, the association's lien would have priority (or extended priority) for the assessments accruing during that period of delay.
- It could analogize common interest ownership assessments to real property taxes, and give the association full priority over the first mortgage lender for unpaid assessments to the same extent as real property taxes currently enjoy a superpriority over first mortgage liens.¹⁵

The Board does not advocate for any one of these approaches; a drafting committee should make a determination following deliberations involving the participation of all relevant stakeholder groups (including first mortgage lenders, community associations, and government-sponsored enterprises like Fannie Mae and Freddie Mac).

¹⁵ To a significant extent, an analogy between community assessments and property taxes is compelling, as the association often provides public services such as paving, snow removal, open space maintenance, and land use control/enforcement. First mortgage lenders would no doubt voice strong objections to giving association liens full priority, which raises a concern as to whether such a change would affect the availability of home mortgage credit for common interest units/parcels. Nevertheless, as Professor Boyack has noted, priority for real property taxes has not dissuaded lenders from making first mortgage loans; lenders have addressed this risk by requiring real property escrow accounts, and could demand similar escrow accounts for association assessments. Andrea J. Boyack, *Community Collateral Damage: A Question of Priorities*, 43 Loy.U.Chi.L.Rev. 53, 116, 122 (2011).



1 **ORDD**
2 ROGER P. CROTEAU, ESQ.
3 Nevada Bar No. 4958
4 TIMOTHY E. RHODA, ESQ.
5 Nevada Bar No. 7878
6 ROGER P. CROTEAU & ASSOCIATES, LTD.
7 9120 West Post Road, Suite 100
8 Las Vegas, Nevada 89148
9 (702) 254-7775
10 (702) 228-7719 (facsimile)
11 croteaulaw@croteaulaw.com
12 *Attorney for Plaintiff*
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

14
15 DISTRICT COURT
16 CLARK COUNTY, NEVADA

17 ***

18 LAS VEGAS DEVELOPMENT GROUP, LLC,)
19 a Nevada limited liability company,)

20 Plaintiff,)

21 vs.)

22 DANIA V. HERNANDEZ, an individual; THE)
23 BANK OF NEW YORK MELLON f/k/a THE)
24 BANK OF NEW YORK, AS TRUSTEE FOR)
25 THE CERTIFICATEHOLDERS OF CWABS,)
26 INC., ASSET-BACKED CERTIFICATES,)
27 SERIES 2006-7, a national banking association;)
28 DOE individuals I through XX; and ROE)
CORPORATIONS I through XX,)

29 Defendants.)

30 THE BANK OF NEW YORK MELLON f/k/a)
31 THE BANK OF NEW YORK, AS TRUSTEE)
32 FOR THE CERTIFICATEHOLDERS OF)
33 CWABS, INC., ASSET-BACKED)
34 CERTIFICATES, SERIES 2006-7,)

35 Counterclaimant,)

36 vs.)

37 LAS VEGAS DEVELOPMENT GROUP, LLC,)
38 a Nevada limited liability company,)

39 Counterdefendant.)

Case No. A-17-756215-C
Dept. No. XIII

ORDER DENYING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

Date of Hearing: July 11, 2019
Time of Hearing: 9:00 a.m.

RECEIVED

JUL 31 2019



DISTRICT COURT DEPT#13

1 ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

2 On March 18, 2019, the Defendant/Counterclaimant herein, THE BANK OF NEW
3 YORK MELLON f/k/a THE BANK OF NEW YORK, AS TRUSTEE FOR THE
4 CERTIFICATEHOLDERS OF CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES
5 2006-7, filed a Motion for Summary Judgment. Said Motion came before this Court for hearing
6 on July 11, 2019. Having carefully reviewed and considered the papers and pleadings on file
7 herein, including the Motion, the Plaintiff's Opposition and the Defendant's Reply thereto, and
8 after hearing the arguments of counsel for the parties, the Court finds that the Motion should be
9 DENIED. Good cause appearing therefor,

10 IT IS HEREBY ORDERED that THE BANK OF NEW YORK MELLON f/k/a THE
11 BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS,
12 INC., ASSET-BACKED CERTIFICATES, SERIES 2006-7's Motion for Summary Judgment is
13 hereby DENIED in its entirety

14 DATED this 15th day of August, 2019.

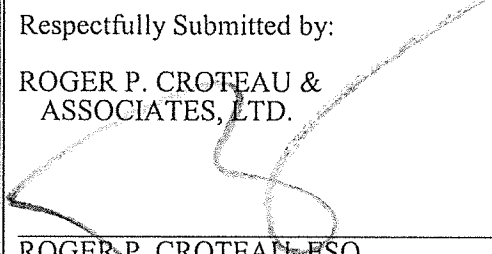
15
16
17 
DISTRICT COURT JUDGE 


18 Respectfully Submitted by:

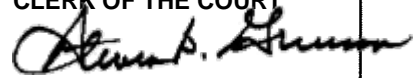
19 ROGER P. CROTEAU &
20 ASSOCIATES, LTD.

Approved as to form and content:

AKERMAN LLP

21
22 
23 ROGER P. CROTEAU, ESQ.
24 Nevada Bar No. 4958
25 TIMOTHY E. RHODA, ESQ.
26 Nevada Bar No. 7878
27 9120 West Post Road, Suite 100
28 Las Vegas, Nevada 89148
(702) 254-7775
Attorney for Plaintiff/Counter-Defendant
LAS VEGAS DEVELOPMENT GROUP,
LLC


TENESA POWELL, ESQ.
Nevada Bar No. 12488
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
tenesa.powell@akerman.com
Attorneys for Defendant/Counterclaimant
THE BANK OF NEW YORK MELLON
F/K/A THE BANK OF NEW YORK, AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWABS,
INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-7



1 **NEO**
2 ROGER P. CROTEAU, ESQ.
3 Nevada Bar No. 4958
4 TIMOTHY E. RHODA, ESQ.
5 Nevada Bar No. 7878
6 ROGER P. CROTEAU & ASSOCIATES, LTD.
7 9120 West Post Road, Suite 100
8 Las Vegas, Nevada 89148
9 (702) 254-7775
10 (702) 228-7719 (facsimile)
11 croteaulaw@croteaulaw.com
12 *Attorney for Plaintiff*
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 ***

17 LAS VEGAS DEVELOPMENT GROUP, LLC,)
18 a Nevada limited liability company,)
19)
20 Plaintiff,)

21 vs.)

Case No. A-17-756215-C
Dept. No. XIII

22 DANIA V. HERNANDEZ, an individual; THE)
23 BANK OF NEW YORK MELLON f/k/a THE)
24 BANK OF NEW YORK, AS TRUSTEE FOR)
25 THE CERTIFICATEHOLDERS OF CWABS,)
26 INC., ASSET-BACKED CERTIFICATES,)
27 SERIES 2006-7, a national banking association;)
28 DOE individuals I through XX; and ROE)
CORPORATIONS I through XX,)

Defendants.)

THE BANK OF NEW YORK MELLON f/k/a)
THE BANK OF NEW YORK, AS TRUSTEE)
FOR THE CERTIFICATEHOLDERS OF)
CWABS, INC., ASSET-BACKED)
CERTIFICATES, SERIES 2006-7,)

Counterclaimant,)

vs.)

LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)

Counterdefendant.)

NOTICE OF ENTRY OF ORDER
DENYING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 W. Charleston Blvd., Ste. 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Denying Defendatn's Motion for Summary Judgment was entered in the above-entitled action on August 2, 2019, a copy of which is attached hereto.

DATED this 2nd day of August, 2019.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
2810 W. Charleston Blvd., Ste. 75
Las Vegas, Nevada 89102
(702) 254-7775
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 2nd day of August, 2019, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

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

/s/ Mindy B. Keck
An employee of ROGER P. CROTEAU &
ASSOCIATES, LTD

Steven D. Grierson

1 **ORDD**
2 ROGER P. CROTEAU, ESQ.
3 Nevada Bar No. 4958
4 TIMOTHY E. RHODA, ESQ.
5 Nevada Bar No. 7878
6 ROGER P. CROTEAU & ASSOCIATES, LTD.
7 9120 West Post Road, Suite 100
8 Las Vegas, Nevada 89148
9 (702) 254-7775
10 (702) 228-7719 (facsimile)
11 croteaulaw@croteaulaw.com
12 *Attorney for Plaintiff*
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

DISTRICT COURT

CLARK COUNTY, NEVADA

11 LAS VEGAS DEVELOPMENT GROUP, LLC,)
12 a Nevada limited liability company,)
13 Plaintiff,)

14 vs.)

Case No. A-17-756215-C
Dept. No. XIII

15 -DANIA V. HERNANDEZ, an individual; THE)
16 BANK OF NEW YORK MELLON f/k/a THE)
17 BANK OF NEW YORK, AS TRUSTEE FOR)
18 THE CERTIFICATEHOLDERS OF CWABS,)
19 INC., ASSET-BACKED CERTIFICATES,)
20 SERIES 2006-7, a national banking association;)
21 DOE individuals I through XX; and ROE)
22 CORPORATIONS I through XX,)

23 Defendants.)

Date of Hearing: July 11, 2019
Time of Hearing: 9:00 a.m.

20 THE BANK OF NEW YORK MELLON f/k/a)
21 THE BANK OF NEW YORK, AS TRUSTEE)
22 FOR THE CERTIFICATEHOLDERS OF)
23 CWABS, INC., ASSET-BACKED)
24 CERTIFICATES, SERIES 2006-7,)

25 Counterclaimant,)

26 vs.)

27 LAS VEGAS DEVELOPMENT GROUP, LLC,)
28 a Nevada limited liability company,)

Counterdefendant.)

RECEIVED

JUL 31 2019



DISTRICT COURT DEPT# 13

1 ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

2 On March 18, 2019, the Defendant/Counterclaimant herein, THE BANK OF NEW
3 YORK MELLON f/k/a THE BANK OF NEW YORK, AS TRUSTEE FOR THE
4 CERTIFICATEHOLDERS OF CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES
5 2006-7, filed a Motion for Summary Judgment. Said Motion came before this Court for hearing
6 on July 11, 2019. Having carefully reviewed and considered the papers and pleadings on file
7 herein, including the Motion, the Plaintiff's Opposition and the Defendant's Reply thereto, and
8 after hearing the arguments of counsel for the parties, the Court finds that the Motion should be
9 DENIED. Good cause appearing therefor,

10 IT IS HEREBY ORDERED that THE BANK OF NEW YORK MELLON f/k/a THE
11 BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS,
12 INC., ASSET-BACKED CERTIFICATES, SERIES 2006-7's Motion for Summary Judgment is
13 hereby DENIED in its ~~entire~~ ^{August}

14 DATED this 1st day of August, 2019.

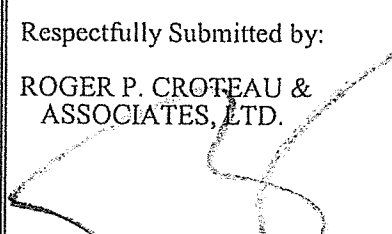
15
16
17 
DISTRICT COURT JUDGE 

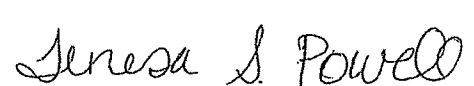
18 Respectfully Submitted by:

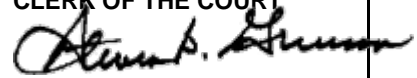
19 ROGER P. CROTEAU &
20 ASSOCIATES, LTD.

21 Approved as to form and content:

22 AKERMAN LLP

23 
24 ROGER P. CROTEAU, ESQ.
25 Nevada Bar No. 4958
26 TIMOTHY E. RHODA, ESQ.
27 Nevada Bar No. 7878
28 9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
(702) 254-7775
Attorney for Plaintiff/Counter-Defendant
LAS VEGAS DEVELOPMENT GROUP,
LLC

29 
TENESA POWELL, ESQ.
Nevada Bar No. 12488
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
tenesa.powell@akerman.com
Attorneys for Defendant/Counterclaimant
THE BANK OF NEW YORK MELLON
F/K/A THE BANK OF NEW YORK, AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWABS,
INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-7



1 ANCC
2 ROGER P. CROTEAU, ESQ.
3 Nevada Bar No. 4958
4 TIMOTHY E. RHODA, ESQ.
5 Nevada Bar No. 7878
6 ROGER P. CROTEAU & ASSOCIATES, LTD.
7 2810 West Charleston #75
8 Las Vegas, Nevada 89102
9 (702) 254-7775
10 (702) 228-7719 (facsimile)
11 croteaulaw@croteaulaw.com
12 *Attorney for Plaintiff*
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

DISTRICT COURT

CLARK COUNTY, NEVADA

11 LAS VEGAS DEVELOPMENT GROUP, LLC,)
12 a Nevada limited liability company,)

Plaintiff,)

13 vs.)

Case No. A-17-756215-C
Dept. No. XIII

14 DANIA V. HERNANDEZ, an individual; THE)
15 BANK OF NEW YORK MELLON f/k/a THE)
16 BANK OF NEW YORK, AS TRUSTEE FOR)
17 THE CERTIFICATEHOLDERS OF CWABS,)
18 INC., ASSET-BACKED CERTIFICATES,)
19 SERIES 2006-7, a national banking association;)
20 DOE individuals I through XX; and ROE)
21 CORPORATIONS I through XX,)

Defendants.)

22 THE BANK OF NEW YORK MELLON f/k/a)
23 THE BANK OF NEW YORK, AS TRUSTEE)
24 FOR THE CERTIFICATEHOLDERS OF)
25 CWABS, INC., ASSET-BACKED)
26 CERTIFICATES, SERIES 2006-7,)

Counterclaimant,)

24 vs.)

25 LAS VEGAS DEVELOPMENT GROUP, LLC,)
26 a Nevada limited liability company,)

Counterdefendant.)

ANSWER TO COUNTERCLAIM

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

1. OMITTED
2. OMITTED
3. OMITTED
4. OMITTED
5. Answering Paragraph 5 of Defendant's Counterclaim, Plaintiff admits the allegations therein.
6. Answering Paragraph 6 of Defendant's Counterclaim, Plaintiff admits the allegations therein.
7. Answering Paragraph 7 of Defendant's Counterclaim, Plaintiff admits that NRS 116.3116 *et seq.* provides substantially as alleged.
8. Answering Paragraph 8 of Defendant's Counterclaim, Plaintiff admits that NRS 116.3116 *et seq.* provides substantially as alleged.
9. Answering Paragraph 9 of Defendant's Counterclaim, Plaintiff admits that the Nevada Supreme Court has determined that a proper nonjudicial foreclosure of a homeowners association lien extinguishes all subordinate security interests, including a first deed of trust. Plaintiff denies the remaining allegations therein.

10. Answering Paragraph 10 of Defendant's Counterclaim, Plaintiff admits that the subject document appears to have been recorded as alleged. Plaintiff neither admits nor denies the remaining allegations therein and instead avers that the subject document speaks for itself.

11. Answering Paragraph 11 of Defendant's Counterclaim, Plaintiff admits that the subject documents appears to have been recorded as alleged. Plaintiff neither admits nor denies the remaining allegations therein and instead avers that the subject document speaks for itself.

THE HOA LIEN AND FORECLOSURE

12. Answering Paragraph 12 of Defendants' Counterclaim, Plaintiff admits that the subject document appears to have been recorded as alleged. Plaintiff neither admits nor denies the remaining allegations therein and instead avers that the subject document speaks for itself.

13. Answering Paragraph 13 of Defendants' Counterclaim, Plaintiff admits that the subject document appears to have been recorded as alleged. Plaintiff neither admits nor denies the remaining allegations therein and instead avers that the subject document speaks for itself.

14. Answering Paragraph 14 of Defendants' Counterclaim, Plaintiff admits that the subject document appears to have been recorded as alleged. Plaintiff neither admits nor denies the remaining allegations therein and instead avers that the subject document speaks for itself.

15. Answering Paragraph 15 of Defendants' Counterclaim, Plaintiff is without sufficient information to either admit or deny the allegations therein. On this basis, Plaintiff denies said allegations in their entirety.

16. Answering Paragraph 16 of Defendants' Counterclaim, Plaintiff is without sufficient information to either admit or deny the allegations therein. On this basis, Plaintiff denies said allegations in their entirety.

17. Answering Paragraph 17 of Defendants' Counterclaim, Plaintiff is without sufficient information to either admit or deny the allegations therein. On this basis, Plaintiff denies said allegations in their entirety.

18. Answering Paragraph 18 of Defendants' Counterclaim, Plaintiff is without sufficient information to either admit or deny the allegations therein. On this basis, Plaintiff denies

1 said allegations in their entirety.

2 19. Answering Paragraph 19 of Defendants' Counterclaim, Plaintiff is without sufficient

3 information to either admit or deny the allegations therein. On this basis, Plaintiff denies

4 said allegations in their entirety.

5 20. Answering Paragraph 20 of Defendant's Counterclaim, Plaintiff is without sufficient

6 information to either admit or deny the allegations therein. On this basis, Plaintiff denies

7 said allegations in their entirety.

8 21. Answering Paragraph 21 of Defendants' Counterclaim, Plaintiff admits the allegations

9 therein upon information and belief.

10 22. Answering Paragraph 22 of Defendants' Counterclaim, Plaintiff admits the allegations

11 therein upon information and belief.

12 23. Answering Paragraph 23 of Defendants' Counterclaim, Plaintiff denies the allegations

13 therein.

14 24. Answering Paragraph 24 of Defendants' Counterclaim, Plaintiff denies the allegations

15 therein.

16 25. Answering Paragraph 25 of Defendants' Counterclaim, Plaintiff denies the allegations

17 therein.

18 26. Answering Paragraph 26 of Defendants' Counterclaim, Plaintiff denies the allegations

19 therein.

20 27. Answering Paragraph 27 of Defendant's Counterclaim, Plaintiff denies the allegations

21 therein.

22 [28]. Answering Paragraph [28] of Defendant's Counterclaim, Plaintiff is without sufficient

23 information to either admit or deny the allegations therein. On this basis, Plaintiff denies

24 said allegations in their entirety.

25 [29]. Answering Paragraph [29] of Defendant's Counterclaim, Plaintiff denies the allegations

26 therein.

27 //

28 //

FIRST CAUSE OF ACTION

(Counterclaim for Quiet Title/Declaratory Relief against Plaintiff)

28. Answering Paragraph 28 of Defendant's Counterclaim, Plaintiff repeats, realleges, and incorporates by reference herein, its Answers to Paragraphs 1 through [29] above, as though said paragraphs were fully set forth herein.
29. Answering Paragraph 29 of Defendant's Counterclaim, Plaintiff admits that this Court generally possesses the power and authority to resolve disputes such as the matter at hand.
30. Answering Paragraph 30 of Defendant's Counterclaim, Plaintiff admits the allegations therein.
31. Answering Paragraph 31 of Defendant's Counterclaim, Plaintiff admits the allegations therein.
32. Answering Paragraph 32 of Defendant's Counterclaim, Plaintiff denies the allegations therein.
33. OMITTED
34. Answering Paragraph 34 of Defendant's Counterclaim, Plaintiff denies the allegations therein.
35. Answering Paragraph 35 of Defendant's Counterclaim, Plaintiff denies the allegations therein.
36. Answering Paragraph 36 of Defendant's Counterclaim, Plaintiff denies the allegations therein.
37. Answering Paragraph 37 of Defendant's Counterclaim, Plaintiff denies the allegations therein.
38. Answering Paragraph 38 of Defendant's Counterclaim, Plaintiff denies the allegations therein.
39. Answering Paragraph 39 of Defendant's Counterclaim, Plaintiff denies the allegations therein.
40. Answering Paragraph 40 of Defendant's Counterclaim, Plaintiff denies the allegations therein.

1 therein.

2 41. Answering Paragraph 41 of Defendant's Counterclaim, Plaintiff denies the allegations
3 therein.

4 **AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

6 Counter-Defendant states that the allegations contained in the Counterclaim fail to state a
7 cause of action against this answering party upon which relief can be granted.

8 **SECOND AFFIRMATIVE DEFENSE**

9 Counter-claimant has failed to mitigate its damages, if any, the existence of which is
10 expressly denied.

11 **THIRD AFFIRMATIVE DEFENSE**

12 The Counter-claimant's claims for damages are barred as a result of the failure to satisfy
13 conditions precedent.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 The Counter-claimant's claims have been waived by the acts and conduct of the Counter-
16 claimant and, therefore, Counter-claimant is estopped from asserting its claims for damages
17 against this answering party.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 The Counter-claimant's claims are barred by the Doctrine of Laches.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 The damages which are alleged to have been incurred by the Counter-claimant, if any, are
22 the direct result, in whole or in part, of acts or omissions of the Counter-claimant and/or its
23 authorized agents and representatives, and this answering party is not responsible for any such
24 damages.

25 **SEVENTH AFFIRMATIVE DEFENSE**

26 The Counter-claimant's claims are barred by the applicable statutes of limitations.

27 **EIGHTH AFFIRMATIVE DEFENSE**

28 Counter-Defendant is a bona fide purchaser for value.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NINTH AFFIRMATIVE DEFENSE

Any security interest that the Counterclaimant once possessed was extinguished as a matter of law at the time of the HOA Foreclosure Sale.

TENTH AFFIRMATIVE DEFENSE

To the extent that the Counter-Defendant has paid any sum of money to the applicable County Treasurer or otherwise in relation to the Property, recovery of the same is barred by the Voluntary Payment Doctrine.

ELEVENTH AFFIRMATIVE DEFENSE

The Counterclaimant has failed to name and join indispensable parties.

TWELFTH AFFIRMATIVE DEFENSE

Counter-Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Counter-Defendant reserves the right to seek leave of Court to amend its Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

THIRTEENTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, all possible affirmative defenses may not have been raised herein as sufficient facts were not available after reasonable inquiry upon the filing of this Answer, and therefore, this answering Counter-Defendant reserves the right to amend its answer to allege additional affirmative defenses if subsequent investigation so warrants.

WHEREFORE, Counter-Defendant prays for judgment as follows:

A. That Counter-Claimant take nothing by virtue of its Counterclaim;

//
//
//
//
//

1 B. For reasonable attorneys' fees and costs;

2 C. For such other and further relief as this Court may deem meet and proper.

3 DATED this 27th day of January, 2020.

4 ROGER P. CROTEAU & ASSOCIATES, LTD.

5
6 /s/ Timothy E. Rhoda

7 ROGER P. CROTEAU, ESQ.

8 Nevada Bar No. 4958

9 TIMOTHY E. RHODA, ESQ.

10 Nevada Bar No. 7878

11 2810 West Charleston #75

12 Las Vegas, Nevada 89102

13 (702) 254-7775

14 *Attorney for Plaintiff*

15 **LAS VEGAS DEVELOPMENT GROUP, LLC**

16
17
18 **CERTIFICATE OF SERVICE**

19 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee
20 of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 27th day of January,
21 2020, I caused a true and correct copy of the foregoing document to be served on all parties as
22 follows:

23 _____ VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-
24 file and serve system.

25 _____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with
26 postage thereon fully prepaid, addressed as indicated on service list below in the United
27 States mail at Las Vegas, Nevada.

28 _____ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated
on the service list below.

_____ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this
date to the addressee(s) at the address(es) set forth on the service list below.

26 /s/ Timothy E. Rhoda

27 An employee of ROGER P. CROTEAU &
28 ASSOCIATES, LTD.

Heather S. Hume
CLERK OF THE COURT

1 **FFCL**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4 LAS VEGAS DEVELOPMENT GROUP,
5 LLC, a Nevada limited liability company,

Case No.: A-17-756215-C
Dept. No.: XIII

6 Plaintiff,

7 vs.

8 DANIA V. HERNANDEZ, an individual;
9 THE BANK OF NEW YORK MELLON
F/K/A THE BANK OF NEW YORK, AS
10 TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWABS,
11 INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-7, a national banking
12 association; DOE individuals I through XX;
and ROE CORPORATIONS I through XX,

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND JUDGMENT**

13 Defendants.

14 THE BANK OF NEW YORK MELLON
F/K/A THE BANK OF NEW YORK, AS
15 TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWABS,
16 INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-7,

17 Counterclaimant,

18 vs.

19 LAS VEGAS DEVELOPMENT GROUP,
20 LLC, a Nevada limited liability company,

21 Counterdefendant.

22 THIS MATTER having come on for non-jury trial on July 28 and 29, 2020, Plaintiff
23 appearing by and through Roger P. Croteau, Esq. of the firm of Roger P. Croteau &
24 Associates, Ltd., and the entity Defendants appearing by and through Rex D. Garner, Esq. of
25 the firm of Akerman LLP;

26 AND, the Court having heard the testimony of witnesses and received other evidence
27 and heard the argument of counsel and having taken the matter under advisement pending
28

1 submission of proposed findings of fact and conclusions of law and judgment, and being now
2 fully advised in the premises;

3 NOW, THEREFORE the Court hereby makes the following

4 **FINDINGS OF FACT**

5 ***The Subject Property, Note, and Deed of Trust***

6 1. On April 10, 2006 Dania Hernandez purchased the property located at 1524
7 Highfield Court, Las Vegas, Nevada, financed with a loan from Countrywide Home Loans,
8 Inc. in the amount of \$208,000.00. The loan was evidenced by a note and secured by a deed
9 of trust recorded against the property on April 19, 2006. **Trial Ex. 26; Stipulated Facts, ¶**

10 **1.**¹

11 2. The deed of trust was assigned to BoNYM in 2011 via a recorded assignment
12 of deed of trust. **Trial Ex. 32; Stipulated Facts, ¶ 2.**

13 ***The HOA Foreclosure and the Tender***

14 3. The property is located in the Hidden Canyon Owners Association (HOA) and
15 is subject to the HOA's covenants, conditions, and restrictions (CC&Rs). **Stipulated Facts, ¶**
16 **3.**

17 4. Hernandez failed to pay the HOA all amounts due to it, so the HOA, through
18 its agent, Alessi & Koenig, LLC (Alessi), recorded a notice of delinquent assessment lien on
19 June 3, 2009. Per the notice, the amount due to HOA was \$571.85. **Trial Ex. 27; Stipulated**
20 **Facts, ¶ 4.**

21 5. The HOA, through its agent Alessi, recorded a notice of default on September
22 2, 2009.² The notice states the amount due to HOA was \$1,404.49. **Trial Ex. 28; Stipulated**
23 **Facts, ¶ 5.**

24
25 ¹ The stipulated facts were filed February 27, 2020.

26 ² Assembly Bill 204 in the 2009 legislative session amended NRS 116.3116, increasing the
27 superpriority from 6 months to 9 months. This bill took effect October 1, 2009. The action to
28 enforce the lien in this case, having started before October 1, 2009, means the HOA's
superpriority lien in this case was limited to 6 months. *See Saticoy Bay LLC Series 2021*
Gray Eagle Way v. JPMorgan Chase Bank, N.A., 388 P.3d 226, 231, 133 Nev. Adv. Op. 3
(2017) (serving a notice of delinquent assessments constitutes institution of an action to
enforce the lien) ("As such, a party has instituted "proceedings to enforce the lien" for

1 6. On October 20, 2009, Miles Bauer Bergstrom & Winters LLP (**Miles Bauer**),
2 as the attorneys of MERS, as nominee for BAC Home Loans Servicing, LP, as then-servicer
3 of the loan, requested a breakdown of the HOA arrears from Alessi, and the identification of
4 the superpriority amount owed to HOA. **Stipulated Facts, ¶ 6.**

5 7. On or about December 17, 2009, Alessi provided a facsimile cover letter and
6 Resident Transaction Detail, which revealed the HOA charged assessments for common
7 expenses of \$118.00 annually, and showing the account had no charges for nuisance
8 abatement or exterior maintenance. **Stipulated Facts, ¶¶ 7–9.** Such item did not give a
9 monthly breakdown, but such a breakdown would amount to \$9.83 monthly.

10 8. On January 21, 2010, Miles Bauer sent a letter, together with a check payable
11 to Alessi in the amount of \$88.50 to Alessi, purporting to represent 9 months of assessments,
12 *i.e.* nine-twelfths of the HOA annual assessment of \$118.00. **Trial Ex. 41; Stipulated Facts,**
13 **¶ 10.**

14 9. Alessi refused Miles Bauer's payment. **Trial Ex. 41; Stipulated Facts, ¶ 11.**

15 10. At the time Alessi rejected Miles Bauer's payment, it explained its reasoning
16 for doing so in a letter found within Alessi's file for this property's foreclosure, which had
17 nothing to do with a 9-month versus 12-month difference, but instead with Alessi's
18 understanding and belief that the superpriority included its fees and costs in addition to
19 assessments owed:

20 ". . . we are unable to accept the partial payments offered by your clients as
21 payment in full. . . . case authority exists which provides that the association's lien
22 also includes the reasonable cost of collection of those assessments.

23 If the association were to accept your offer that only includes assessments, Alessi
24 & Koenig would be left with a lien against the association for our substantial out-
of-pocket expenses and fees generated. . . ."

25 **Trial Ex. 41 at 41-069; see also Trial Ex. 40.**

26
27
28

purposes of NRS 116.3116(6) when it provides the notice of delinquent assessment. This
interpretation conforms to our decision in *SFR*, where we stated that "[t]o initiate foreclosure
under NRS 116.31162 through NRS 116.31168, a Nevada HOA must notify the owner of the
delinquent assessments.").

1 11. Alessi & Koenig's letter did not identify a different dollar amount that it
2 believed was the superpriority. **Trial Ex. 41** at 41-069.

3 12. Alessi & Koenig reiterated their policy two years later in another letter to
4 Miles Bauer:

5 ". . . In the opinion, the Commission concluded that associations may collect, as
6 part of the super priority lien, the costs of collecting as authorized by NRS
7 116.310313.

8 Furthermore, the nine-month super-priority is not triggered until the beneficiary
under the first deed of trust forecloses."

9 **Trial Ex. 39.**

10 13. The HOA, through its agent Alessi, recorded a notice of sale on August 9,
11 2010. The notice states the amount due to HOA was \$2,862.23. **Trial Ex. 29; Stipulated**
12 **Facts, ¶ 12.**

13 14. Alessi, on behalf of the HOA, auctioned the property on March 2, 2011, and
14 the HOA won the bidding with a credit bid for all amounts owed to it. **Testimony of Yvette**
15 **Sauceda** (HOA representative). A foreclosure deed in favor of the HOA was recorded March
16 3, 2011. **Trial Ex. 30; Stipulated Facts, ¶ 13.**

17 15. Because the HOA credit bid, no money changed hands as a consequence of the
18 auction, and the assessment balance to the HOA remained unpaid. **Testimony of Yvette**
19 **Sauceda** (HOA representative); *see also* **Trial Ex. 46** at 46-029.

20 16. Not until weeks later through a non-NRS-116 sale to LVDG did the HOA get
21 funds and apply them to the assessments that comprised the superpriority. **Testimony of**
22 **Yvette Saucedo.**

23 17. On March 30, 2011, the HOA quitclaimed its interest to LVDG in exchange
24 for \$4,500.00. **Trial Ex. 31; Stipulated Facts, ¶ 14.**

25 18. At the time of the HOA's foreclosure sale, the property's fair market value was
26 \$76,000.00, meaning both the auction price and the amount LVDG paid were less than 6% of
27 the fair market value. **Stipulated Facts, ¶ 15.**

1 Any of the foregoing Findings of Fact that are more appropriately to be considered
2 Conclusions of Law shall be so deemed.

3 FROM the foregoing Findings of Fact, the Court hereby makes the following

4 **CONCLUSIONS OF LAW**

5 ***Burdens of Proof***

6 1. As explained by the Nevada Supreme Court, "the burden of proof rests with
7 the party seeking to quiet title in its favor." *Shadow Wood Homeowners Ass'n, Inc. v. N.Y.*
8 *Cnty. Bancorp.*, 132 Nev. 49, 366 P.3d 1105 (2016) (citing *Breliant v. Preferred Equities*
9 *Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996)); *see also Res. Grp., LLC as Tr. of E.*
10 *Sunset Rd. Tr. v. Nevada Ass'n Servs., Inc.*, 135 Nev. Adv. Op. 8, 437 P.3d 154, 156 (2019)
11 ("each party to a quiet title action has the burden of demonstrating superior title in himself or
12 herself").

13 2. LVDG bears the burden of proof on all its claims against defendants, and
14 BoNYM bears the burden of proof on its counterclaims and defenses.

15 3. Further, deed recitals are not conclusive. *See Shadow Wood, supra*. To the
16 extent there is any evidentiary value found in deed recitals, it is limited only to "default,
17 notice, and publication," and statutory prerequisites to the sale. *Id.* The recitals do not
18 address the issues in this case, including tender and the equities of the sale. *Shadow Wood*,
19 132 Nev., Adv. Op. 5, 366 P.3d at 1110 (explaining deed recitals do not eliminate equitable
20 relief).

21 ***Bank of America's tender did not itself preserve the deed of trust***

22 4. Under NRS 116.3116(2), an association's lien is split "into two pieces, a
23 superpriority piece and a sub-priority piece." *SFR Investments Pool 1, LLC v. U.S. Bank,*
24 *N.A.*, 130 Nev. 742, 745, 334 P.3d 408, 411 (2014). If a senior deed of trust holder pays or
25 tenders payment of the superpriority before the HOA's sale, the superpriority piece is
26 satisfied, meaning the HOA's auction cannot affect the senior deed of trust. *Bank of America,*
27 *N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. Adv. Op. 72, 427 P.3d 113 (2018) (*Diamond Spur*)
28

1 ("Bank of America's tender cured the default and prevented foreclosure as to the superpriority
2 portion of the HOA's lien by operation of law.").

3 5. Just as it did in *Diamond Spur*, here Miles Bauer sent a letter to the HOA's
4 collection agent, seeking to determine the superpriority amount of the HOA's lien and
5 "offer[ing] to pay that sum upon presentation of adequate proof of the same by the HOA."
6 **Trial Ex. 41; Stip. Facts**, at ¶ 6. In response, Alessi provided a ledger. **Trial Ex. 41; Stip.**
7 **Facts**, at ¶ ¶ 7–9.

8 6. Based on the ledger, which showed the account had no nuisance or
9 maintenance charges under NRS 116.310312, but which did not identify a superpriority
10 amount, Miles Bauer sent a check purporting to represent 9 months of assessments. *See*
11 *Finding of Fact No. 8, supra*. **Trial Ex. 41; Stipulated Facts, ¶ 10.**

12 7. Alessi rejected the payment. *See id.*; **Stip. Facts**, at ¶ 11. The Nevada
13 Supreme Court has recently held that if an HOA makes assessments payable annually, the
14 entire assessment amount can have superpriority status if it becomes due within the nine
15 months preceding the notice of delinquent assessments, which is the case here. *Anthony S.*
16 *Noonan IRA, LLC v. U.S. Bank Nat'l Ass'n EE*, 136 Nev. Adv. Op. 41, 466 P.3d 1276 (2020).

17 8. The Nevada Supreme Court has confirmed that Miles Bauer could rely on the
18 information provided by an association's collection agent in calculating their superpriority
19 tenders in *Diamond Spur*, explaining:

20
21 The record establishes that Bank of America tendered the correct amount to
22 satisfy the superpriority portion of the lien on the property. **Pursuant to the**
23 **HOA's accounting**, nine months' **worth** of assessment fees totaled \$720, **and**
24 **the HOA did not indicate that the property had any charges for**
25 **maintenance or nuisance abatement**. Bank of America sent the HOA a
26 check for \$720 in June 2012. On the record presented, this was the full
27 superpriority amount.

28 134 Nev. at 607 (emphasis added). Earlier in the opinion, the Court stated that Miles Bauer
tendered the correct superpriority amount "based on the HOA's representations" to Miles
Bauer. *See id.*, at 605; *see also* 74 AM. JUR. 2d *Tender* § 4 (explaining that offering to pay a
specific amount is "excused" if "the amount depends on the balance shown by accounts that
are inaccessible to the party from whom the tender would otherwise be required . . . and such

1 information is ascertainable only from the accounts of the creditor, who does not disclose the
2 required information to the debtor"). Miles Bauer had a right to rely on the document
3 provided to them by Alessi to calculate the superpriority amount, and Alessi never suggested
4 a different dollar amount. Moreover, the Supreme Court's use of the term "worth" supports
5 the notion that the yearly assessment in this case could be properly apportioned to determine
6 the monetary amount represented by nine months. However, the Nevada Supreme Court has
7 otherwise ruled in *Noonan, supra*.

8 9. However, Alessi rejected the tender check not because Miles Bauer's
9 superpriority calculation was off by a few dollars—Alessi rejected the check because it was
10 not for the full amount secured by the HOA's **entire** lien (both subpriority and superpriority
11 portions), just as its letter to Miles Bauer said. **Trial Ex. 41** at 41-069.

12 10. The Nevada Supreme Court has held that "... an offer to pay the superpriority
13 amount in the future, once that amount is determined, does not constitute a tender sufficient to
14 preserve the first deed of trust." *7510 Perla Del Mar Ave. Tr. v. Bank of America, N.A.*, 136
15 Nev. Adv. Op. 6, 458 P.3d 348, 349 (2020). (*Perla*)

16 *Alternatively, Miles Bauer was excused from tendering a superpriority payment because it*
17 *would have been futile*

18 11. However, a tendering party can also establish excuse from formal
19 tender/delivery of money. *Perla, supra*, at 349 ("formal tender is excused when the evidence
20 shows that the party entitled to payment had a known policy of rejecting [superpriority]
21 payments.").

22 12. The *Perla* decision confirms long-standing law that delivery of payment is *not*
23 always necessary to effectuate a legal tender.³ To be sure, a creditor like an HOA and its
24

25 ³ See, e.g., *Guthrie v. Curnutt*, 417 F.2d 764, 765–66 (10th Cir. 1969) ("[W]hen a party, able
26 and willing to do so, offers to pay another a sum of money and is told that it will not be
27 accepted, the offer is a tender without the money being produced."); *In re Pickel*, 493 B.R.
28 258, 271 (Bankr. D.N.M. 2013) ("Tender is unnecessary if the other party has stated that the
amount due would not be accepted."); *Mark Turner Props., Inc. v. Evans*, 554 S.E.2d 492,
495 (Ga. 2001) ("Tender of an amount due is waived when the party entitled to payment, by
declaration or by conduct, proclaims that, if tender of the amount due is made, an acceptance
of 'it will be refused.' (internal quotation marks and alterations omitted)); 74 Am. Jur. 2d
Tender § 4 (2012) ("A tender of an amount due is waived when the party entitled to payment,

1 collection agent can waive or excuse payment, and they can do this by words or by conduct.
2
3 *Id.*

4 13. In addition to waiver, a creditor's words or actions—like Alessi's ordinary
5 course of business to reject payments—can render payment futile, in which case the law will
6 not require a payor to perform a useless or futile act.⁴

7 14. Here, Alessi had a well-known policy of rejecting Miles Bauer's payments, as
8 its letter acknowledges:

9 ". . . we are unable to accept the partial payments offered by your clients as
10 payment in full . . . case authority exists which provides that the association's
11 lien also includes the reasonable cost of collection of those assessments.

12 If the association were to accept your offer that only includes assessments,
13 Alessi & Koenig would be left with a lien against the association for our
14 substantial out-of-pocket expenses and fees generated. . . ."

15 **Trial Ex. 41** at 069; *see also* **Trial Ex. 39** ("Furthermore, the nine-month super-priority is not
16 triggered until the beneficiary under the first deed of trust forecloses.").

17 by declaration or by conduct, proclaims that, if tender of the amount due is made, it will not
18 be accepted."); 86 C.J.S. Tender § 5 (2017) (tender "is waived when the party entitled to
19 payment, by declaration or conduct . . . makes clear that they will not perform, or they have
20 evaded tender, or in any other way obstructs or prevents a tender"); *cf. Cladianos v. Friedhoff*,
21 69 Nev. 41, 45, 240 P.2d 208, 210 (1952) ("The law is clear . . . that any affirmative tender of
22 performance is excused when performance has in effect been prevented by the other party to
23 the contract."); *see also Perla*, 2020 WL 966026, *3 (citing multiple cases on waiver, excuse,
24 and futility).

25 ⁴ *See, e.g., Telemark Dev. Grp., Inc. v. Mengelt*, 313 F.3d 972, 978 (7th Cir. 2002) ("tender
26 may be excused when the conduct of the creditor makes it 'reasonably clear that such [tender]
27 would be a vain, idle, or useless act."); *Quality Motors v. Hays*, 225 S.W.2d 326 (Ark. 1949)
28 (tender is immaterial when it would be vain and useless); *Donnellan v. Rocks*, 22 Cal. App. 3d
925, 929 (1st Dist. 1972) ("it is equally well established that the law does not require the
performance of an idle act and a formal tender of performance is excused by the refusal in
advance of the party to accept the performance."); *Fox Run Properties, LLC v. Murray*, 654
S.E.2d 676 (Ga. App. 2007) ("tender is excused or waived where the seller, by conduct or
declaration, proclaims that if a tender should be made, acceptance would be refused" because
"the law does not require a futile tender or other useless act."); *Chapman v. Olbrich*, 217
S.W.3d 482, 491 (Tex. App. 2006) ("Tender of performance is excused under certain
circumstances, such as when a tender would be futile"); *Roundville Partners, L.L.C. v. Jones*,
118 S.W.3d 73, 79 (Tex. App. 2003) ("when actual tender would have been a useless act, an
idle ceremony, or wholly nugatory, constructive tender will suffice."); *Schmitt v. Sapp*, 71
Ariz. 48, 223 P.2d 403, 406–07 (1950) ("An actual tender is unnecessary where it is apparent
the other party will not accept it. The law does not require one to do a vain and futile thing.").

1 15. Alessi's known policy of rejecting Miles Bauer tenders because it believed the
2 tender letter had conditional language has been acknowledged by at least one other court.
3 *Bank of America, N.A. v. Bernini Dr Trust*, Case No. 2:16-cv-00474-APG-BNW, 2020 WL
4 1044005 (D. Nev. 2020).

5 16. By its word and by its conduct in rejecting payments, Alessi had the same
6 policy under which the Nevada Supreme Court held delivering payment was excused entirely,
7 so the deed holder was excused from sending payment at all. But here, Miles Bauer actually
8 delivered payment, so the first deed of trust should fare no worse than in *Perla*.

9 17. Based on Alessi's words and conduct, Alessi would have also rejected payment
10 for a full annual assessment, so the deed holder was excused from sending such payment
11 under *Perla*.

12 ***Alternatively, Bank of America substantially complied with its payment obligations***

13 18. The doctrine of "[s]ubstantial compliance may be sufficient to avoid harsh,
14 unfair[,] or absurd consequences." *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470,
15 475–76, 255 P.3d 1275, 1278 (2011) (internal quotation omitted); *see also Fondren v. K/L*
16 *Complex Ltd.*, 106 Nev. 705, 713, 800 P.2d 719 (1990) ("[i]t is not realistic to become so
17 technical that such errors defeat an otherwise valid lien for a large amount.") (citing *Hayes v.*
18 *Pigg*, 267 Or. 143, 515 P.2d 924 (1973)); *see also Nevada Equities v. Willard Pease Drilling*
19 *Co.*, 84 Nev. 300, 303, 440 P.2d 122, 123 (1968) ("We shall not condone a forfeiture in the
20 absence of any ascertainable public policy requiring us to do so."); *Claybaugh v. Gancarz*, 81
21 Nev. 64, 78, 398 P.2d 695, 703 (1965) ("[e]very reasonable doubt will be resolved in favor of
22 the validity of a mining claim as against the assertion of a forfeiture.") (internal citations
23 omitted).

24 19. The Nevada Supreme Court has applied the substantial compliance doctrine to
25 various requirements under NRS 116. *See, e.g., Saticoy Bay 9050 W Warm Springs 2079 v.*
26 *NAS*, 444 P.3d 428, 135 Nev. Adv. Op. 23 (2019) (applying substantial compliance standard
27 to homeowner's redemption under NRS 116.31166(4)); *U.S. Bank, N.A. v. Resources Grp.*,
28 444 P.3d 442, 448, 135 Nev. Adv. Op. 26 (2019) (remanding for analysis of HOA trustee's

1 substantial compliance NRS 116 notice requirements); *Black's Law Dictionary* 524 (10th ed.
2 2014) (*de minimis non curat lex*, meaning the law does not concern itself with trifles).

3 20. If lenders have the right to pay the superpriority amount, then lenders must
4 also have the right to know what that amount is. See *U.S. Bank ND, N.A. v. Resources Group,*
5 *LLC*, 135 Nev. Adv. Op. 26, 444 P.3d 442, 447 (2019) (explaining that the "Legislature has
6 mandated [that] the deed of trust holder [have] time to cure" a superpriority lien).

7 21. Alessi rejected the superpriority tender, without telling Miles Bauer anything
8 about paying an annual assessment or any other specified amount. Even if Miles Bauer had
9 sent a check in the amount of twelve months and not just nine months of assessments, Alessi's
10 consistent policy of rejecting Miles Bauer's superpriority tenders leaves no doubt the result
11 would have been the same—Alessi would have rejected the payment.

12 22. If homeowners and HOAs are entitled to the doctrine of substantial compliance
13 under NRS 116, so are BoNYM and Miles Bauer. Otherwise, the result is "harsh, unfair, and
14 absurd" in light of Miles Bauer's tender of its best estimate of the superpriority amount and
15 Alessi's rejection of that tender for reasons wholly unrelated to any *de minimis* miscalculation
16 of the superpriority amount.

17 23. A 3-month shortage (here, \$29.50) should not, under the substantial
18 compliance doctrine, eliminate a deed securing repayment of a loan in the original amount of
19 \$208,000.00—well over 7,000 times greater than the alleged deficiency in Miles Bauer's
20 check.

21 *Alternatively, the deed of trust survived the HOA's sale as a matter of equity*

22 24. The Nevada Supreme Court confirmed an HOA foreclosure sale is void where
23 the party challenging the sale can show an inadequate sales price and additional "proof of
24 some element of fraud, unfairness, or oppression [that] accounts for and brings about the
25 inadequacy of price." *Nationstar Mortg. LLC v. Saticoy Bay LLC Series 2227 Shadow*
26 *Canyon*, 133 Nev. 740, 405 P.3d 641 (Nev. 2017) (*Shadow Canyon*).

27 25. In *Shadow Canyon*, the court rejected an argument that a sales price of under
28 20% of the fair market value renders the sale *per se* void, instead finding the court should

1 engage in more of a sliding scale analysis. *Id.* at 643 (quoting *Golden v. Tomiyasu*, 387 P.2d
2 989, 995 (1963) ("While mere inadequacy of price has rarely been held sufficient in itself to
3 justify setting aside a judicial sale of property, courts are not slow to seize upon other
4 circumstances impeaching the fairness of the transaction as a cause for vacating it, especially
5 if the inadequacy be so gross as to shock the conscience.")). Specifically, where there is a
6 wide disparity in price, a party challenging the sale "may require less evidence of fraud,
7 unfairness, or oppression to justify setting aside the sale." *Id.* at 643–44 (citing *Golden v.*
8 *Tomiyasu*, 79 Nev. at 515–16.)

9 ***The auction price was inadequate***

10 26. A price below 20% of fair market value is "obviously inadequate." *See*
11 *Shadow Wood Homeowners Ass'n, Inc. v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. 49, 60, 366
12 P.3d 1105, 1112 (2016).

13 27. The undisputed evidence here shows the property had a fair market value of
14 \$76,000.00 as of the date of the foreclosure. Stipulated Fact # 15. The HOA's credit bid was
15 \$4,310.82. Trial Ex. 30. LVDG purchased the property for \$4,500.00. Trial Ex. 31. The
16 sales price at auction and paid by LVDG were each approximately 6% of the fair market
17 value and were, therefore, grossly inadequate prices.

18 28. The lower the price, the less fraud and unfairness is required to set aside the
19 sale or to declare, under equity, this sale did harm a senior lienholder's interest. *See*
20 *Ballentyne v. Smith*, 205 U.S. 285, 290 (1907) ("if there be great inadequacy, slight
21 circumstances of unfairness in the conduct of the party benefitted by the sale will be sufficient
22 to justify setting it aside. It is difficult to formulate any rule more definite than this, and each
23 case must stand on its own particular facts."); *Shadow Canyon*, 405 P.3d at 648–49 (quoting
24 *Golden v. Tomiyasu*, 387 P.2d 989, 995 (1963) ("While mere inadequacy of price has rarely
25 been held sufficient in itself to justify setting aside a judicial sale of property, courts are not
26 slow to seize upon other circumstances impeaching the fairness of the transaction as a cause
27 for vacating it, especially if the inadequacy be so gross as to shock the conscience."); *see also*
28 *U.S. Bank ND, N.A. v. Resources Group, LLC*, 135 Nev. Adv. Op. 26, 444 P.3d 442, 448

1 (2019) ("The relationship is hydraulic: where the inadequacy is palpable and great, very slight
2 additional evidence of unfairness or irregularity is sufficient to authorize the granting of the
3 relief sought.") (quoting *Shadow Canyon*, 133 Nev. at 749).

4 ***The HOA's foreclosure involved unfairness and oppression***

5 29. In *Shadow Canyon*, the Nevada Supreme Court indicated that whether a lender
6 "tried to tender payment" before the sale is "significant[]" to determine whether the lender's
7 deed of trust survived as an equitable matter. 405 P.3d at 650.

8 30. As described above, Miles Bauer tendered nine months of assessments on a
9 lien for which, based on the statute when initiated, limited the superpriority to six months.⁵
10 To the extent there was any deficiency with the tender, it was inequitable for Alessi to reject it
11 without identifying an alternative superpriority. And Alessi's blanket policy of rejecting
12 payments the senior lender was entitled to make is also unfair and oppressive.

13 31. The credit bid and lack of distribution of auction proceeds also establish
14 unfairness if this HOA sale is construed as a superpriority sale.

15 32. In an unpublished decision, the Nevada Supreme Court reversed a lower court
16 decision under unfairness, saying genuine issues of material fact existed concerning both the
17 opening bid amount and how the funds from sale were distributed. *JPMorgan Chase Bank,*
18 *N.A. v. 1209 Village Walk Trust, LLC*, 424 P.3d 813 (table), No. 69784, 2018 WL 1448805
19 (Nev. Mar. 20, 2018). First, the court expressed concern that "if the HOA trustee set the sale
20 price for the entire lien amount rather than the superpriority portion, it may have chilled
21 bidding on the property." *Id.* at 6. Next, the court opined about distribution of sale proceeds,
22 saying, "The HOA may have owed JPMorgan any amount beyond the superpriority portion of
23 the assessment lien, as JPMorgan's interest as the holder of the first deed of trust was superior
24 to the subpriority portion of the assessment lien."⁶

25
26 ⁵ See footnote 2, *supra*.

27 ⁶ The 2013 JEB Report, often cited and relied upon in Nevada Supreme Court opinions,
28 explains through illustration that if an HOA forecloses on a superpriority lien, the HOA must
pay the first mortgage holder before paying itself the subpriority portion of HOA's lien
(Example 2).

1 33. Here, the HOA credit bid its entire lien, and it distributed zero dollars to the
2 first deed holder after sale and again after selling the property to LVDG. The HOA should
3 have had to pay the senior lender before paying itself the subpriority portion of the lien, as
4 explained in *Village Walk Trust* and the 2013 JEB Report, Example 2, unless the HOA
5 foreclosure did not contain a superpriority, in which case the HOA could keep all sale
6 proceeds without affecting BoNYM's deed of trust.

7 34. In fact, because no money was paid at the NRS 116 sale, and the full
8 assessment balance owed to the HOA remained outstanding after the HOA's sale, no one
9 satisfied the superpriority. Testimony of Yvette Saucedo (HOA representative). The HOA
10 could not have sold a lien containing a superpriority if all the amounts that could have
11 comprised the superpriority portion of the lien remained unpaid after the auction.

12 *The balance of equities shows no harm to LVDG*

13 35. In balancing the equities, LVDG has offered no evidence of harm.

14 36. Moreover, it is not harmed by a finding that the deed of trust survived the sale.
15 LVDG purchased the property knowing all title risks, including the certainty it could not get
16 title insurance without litigation. Testimony of Charles Schmidt. LVDG offered no proof its
17 predecessor, the HOA, was a bona fide purchaser, which was its burden to do. *See, e.g.,*
18 *Berge v. Fredericks*, 95 Nev. 183, 185, 591 P.2d 246, 248 (1979) (explaining that the
19 **putative bona fide purchaser "was required to show** that legal title had been transferred to
20 her before she had notice of the prior conveyance to appellant") (emphasis added); *see also*
21 *RLP-Ampus Place, LLC v. U.S. Bank, N.A.*, 408 P.3d 557 (table), 2017 WL 6597148, at *1
22 (Nev. Dec. 22, 2017) (unpublished) ("[A] putative BFP must introduce some evidence to
23 support its BFP status beyond simply claiming that status.").

24 37. The HOA took no position on what effect its foreclosure had on the senior
25 deed, and no evidence was presented it believed it was getting clear title. The HOA's own
26 notice of sale warned bidders the sale came with no covenants or warranties, and the
27 foreclosure deed to the HOA similarly disclaimed any warranty. Trial Exs. 29 and 30.

1 38. In addition, *Thompson on Real Property* (often cited by the Nevada Supreme
2 Court) instructs: "In applying the equitable doctrine of bona fide purchaser, some courts have
3 held that one who takes by quitclaim deed cannot be a bona fide purchaser because the deed
4 purports to convey only such right, title or interest as the grantor may have, and thus the deed
5 carries notice of every defect in the grantor's title." 11 David A. Thomas, *Thompson on Real*
6 *Property*, § 92.09(c), at 191 (2008); *see also* 6A C.J.S. Deeds § 327 ("It is well established
7 that a quitclaim deed only conveys such title or interest as possessed by the grantor at the time
8 of the making of the deed . . . and 'one who accepts a quitclaim deed is conclusively presumed
9 to have agreed to take the title subject to all risks as to defects and [e]ncumbrances'").⁷

10 39. LVDG accepted a quitclaim deed from the HOA. Trial Ex. 31.

11 40. To the extent the actual payment did not satisfy the superpriority, and to the
12 extent Alessi's policy did not excuse delivery of payment, the equities balance in favor of
13 setting aside any superpriority portion of the HOA's sale here.

14 ***There is no presumption the deed of trust was extinguished, and BoNYM had no obligation***
15 ***to file a lawsuit to confirm what the tender automatically accomplished***

16 41. There is nothing in NRS 116, the text or commentary to the Uniform Common
17 Interest Ownership Act, or the Nevada Supreme Court's published decisions creating a
18 presumption that an HOA foreclosure extinguishes a senior mortgage.

19 42. No statute of limitation applies to BoNYM's affirmative defenses based on the
20 tender facts. Decades ago, the Nevada Supreme Court examined the issue of applying statutes
21 of limitations to defenses and concluded: "Limitations do not run against defenses." *Dredge*
22 *Corp. v. Wells Cargo, Inc.*, 80 Nev. 99, 101, 389 P.2d 394, 396 (Nev. 1964).

23
24 ⁷ *See also Bright v. Johnson*, 302 S.W.3d 483, 492 (Tex. App. 2009) ("[A] subsequent
25 purchaser is not a bona fide purchaser if the conveyance is made without warranty."); *Fla. E.*
26 *Coast Ry v. Patterson*, 539 So.2d 575, 577 (Fla. 3rd DCA 1992) (quoting *St. Clair v. City*
27 *Bank & Trust Co.*, 175 So.2d 791, 792 (Fla. 2d DCA 1965)) ("It is well established that a
quitclaim deed only conveys such title or interest as possessed by the grantor . . . and 'one
who accepts a quitclaim deed is conclusively presumed to have agreed to take the title subject
to all risks as to defenses and incumbrances [sic]."); *Crump v. Knight*, 56 So.2d 625, 628
(Ala. 1952) ("One who takes under a quitclaim deed acquires only such title and interest as
his grantor had, and is not within the protection of a bona fide purchaser.").

1 43. The reasoning behind this statement follows in the next sentence of the
2 opinion: "The statute is available only as a shield, not a sword." *Id.*; *see also City of Saint*
3 *Paul, Alaska v. Evans*, 344 F.3d 1029, 1033–34 (9th Cir. 2003) (examining "the interplay
4 between statutes of limitations and defenses" and concluding that such limitations do not
5 apply to defenses because "[w]ithout this exception, potential plaintiffs could simply wait
6 until all available defenses are time barred and then pounce on the helpless defendant").

7 44. *Dredge*, in turn, cited to a Second Circuit case called *Luckenbach Steamship*
8 *Co. v. United States*, 312 F.2d 545, 548 (2d Cir. 1963), which held that "[l]imitations statutes
9 do not apply to declaratory judgments as such. Declaratory relief is a mere procedural device
10 by which various types of substantive claims may be vindicated. There are no statutes which
11 provide that declaratory relief will be barred after a certain period of time."

12 45. Here, LVDG filed suit seeking a declaration that when it purchased the
13 property from the HOA, which had purchased the property at its own foreclosure sale—an
14 auction which came with pre-sale warnings disclaiming any guarantee or covenant concerning
15 the quality of title or the sale's effect on other liens—it purchased title free of the deed of
16 trust.

17 46. BoNYM asserted several defenses to LVDG's requested relief, including
18 tender and inequities of the sale. As defenses, no limitations period can apply to defeat them
19 as time barred.

20 *If LVDG's claims are timely, BoNYM's compulsory counterclaims on the same operative*
21 *facts must be as well*

22 47. Although the court can rule on the tender as a *defense* without examining the
23 same argument as a *counterclaim* that may be subject to a limitations period, the
24 counterclaims are timely because they are compulsory under NRCP 13.

25 48. If a counterclaim "arises out of the transaction or occurrence that is the subject
26 matter of the opposing party's claim and does not require for its adjudication the presence of
27 third parties of whom the court cannot acquire jurisdiction," then it qualifies as a compulsory
28 counterclaim. NRCP 13(a); *see also Yates v. Washoe Cty. Sch. Dist.*, No. 03:07-CV-00200-

1 LRH-RJJ, 2007 WL 3256576, at *2 (D. Nev. Oct. 31, 2007) ("a plaintiff's institution of a suit
2 tolls or suspends the running of the statute of limitations governing a compulsory
3 counterclaim.").⁸

4 49. BoNYM's counterclaims arise out of the same occurrence—the HOA's
5 foreclosure—as LVDG claims, and they also seek the kind of declaratory relief that
6 *Luckenbach*, cited in *Dredge*, said has no applicable statute of limitations because declaratory
7 relief is not a claim that seeks a judgment for money or to coerce an adversary to take some
8 action, but merely requests a declaration of non-liability—here, non-extinguishment of a lien.
9 312 F.2d at 548. *Cf. Bull v. United States*, 295 U.S. 247, 262, 55 S.Ct. 695, 700–01, 79 L.Ed.
10 142 (1935).

11 50. For this reason, too, LVDG's arguments about BoNYM's counterclaim being
12 time-barred fail.

13 If any of the foregoing Conclusions of Law are more appropriately to be considered
14 Findings of Fact, they shall be so deemed.

15 JUDGMENT

16 For the foregoing reasons, the Court ORDERS, ADJUDGES, AND DECREES:

- 17 1. The March 2, 2011 HOA foreclosure sale did not extinguish the subject deed
18 of trust.
19 2. The deed of trust, recorded as instrument number 20060419-0000609, remains
20 an encumbrance against the property located at 1524 Highfield Court, Las Vegas, Nevada
21 89032, APN 139-09-410-021.
22

23
24
25 ⁸ To determine whether a claim is a compulsory counterclaim, courts look to "(1) whether the
26 issues of fact and law raised by the claim and counterclaim largely are the same; (2) whether
27 *res judicata* would bar a subsequent suit on defendant's claim absent the compulsory
28 counterclaim rule; (3) whether substantially the same evidence will support or refute
plaintiff's claim as well as defendant's counterclaim; and (4) whether there is any logical
relationship between the claim and the counterclaim." *Tank Insulation Int'l, Inc. v.*
Insultherm, Inc., 104 F.3d 83, 85–86 (5th Cir. 1997). There can be no doubt that BoNYM's
counterclaims are simply the mirror of LVDG's similar claims, thus meeting all these factors.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Title is quieted in LVDG's name, but LVDG's title remains subject to the deed of trust.

Dated this 17th day of September, 2020



CB8 052 DB14 DD74
Mark R. Denton
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Las Vegas Development Group
LLC, Plaintiff(s)

CASE NO: A-17-756215-C

7 vs.

DEPT. NO. Department 13

8
9 Dania Hernandez, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

15 Service Date: 9/17/2020

16 Natalie Winslow natalie.winslow@akerman.com

17 Ariel Stern ariel.stern@akerman.com

18 Rex Garner rex.garner@akerman.com

19 Akerman LLP AkermanLAS@akerman.com

20 Roger Croteau croteaulaw@croteaulaw.com

21 Croteau Admin receptionist@croteaulaw.com

IN THE SUPREME COURT OF THE STATE OF NEVADA

| | | |
|-------------------------------|---|-----------------------------|
| LAS VEGAS DEVELOPMENT |) | |
| GROUP, LLC, A NEVADA LIMITED |) | |
| LIABILITY COMPANY, |) | |
| |) | Supreme Court No. 81961 |
| Appellant, |) | |
| vs. |) | Consolidated with No. 82266 |
| |) | |
| THE BANK OF NEW YORK |) | |
| MELLON, F/K/A THE BANK OF NEW |) | |
| YORK, AS TRUSTEE FOR THE |) | |
| CERTIFICATEHOLDERS OF CWABS, |) | |
| INC., ASSET-BACKED |) | |
| CERTIFICATES, SERIES 2006-7, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

APPEAL

From the Eighth Judicial District Court,
The Honorable Mark R. Denton, District Court Judge
District Court Case No. A-17-756215-C

JOINT APPENDIX - VOLUME 4

Roger P. Croteau, Esq.
Nevada Bar No. 4958
Timothy E. Rhoda, Esq.
Nevada Bar No. 7878
ROGER P. CROTEAU AND ASSOCIATES, LTD
2810 West Charleston Boulevard, Suite 75
Las Vegas, Nevada 89102
Telephone: (702) 254-7775
Facsimile: (702) 228-7719
Attorneys for Plaintiff/Appellant Las Vegas Development Group, LLC

INDEX OF APPENDIX - CHRONOLOGICAL

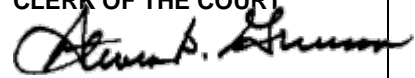
| DOCUMENT | PAGE |
|--|-------------|
| VOLUME 1 | |
| First Amended Complaint | 0001 - 0010 |
| Acceptance of Service | 0011 - 0012 |
| Answer to Complaint and Counterclaim | 0013 - 0038 |
| LVDG Motion to Dismiss Counterclaim and Motion for Summary Judgment | 0039 - 0063 |
| Opposition to Motion to Dismiss and Motion for Summary Judgment | 0064 - 0072 |
| Reply to Opposition to Motion to Dismiss and Motion for Summary Judgment | 0073 - 0081 |
| Transcript of Hearing 8-10-17 | 0082 - 0101 |
| VOLUME 2 | |
| BONY Motion for Summary Judgment | 0102 - 0231 |
| VOLUME 3 | |
| LVDG Opposition to Motion for Summary Judgment | 0232 - 0334 |
| Reply to Opposition to Motion for Summary Judgment | 0335 - 0367 |
| Order Denying Motion for Summary Judgment | 0368 - 0369 |
| Notice of Entry of Order Denying Motion for Summary Judgment | 0370 - 0373 |
| Answer to Counterclaim | 0374 - 0381 |
| Findings of Fact, Conclusions of Law and Judgment | 0382 - 0399 |
| VOLUME 4 | |
| BONY Memorandum of Costs and Disbursements | 0400 - 0475 |
| Notice of Entry of FFCL | 0476 - 0497 |
| Voluntary Dismissal of Hernandez | 0498 - 0500 |
| Notice of Appeal (Trial Court Judgment) | 0501 - 0503 |
| BONY Motion for Attorneys' Fees and Costs | 0504 - 0610 |
| Opposition to Motion for Attorneys' Fees and Costs | 0611 - 0621 |
| Reply in Support of Motion for Attorneys' Fees and Costs | 0622 - 0626 |

[illegible]

INDEX OF APPENDIX - ALPHABETICAL

| DOCUMENT | VOLUME : PAGE |
|--|----------------------|
| Acceptance of Service | 1:0011 |
| Answer to Complaint and Counterclaim | 1:0013 |
| Answer to Counterclaim | 3:0374 |
| Bench Trial Transcript - Day 1 | 5:0648 |
| Bench Trial Transcript - Day 2 | 5:0741 |
| BONY Memorandum of Costs and Disbursements | 4:0400 |
| BONY Motion for Attorneys' Fees and Costs | 4:0504 |
| BONY Motion for Summary Judgment | 2:0102 |
| Decision | 4:0627 |
| Findings of Fact, Conclusions of Law and Judgment | 3:0382 |
| First Amended Complaint | 1:0001 |
| LVDG Motion to Dismiss Counterclaim and Motion for Summary Judgment | 1:0039 |
| LVDG Opposition to Motion for Summary Judgment | 3:0232 |
| Notice of Appeal (Order Granting Attorney' Fees and Costs) | 4:0645 |
| Notice of Appeal (Trial Court Judgment) | 4:0501 |
| Notice of Entry of FFCL | 4:0476 |
| Notice of Entry of Order Denying Motion for Summary Judgment | 3:0370 |
| Notice of Entry of Order Granting Motion for Attorneys' Fees and Costs in Part | 4:0636 |
| Opposition to Motion for Attorneys' Fees and Costs | 4:0611 |
| Opposition to Motion to Dismiss and Motion for Summary Judgment | 1:0064 |
| Order Denying Motion for Summary Judgment | 3:0368 |
| Order Granting Motion for Attorneys' Fees and Costs in Part | 4:0631 |
| Reply in Support of Motion for Attorneys' Fees and Costs | 4:0622 |
| Reply to Opposition to Motion for Summary Judgment | 3:0335 |

[illegible]



1 **MEMC**
2 ARIEL E. STERN, ESQ.
3 Nevada Bar No. 8276
4 NATALIE L. WINSLOW, ESQ.
5 Nevada Bar No. 12125
6 REX D. GARNER, ESQ.
7 Nevada Bar No. 9401
8 AKERMAN LLP
9 1635 Village Center Circle, Suite 200
10 Las Vegas, Nevada 89134
11 Telephone: (702) 634-5000
12 Facsimile: (702) 380-8572
13 Email: ariel.stern@akerman.com
14 Email: natalie.winslow@akerman.com
15 Email: rex.garner@akerman.com

16 *Attorneys for The Bank of New York Mellon f/k/a*
17 *The Bank of New York, as Trustee for the*
18 *Certificateholders of CWABS, Inc., Asset-Backed*
19 *Certificates, Series 2006-7*

20 **EIGHTH JUDICIAL DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 LAS VEGAS DEVELOPMENT GROUP, LLC, a
23 Nevada limited liability company,

24 Plaintiff,

25 vs.

26 DANIA V. HERNANDEZ, an individual; THE
27 BANK OF NEW YORK MELLON F/K/A THE
28 BANK OF NEW YORK, AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF CWABS,
INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-7, a national banking association;
DOE individuals I through XX; and ROE
CORPORATIONS I through XX,

Defendants.

Case No.: A-17-756215-C

Dept. No.: XIII

**THE BANK OF NEW YORK MELLON
F/K/A THE BANK OF NEW YORK, AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWABS,
INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-7'S MEMORANDUM OF
COSTS AND DISBURSEMENTS**

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

THE BANK OF NEW YORK MELLON F/K/A
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF
CWABS, INC., ASSET-BACKED
CERTIFICATES, SERIES 2006-7,

Counterclaimant,

vs.

LAS VEGAS DEVELOPMENT GROUP, LLC, a
Nevada limited liability company,

Counterdefendant.

REX D. GARNER, counsel for defendant/counter-claimant, states as follows:

I am a duly licensed attorney admitted to practice in the State of Nevada. I am an attorney at the law firm of Akerman LLP, counsel for Defendant/Counterclaimant The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-7 (**BoNYM**) in this matter. BoNYM is the prevailing party against Las Vegas Development Group, LLC. I have reviewed the case file and associated documents/invoices and have personal knowledge of the following costs and disbursements expended, which are true and correct to the best of my knowledge and belief.

These costs and disbursements were reasonable and necessarily and actually incurred in this action. Attached as Exhibits A and B are true and correct copies of Invoices and Receipts for the costs listed below.

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

DATED on September 23, 2020.

/s/ Rex D. Garner

REX D. GARNER, ESQ.

I. Legal Discussion

NRS 18.020(5) allows for a prevailing party to recover its costs in an action involving the title or boundaries of real estate, stating that costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, including:

- 1 5. In an action which involves the title or boundaries of real estate, or the legality
2 of any tax, impost, assessment, toll or municipal fine, including the costs
 accrued in the action if originally commenced in a Justice Court.

3 *Id.* (emphasis added). Additionally, NRS 116.3116(12) allows for costs to the prevailing party for an
4 action brought under NRS 116.3116:

- 5 12. A judgment or decree in any action brought under this section must include
6 costs and reasonable attorney's fees for the prevailing party.

7 *Id.* Thus, since this case involved a dispute as to the fact Las Vegas Development Group, LLC
8 (**Plaintiff**) held title to property free and clear of BoNYM's interest under NRS 116.3116, appropriate
9 costs must be allowed.

10 NRS 18.005 outlines the costs that can be recovered by a prevailing party:

- 11 1. Clerks' fees.
- 12 2. Reporters' fees for depositions, including a reporter's fee for one copy of each
13 deposition.
- 14 3. Jurors' fees and expenses, together with reasonable compensation of an officer
15 appointed to act in accordance with NRS 16.120.
- 16 4. Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless the court
17 finds that the witness was called at the instance of the prevailing party without reason
 or necessity.
- 18 5. Reasonable fees of not more than five expert witnesses in an amount of not more than
19 \$1,500 for each witness, unless the court allows a larger fee after determining that the
20 circumstances surrounding the expert's testimony were of such necessity as to require
 the larger fee.
- 21 6. Reasonable fees of necessary interpreters.
- 22 7. The fee of any sheriff or licensed process server for the delivery or service of any
23 summons or subpoena used in the action, unless the court determines that the service
 was not necessary.
- 24 8. Compensation for the official reporter or reporter pro tempore.
- 25 9. Reasonable costs for any bond or undertaking required as part of the action.
- 26 10. Fees of a court bailiff or deputy marshal who was required to work overtime,
- 27 11. Reasonable costs for telecopies.
- 28 12. Reasonable costs for photocopies.

13. Reasonable costs for long distance telephone calls.
14. Reasonable costs for postage.
15. Reasonable costs for travel and lodging incurred taking depositions and conducting discovery.
16. Fees charged pursuant to NRS 19.0335.
17. Any other reasonable and necessary expense incurred in connection with the action, including reasonable and necessary expenses for computerized services for legal research.

Below is a list of the costs that are recoverable by BoNYM for costs that were reasonable, necessary, and actually incurred in BoNYM's litigation of this matter.

II. Clerk's Filing Fees (pursuant to NRS 18.005(1))

| | | |
|------------------|---|----------|
| June 16, 2017 | BoNYM's Answer to Plaintiff's Complaint and Counterclaims | \$233.19 |
| June 16, 2017 | Initial Appearance Fee Disclosure | \$3.50 |
| July 6, 2017 | Stipulation and Order to Extend Briefing Schedule and to Continue Hearing on Motion to Dismiss Counterclaim and for Summary Judgment | \$3.50 |
| July 7, 2017 | Notice Of Entry of Stipulation and Order to Extend Briefing Schedule and to Continue Hearing on Motion to Dismiss Counterclaim and for Summary Judgment | \$3.50 |
| July 25, 2017 | BoNYM's Opposition to Plaintiff's Motion to Dismiss and Motion for Summary Judgment | \$3.50 |
| January 29, 2018 | Notice of Completion of NRED Mediation | \$3.50 |
| January 22, 2019 | Notice of Lis Pendens | \$3.50 |
| March 18, 2019 | Motion for Summary Judgment | \$209.50 |
| May 8, 2019 | Stipulation and Order to Extend Briefing Schedule and Continue Hearing on Motion for Summary Judgment | \$3.50 |
| May 14, 2019 | Notice of Entry of Stipulation and Order to Extend Briefing Schedule and Continue Hearing on Motion for Summary Judgment | \$3.50 |
| May 30, 2019 | Stipulation and Order to Continue Hearing on Motion for Summary Judgment | \$3.50 |
| May 31, 2019 | Notice Of Entry Of Stipulation and Order to Continue Hearing on Motion for Summary Judgment | \$3.50 |
| July 5, 2019 | Reply Supporting Motion for Summary Judgment | \$3.50 |

| | | | |
|---|-------------------|--|-----------------|
| 1 | February 24, 2020 | Individual Pre-Trial Memorandum | \$3.50 |
| 2 | February 25, 2020 | Joint Pre-Trial Memorandum | \$3.50 |
| 3 | February 27, 2020 | Stipulated Facts for Trial | \$3.50 |
| 4 | June 23, 2020 | Notice of Intent to Present by Certificate of Custodian of Records and Notice of Intent to Present Witnesses by Phone | \$3.50 |
| 5 | SUBTOTAL: | | \$495.19 |

6 *See Exhibit A – Invoices & Receipts*
7 *See Exhibit B – Akerman Cost Detail*

8 **III. Reporter's Fees (pursuant to NRS 18.005(3))**

| | | | |
|----|-------------------|--|-----------------|
| 9 | November 20, 2018 | Reporter's Fees (Oasis Reporting Services; Deposition of David Alessi; 30(b)(6) Representative of Alessi & Koenig, LLC) | \$426.90 |
| 10 | SUBTOTAL: | | \$426.90 |

11 *See Exhibit A – Invoices & Receipts*
12 *See Exhibit B – Akerman Cost Detail*

13 **IV. Expert's Fees (pursuant to NRS 18.005(5))**

| | | | |
|----|------------------|--|-----------------|
| 14 | November 9, 2018 | Property Appraisal (R. Scott Dugan Appraisal Co. Inc.) | \$750.00 |
| 15 | SUBTOTAL: | | \$750.00 |

16 *See Exhibit A – Invoices & Receipts*
17 *See Exhibit B – Akerman Cost Detail*

18 **V. Service of Subpoenas/Summons (pursuant to NRS 18.005(7))**

| | | | |
|----|-------------------|---|-----------------|
| 19 | May 20, 2018 | Delivery Service (Nationwide Legal; Subpoena <i>Duces Tecum</i> to Alessi & Koenig, LLC) | \$55.00 |
| 20 | May 20, 2018 | Delivery Service (Nationwide Legal; Subpoena <i>Duces Tecum</i> to Hidden Canyon Owners Association) | \$55.00 |
| 21 | November 12, 2018 | Delivery Service (Nationwide Legal; Subpoena for Deposition to Alessi & Koenig, LLC) | \$88.43 |
| 22 | February 28, 2020 | Delivery Service (Nationwide Legal; Trial Subpoena to Yvette Sauceda) | \$121.93 |
| 23 | February 28, 2020 | Delivery Service (Nationwide Legal; Trial Subpoena to David Alessi) | \$120.00 |
| 24 | SUBTOTAL: | | \$440.36 |

25 *See Exhibit A – Invoices & Receipts*
26 *See Exhibit B – Akerman Cost Detail*

27
28 ///

VI. Other Reasonable and Necessary Expenses (pursuant to NRS 18.005(17))

| | | |
|------------------|---|-----------------|
| June 21, 2017 | Other Charges (Douglas E. Miles, Inc.; Review and Signature of Affidavits) | \$60.00 |
| June 29, 2017 | Delivery Service (Nationwide Legal; Retrieval of Signed Order from Roger Croteau & Associates Ltd.) | \$18.00 |
| January 24, 2019 | Delivery Service (Nationwide Legal; Retrieval of Certified Lis Pendens from Court) | \$3.00 |
| January 28, 2019 | Other Charges (Simplifile; Recording of Lis Pendens) | \$44.50 |
| May 6, 2019 | Delivery Service (Nationwide Legal; Retrieval of Signed Stipulation from Roger Croteau & Associates Ltd.) | \$15.00 |
| May 7, 2019 | Delivery Service (Nationwide Legal; Courtesy Copies of Summary Judgment Briefs to Court) | \$25.00 |
| May 24, 2019 | Delivery Service (Nationwide Legal; Courtesy Copies of Summary Judgment Briefs to Court) | \$25.00 |
| July 8, 2019 | Delivery Service (Nationwide Legal; Courtesy Copies of Summary Judgment Briefs to Court) | \$25.00 |
| January 15, 2020 | Other Charges (DataTree; Retrieval of Recorded Document) | \$4.83 |
| March 4, 2020 | Other Charges (HOLO Discovery; Trial Support and Exhibit Preparation) | \$487.50 |
| July 24, 2020 | Delivery Service (Nationwide Legal; Delivery of Flash Drive for Trial) | \$16.50 |
| SUBTOTAL: | | \$724.33 |

*See Exhibit A – Invoices & Receipts**See Exhibit B – Akerman Cost Detail***GRAND TOTAL:** **\$2,836.78**

DATED September 23, 2020.

AKERMAN LLP/s/ Rex D. Garner

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

REX D. GARNER, ESQ.

Nevada Bar No. 9401

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-

7

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of September, 2020 and pursuant to NRCP 5(b), I served via the Clark County electronic filing system a true and correct copy of the foregoing **THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2006-7'S MEMORANDUM OF COSTS AND DISBURSEMENTS**, addressed to:

Roger P. Croteau & Associates, Ltd.

Roger P. Croteau croteaulaw@croteaulaw.com

Croteau Admin receptionist@croteaulaw.com

/s/ Patricia Larsen

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A

Invoice

| | |
|-----------|-----------|
| Date | Invoice # |
| 6/21/2017 | 0329 |

| |
|---|
| Bill To |
| Ms. Parisa Jassim Akerman LLP 601 West 5th Street, Ste 300 Los Angeles, CA 90071 |

[illegible]

132544618 09-L0716H
132544618 09-L0716H

Nationwide Legal Nevada, LLC

1609 James M Wood Blvd
Los Angeles, CA 90015
(213) 249-9999 FAX (213) 249-9990



| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|---------------|------------|
| 210025 | June 29, 2017 | NV84044 |

Bill To:

AKERMAN LLP
1635 Village Center Circle Suite 200
Las Vegas, NV 89134

REF: [REDACTED]
POD DATE: 6/29/2017



Delivery Date/Time: 6/29/2017 1:02 PM

Delivered to: **AKERMAN LLP**
1160 Town Center Dr, Suite 330
Las Vegas, NV 89144

| DESCRIPTION OF SERVICES RENDERED | QUANTITY | UNIT PRICE | AMOUNT |
|---|----------|------------|----------|
| Base Charge | 12.00 | 1.50 | 18.00 |
| Description: Delivered from 9120 West Post Rd. Las Vegas, NV, 89148 to DOLLIE @ 1160 Town Center Dr, Suite 330 Las Vegas, NV, 89144 | | TOTAL DUE | \$ 18.00 |

Thank you for choosing Nationwide Legal Nevada, LLC!

For proper credit please detach this section and return with your payment. **Remittance Copy**

| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|---------------|------------|
| 210025 | June 29, 2017 | NV84044 |

Remit To:

Nationwide Legal Nevada, LLC
1609 James M Wood Blvd.
Los Angeles, CA 90015

TOTAL DUE:

\$ 18.00

1. PLEASE INCLUDE INVOICE NUMBER ON PAYMENT.

2. MAKE CHECKS PAYABLE TO **Nationwide Legal Nevada, LLC****Service Type: 010 - STANDARD DELIVERY (4 HRS)**

Order#: NV84044/INVOICEM

JA 0409

Case # A-17-756215-C - Las Vegas Development Group LLC, Plaintiff

Envelope Information

Envelope Id

1092655

Submitted Date

6/15/2017 4:50 PM PST

Submitted User Name

akermanlas@akerman.com

Case Information

Location

Department 13

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

5/31/2017

Case #

A-17-756215-C

Assigned to Judge

Denton, Mark R.

Filings

Filing Type

EFileAndServe

Filing Code

Answer and Counterclaim - AACC

Filing Description

The Bank of New York Mellon as
Trustee's Answer to Plaintiff's Complaint
and Counterclaims

Client Reference Number**Filing on Behalf of**

Bank of New York Mellon

Filing Status

Accepted

Accepted Date

6/16/2017 10:55 AM PST

Lead Document

File Name

ANS [Hernandez, Diana] Answer and
Counterclaim.PDF

Security

Public Filed Document

Download

Original File
Court Copy

eService Details

| Name | Address |
|-------------------------|---------|
| Bank of New York Mellon | |

| Description | Amount |
|-------------------------|-----------------|
| Filing Fee | \$0.00 |
| 05A Civil Answer/Appear | \$223.00 |
| Filing Total: | \$223.00 |

Envelope Total: \$233.19

| | | | |
|----------------------------|-------------------------|--------------------|-------------|
| Party Responsible for Fees | Bank of New York Mellon | Transaction Amount | \$233.19 |
| Payment Account | Akerman | Transaction Id | 1591757 |
| Filing Attorney | Tenesa Scaturro | Order Id | 001092655-0 |
| Transaction Response | Payment Complete | | |

Case # A-17-756215-C - Las Vegas Development Group LLC, Plaintiff

Envelope Information

| | | |
|-------------------------------|---|--|
| Envelope Id 1094681 | Submitted Date 6/16/2017 10:43 AM PST | Submitted User Name akermanlas@akerman.com |
|-------------------------------|---|--|

Case Information

| | | |
|---|--------------------------------|---|
| Location Department 13 | Category Civil | Case Type Other Title to Property |
| Case Initiation Date 5/31/2017 | Case # A-17-756215-C | |
| Assigned to Judge Denton, Mark R. | | |

Filings

| | |
|-------------------------------------|--|
| Filing Type EFileAndServe | Filing Code Initial Appearance Fee Disclosure - IAFD |
|-------------------------------------|--|

Filing Description
Initial Appearance Fee Disclosure

Client Reference Number
[REDACTED]

Filing on Behalf of
Bank of New York Mellon

| | |
|----------------------------------|--|
| Filing Status Accepted | Accepted Date 6/16/2017 10:56 AM PST |
|----------------------------------|--|

Lead Document

| File Name | Security | Download |
|---|-----------------------|-----------------------------|
| OTHER [Hernandez, Dania]-Initial Appearance Fee Disclosure (Served Odyssey).PDF | Public Filed Document | Original File Court Copy |

eService Details

| Status | Name | Firm | Served | Date Opened |
|--------|------|------|--------|-------------|
|--------|------|------|--------|-------------|

| Status | Name | Firm | Served | Date Opened |
|--------|------------------|-------------------------------------|--------|-----------------------|
| Sent | Roger P. Croteau | Roger P. Croteau & Associates, Ltd. | Yes | 6/16/2017 1:19 PM PST |

Parties with No eService

| | |
|---------------------------------|----------------|
| Name | Address |
| Dania V Hernandez | |
| Name | Address |
| Las Vegas Development Group LLC | |
| Name | Address |
| Bank of New York Mellon | |

Fees

Initial Appearance Fee Disclosure - IAFD

| Description | Amount |
|----------------------|---------------|
| Filing Fee | \$0.00 |
| Filing Total: | \$0.00 |

| | |
|-------------------------------|--------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: \$3.50 | |

| | | | |
|----------------------------|-------------------------|--------------------|-------------|
| Party Responsible for Fees | Bank of New York Mellon | Transaction Amount | \$3.50 |
| Payment Account | Akerman | Transaction Id | 1591772 |
| Filing Attorney | Tenesa Scaturro | Order Id | 001094681-0 |
| Transaction Response | Payment Complete | | |

Case # A-17-756215-C - Las Vegas Development Group LLC, Plaintiff

Envelope Information

Envelope Id

1178481

Submitted Date

7/6/2017 11:52 AM PST

Submitted User Name

akermanlas@akerman.com

Case Information

Location

Department 13

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

5/31/2017

Case #

A-17-756215-C

Assigned to Judge

Denton, Mark R.

Filings

Filing Type

EFileAndServe

Filing Code

Stipulation and Order - SAO

Filing Description

Stipulation and Order to Extend Briefing
Schedule and to Continue Hearing on
Motion to Dismiss COunterclaim and for
Summary Judgment

Client Reference Number**Filing on Behalf of**

Bank of New York Mellon

Filing Status

Accepted

Accepted Date

7/6/2017 12:11 PM PST

Lead Document

| File Name | Security | Download |
|-------------------|----------|-----------------------------|
| SAO Hernandez.pdf | | Original File Court Copy |

eService Details

| Status | Name | Firm | Served | Date Opened |
|--------|------------------|-------------------------------------|--------|-----------------------|
| Sent | Roger P. Croteau | Roger P. Croteau & Associates, Ltd. | Yes | Not Opened |
| Sent | Croteau Admin | | Yes | 7/7/2017 10:42 AM PST |
| Sent | Ariel Stern | Akerman LLP | Yes | 7/6/2017 2:30 PM PST |
| Sent | Tenesa Scaturro | Akerman LLP | Yes | Not Opened |

Parties with No eService

Name **Address**
Dania V Hernandez

Name **Address**
Las Vegas Development Group LLC

Name **Address**
Bank of New York Mellon

Fees

Stipulation and Order - SAO

| Description | Amount |
|----------------------|---------------|
| Filing Fee | \$0.00 |
| Filing Total: | \$0.00 |

| | |
|------------------------|---------------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: | \$3.50 |

| | | | |
|-----------------------------------|-------------------------|---------------------------|-------------|
| Party Responsible for Fees | Bank of New York Mellon | Transaction Amount | \$3.50 |
| Payment Account | Akerman | Transaction Id | 1685087 |
| Filing Attorney | Tenesa Scaturro | Order Id | 001178481-0 |
| Transaction Response | Payment Complete | | |

Case # A-17-756215-C - Las Vegas Development Group LLC, Plaintiff

Envelope Information

Envelope Id

1182547

Submitted Date

7/7/2017 8:47 AM PST

Submitted User Name

akermanlas@akerman.com

Case Information

Location

Department 13

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

5/31/2017

Case #

A-17-756215-C

Assigned to Judge

Denton, Mark R.

Filings

Filing Type

EFileAndServe

Filing Code

Notice of Entry - NEO

Filing Description

Notice Of Entry Of Stipulation And Order
To Extend Briefing Schedule And
Continue Hearing On Motion To Dismiss
Counterclaim And For Summary
Judgment

Client Reference Number**Filing on Behalf of**

Bank of New York Mellon

Filing Status

Accepted

Accepted Date

7/7/2017 9:09 AM PST

Lead Document

| File Name | Security | Download |
|---|----------|-----------------------------|
| NTC [Hernandez, Dania]- Notice Of Entry Of Stipulation And Order To Extend Briefing Schedule And Continue Hearing On Motion To Dismiss Counterclaim And For Summary Judgment (Served Odyssey).PDF | | Original File Court Copy |

eService Details

| Status | Name | Firm | Served | Date Opened |
|--------|------------------|-------------------------------------|--------|-----------------------|
| Sent | Roger P. Croteau | Roger P. Croteau & Associates, Ltd. | Yes | Not Opened |
| Sent | Croteau Admin | | Yes | 7/7/2017 11:30 AM PST |
| Sent | Ariel Stern | Akerman LLP | Yes | Not Opened |
| Sent | Tenesa Scaturro | Akerman LLP | Yes | 7/7/2017 9:17 AM PST |

Parties with No eService

Name
Bank of New York Mellon

Address

Name
Dania V Hernandez

Address

Name
Las Vegas Development Group LLC

Address

Fees

Notice of Entry - NEO

| Description | Amount |
|-----------------------------|--------|
| Filing Fee | \$0.00 |
| Filing Total: \$0.00 | |

| | |
|-------------------------------|--------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: \$3.50 | |

| | | | |
|-----------------------------------|-------------------------|---------------------------|-------------|
| Party Responsible for Fees | Bank of New York Mellon | Transaction Amount | \$3.50 |
| Payment Account | Akerman | Transaction Id | 1689609 |
| Filing Attorney | Tenesa Scaturro | Order Id | 001182547-0 |
| Transaction Response | Payment Complete | | |

Case # A-17-756215-C - Las Vegas Development Group LLC, Plaintiff

Envelope Information

Envelope Id

1263611

Submitted Date

7/25/2017 11:17 AM PST

Submitted User Name

akermanlas@akerman.com

Case Information

Location

Department 13

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

5/31/2017

Case #

A-17-756215-C

Assigned to Judge

Denton, Mark R.

Filings

Filing Type

EFileAndServe

Filing Code

Opposition to Motion - OPFM

Filing Description

The Bank Of New York Mellon, As
Trustee's Opposition To Las Vegas
Development Group, Llc's Motion To
Dismiss And Motion For Summary
Judgment

Client Reference Number**Filing on Behalf of**

Bank of New York Mellon

Filing Status

Accepted

Accepted Date

7/25/2017 11:30 AM PST

Lead Document

| File Name | Security | Download |
|---|----------|-----------------------------|
| OPPO_[Hernandez,_Diana]_Oppositi... _MSJ.PDF | | Original File Court Copy |

eService Details

| Status | Name | Firm | Served | Date Opened |
|--------|------------------|-------------------------------------|--------|------------------------|
| Sent | Roger P. Croteau | Roger P. Croteau & Associates, Ltd. | Yes | Not Opened |
| Sent | Croteau Admin | | Yes | 7/25/2017 4:26 PM PST |
| Sent | Ariel Stern | Akerman LLP | Yes | Not Opened |
| Sent | Tenesa Scaturro | Akerman LLP | Yes | 7/25/2017 11:31 AM PST |
| Sent | Brieanne Siriwan | Akerman LLP | Yes | Not Opened |
| Sent | Akerman LLP | Akerman LLP | Yes | 7/25/2017 11:50 AM PST |

Parties with No eService

Name **Address**
Dania V Hernandez

Name **Address**
Las Vegas Development Group LLC

Name **Address**
Bank of New York Mellon

Fees

Opposition to Motion - OPKM

| Description | Amount |
|----------------------|---------------|
| Filing Fee | \$0.00 |
| Filing Total: | \$0.00 |

| | |
|------------------------|---------------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: | \$3.50 |

| | | | |
|-----------------------------------|-------------------------|---------------------------|-------------|
| Party Responsible for Fees | Bank of New York Mellon | Transaction Amount | \$3.50 |
| Payment Account | Akerman | Transaction Id | 1780354 |
| Filing Attorney | Tenesa Scaturro | Order Id | 001263611-0 |
| Transaction Response | Payment Complete | | |

Case # A-17-756215-C - Las Vegas Development Group LLC, Plaintiff

Envelope Information

| | | |
|-------------------------------|--|--|
| Envelope Id 2061049 | Submitted Date 1/26/2018 5:42 PM PST | Submitted User Name akermanlas@akerman.com |
|-------------------------------|--|--|

Case Information

| | | |
|---|--------------------------------|---|
| Location Department 13 | Category Civil | Case Type Other Title to Property |
| Case Initiation Date 5/31/2017 | Case # A-17-756215-C | |
| Assigned to Judge Denton, Mark R. | | |

Filings

| | |
|-------------------------------------|---|
| Filing Type EFileAndServe | Filing Code Notice - NOTC (CIV) |
|-------------------------------------|---|

Filing Description
Notice of Completion of NRED Mediation

Client Reference Number

[REDACTED]

Filing on Behalf of
Bank of New York Mellon

| | |
|----------------------------------|---|
| Filing Status Accepted | Accepted Date 1/29/2018 7:42 AM PST |
|----------------------------------|---|

Lead Document

| File Name | Security | Download |
|-------------------------------------|----------|-----------------------------|
| PLEAD_[Hernandez,_Diana]_Notice_... | | Original File Court Copy |

eService Details

| Status | Name | Firm | Served | Date Opened |
|--------|------------------|-------------------------------------|--------|-------------|
| Sent | Roger P. Croteau | Roger P. Croteau & Associates, Ltd. | Yes | Not Opened |

| Status | Name | Firm | Served | Date Opened |
|--------|-----------------|-------------|--------|------------------------|
| Sent | Croteau Admin | | Yes | 1/29/2018 9:20 AM PST |
| Sent | Ariel Stern | Akerman LLP | Yes | 1/31/2018 12:43 PM PST |
| Sent | Tenesa Scaturro | Akerman LLP | Yes | Not Opened |
| Sent | Akerman LLP | Akerman LLP | Yes | 1/30/2018 10:45 AM PST |

Parties with No eService

| Name | Address |
|------|---------|
|------|---------|

Dania V Hernandez

| Name | Address |
|------|---------|
|------|---------|

Las Vegas Development Group LLC

| Name | Address |
|------|---------|
|------|---------|

Bank of New York Mellon

Fees

Notice - NOTC (CIV)

| Description | Amount |
|-----------------------------|--------|
| Filing Fee | \$0.00 |
| Filing Total: \$0.00 | |

| | |
|-------------------------------|--------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: \$3.50 | |

| | | | |
|-----------------------------------|-------------------------|---------------------------|-------------|
| Party Responsible for Fees | Bank of New York Mellon | Transaction Amount | \$3.50 |
| Payment Account | Akerman LLP | Transaction Id | 2691371 |
| Filing Attorney | Tenesa Scaturro | Order Id | 002061049-0 |
| Transaction Response | Payment Complete | | |

© 2020 Tyler Technologies

Version: 2019.0.6.8724

Nationwide Legal Nevada, LLC

1609 James M Wood Blvd
Los Angeles, CA 90015
(213) 249-9999 FAX (213) 249-9990



| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|---------------|------------|
| 210025 | May 20, 2018 | NV132026 |

Bill To:

AKERMAN LLP
1635 Village Center Circle Suite 200
Las Vegas, NV 89134

REF:

Case No: A-17-756215-C
POD Date: 5/16/2018



Servee: Alessi & Koenig, LLC c/o Robert A Koenig, Esq.
Court: CLARK COUNTY DISTRICT COURT
Case: Las Vegas Development Group, LLC, a Nevada limited liability vs. Dania V. Hernandez, an individual; et al.,
Documents: Subpoena Duces Tecum To Alessi & Koenig LLC;

| DESCRIPTION OF SERVICES RENDERED | QUANTITY | UNIT PRICE | AMOUNT |
|--|----------|------------------|-----------------|
| Base Charge | | | 55.00 |
| SUMMARY Address: 9500 W. Flamingo Road, # 204 Las Vegas, NV 89147 Completed on 5/16/2018 at 2:31 PM | | | |
| | | TOTAL DUE | \$ 55.00 |

Thank you for choosing !

For proper credit please detach this section and return with your payment. **Remittance Copy**

| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|---------------|------------|
| 210025 | May 20, 2018 | NV132026 |

Remit To:

Nationwide Legal Nevada, LLC
1609 James M Wood Blvd.
Los Angeles, CA 90015

TOTAL DUE:**\$ 55.00**

1. PLEASE INCLUDE INVOICE NUMBER ON PAYMENT.

2. MAKE CHECKS PAYABLE TO **Nationwide Legal Nevada, LLC****Service Type: 030 - STANDARD PROCESS (48 to 72 HRS)**

Order#: NV132026/INVOICEP

JA 0424

Nationwide Legal Nevada, LLC

1609 James M Wood Blvd
Los Angeles, CA 90015
(213) 249-9999 FAX (213) 249-9990



| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|---------------|------------|
| 210025 | May 20, 2018 | NV132027 |

Bill To:

AKERMAN LLP
1635 Village Center Circle Suite 200
Las Vegas, NV 89134

REF:

Case No: A-17-756215-C
POD Date: 5/16/2018



| |
|---|
| Servee: Hidden Canyon Owners Association c/o Complete Association Management Company, LLC |
| Court: CLARK COUNTY DISTRICT COURT |
| Case: Las Vegas Development Group LLC, a Nevada limited liability vs. Dania Hernandez, an individual; et al., |
| Documents: Subpoena Duces Tecum To Hidden Canyon Owners Association; |

| DESCRIPTION OF SERVICES RENDERED | QUANTITY | UNIT PRICE | AMOUNT |
|--|----------|------------|----------|
| Base Charge | | | 55.00 |
| SUMMARY Address: 5980 S. Durango Drive, # 131 Las Vegas, NV 89113 Completed on 5/16/2018 at 2:50 PM | | | |
| | | TOTAL DUE | \$ 55.00 |

Thank you for choosing !

For proper credit please detach this section and return with your payment. **Remittance Copy**

| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|---------------|------------|
| 210025 | May 20, 2018 | NV132027 |

Remit To:

Nationwide Legal Nevada, LLC
1609 James M Wood Blvd.
Los Angeles, CA 90015

TOTAL DUE:

\$ 55.00

1. PLEASE INCLUDE INVOICE NUMBER ON PAYMENT.

2. MAKE CHECKS PAYABLE TO **Nationwide Legal Nevada, LLC****Service Type: 030 - STANDARD PROCESS (48 to 72 HRS)**

Order#: NV132027/INVOICEP

JA 0425

**American Legal Services Nevada**

PI-PS 1452

P.O. Box 59701

Los Angeles CA 90074-9701

TAX ID# 26-1476985

INVOICE

| Invoice No. | Customer No. |
|--------------|--------------|
| 37019531 | 37261 |
| Invoice Date | Total Due |
| 11/15/18 | |
| | |
| | |
| | |

Akerman LLP
Attn: Julie Henning
1635 Village Ctr Cir, Ste 200
Las Vegas, NV 89134

BILLING/PAYMENT QUESTIONS
CLIENT CARE (877) 350-8698

| | | Customer No. | Invoice No. | Period Ending | Amount Due | Pg | | |
|----------------|----------|--------------|--|---------------|------------|--|--|-------|
| | | 37261 | 37019531 | 11/15/18 | | 53 | | |
| Date | Ordr No. | Svc | Service Detail | | | Charges | | Total |
| 11/12/18 | 55098584 | 3DP | Akerman LLP 1635 Village Center Circle LAS VEGAS NV 89134 Caller: Doug Layne A-17-756215-C Subpoena For Rule 30(B)(6) Deposition Of Alessi & Koenig Please Serve The Subpoena For the Deposition To The Signed: Claire Goodrich | | | Alessi & Koenig, LLC 9500 W Flamingo Rd LAS VEGAS NV 89147 Base Chg : 55.25 Fuel Chg : 7.18 Adv/Wit Ck: 26.00 | | 88.43 |
| PROCESS-3 DAYS | | | Ref: 325644 DANIA HERNANDEZ | | | | | |
| | | | Total Charges for Ref. - : 88.43 | | | | | |

INVOICE PAYMENT DUE UPON RECEIPT

JA 0427



OASIS

REPORTING SERVICES

400 South Seventh Street
Suite 400, Box 7
Las Vegas, NV 89101

Tel. (702) 476-4500
info@oasisreporting.com
www.oasisreporting.com

Akerman LLP
1635 Village Center Circle
Suite 200
Las Vegas NV 89134

INVOICE

| Invoice No. | Invoice Date | Job No. |
|---|---------------|---------|
| 37991 | 12/20/2018 | 30825 |
| Job Date | Case No. | |
| 11/29/2018 | A-17-756215-C | |
| Case Name | | |
| Las Vegas Development Group, LLC v. Dania V. Hernandez, et al. | | |
| Payment Terms | | |
| Net 21 | | |

ORIGINAL & 1 CERTIFIED COPY OF TRANSCRIPT & INDEX OF:

| | | |
|------------------------------------|--------------|--------|
| David Alessi | 41.00 Pages | 194.75 |
| Exhibit | 111.00 Pages | 72.15 |
| Half-Day Attendance | | 115.00 |
| E-Bundle With O&I and No Hard Copy | | 25.00 |
| Local Delivery | | 20.00 |

TOTAL DUE >>> \$426.90

AFTER 1/19/2019 PAY \$469.59

Reference No. : [REDACTED]

Ordered transcripts include a fully hyperlinked word index and archival of transcripts, invoices and exhibits. All invoices due upon receipt. Past-due invoices accrue interest at a rate of 1.5% per month. Payment is not contingent upon client or insurance carrier reimbursement.

*** A 3.5% credit card processing fee will be charged on all invoices paid by credit card. ***

Thank you for your business!

Tax ID: 26-3403945

Phone: 702-634-5000 Fax: 702-380-8572

Please detach bottom portion and return with payment.

Tenesa S. Powell
Akerman LLP
1635 Village Center Circle
Suite 200
Las Vegas NV 89134

Invoice No. : 37991
Invoice Date : 12/20/2018
Total Due : \$426.90
AFTER 1/19/2019 PAY \$469.59

Remit To: **Oasis Reporting Services, LLC**
400 South Seventh Street
Suite 400, Box 7
Las Vegas NV 89101

Job No. : 30825
BU ID : 1-MAIN
Case No. : A-17-756215-C
Case Name : Las Vegas Development Group, LLC v. Dania V. Hernandez, et al.

JA 0428

Case # A-17-756215-C - Las Vegas Development Group LLC, Plaintiff

Envelope Information

Envelope Id

3733129

Submitted Date

1/22/2019 11:15 AM PST

Submitted User Name

akermanlas@akerman.com

Case Information

Location

Department 13

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

5/31/2017

Case #

A-17-756215-C

Assigned to Judge

Denton, Mark R.

Filings

Filing Type

EFileAndServe

Filing Code

Notice of Lis Pendens - NOLP (CIV)

Filing Description

Notice of Lis Pendens

Client Reference Number**Filing on Behalf of**

Bank of New York Mellon

Filing Status

Accepted

Accepted Date

1/22/2019 12:20 PM PST

Lead Document

| File Name | Security | Download |
|-------------------------------------|----------|-----------------------------|
| NTC_[Hernandez,_Diana]_Notice_of... | | Original File Court Copy |

eService Details

| Status | Name | Firm | Served | Date Opened |
|--------|------------------|-------------------------------------|--------|------------------------|
| Sent | Roger P. Croteau | Roger P. Croteau & Associates, Ltd. | Yes | 1/22/2019 11:33 AM PST |

| Status | Name | Firm | Served | Date Opened |
|--------|-----------------|-------------|--------|------------------------|
| Sent | Croteau Admin | | Yes | Not Opened |
| Sent | Ariel Stern | Akerman LLP | Yes | 1/22/2019 12:03 PM PST |
| Sent | Tenesa Scaturro | Akerman LLP | Yes | 1/22/2019 12:02 PM PST |
| Sent | Akerman LLP | Akerman LLP | Yes | 1/22/2019 12:02 PM PST |

Parties with No eService

| Name | Address |
|------|---------|
|------|---------|

Dania V Hernandez

| Name | Address |
|------|---------|
|------|---------|

Las Vegas Development Group LLC

| Name | Address |
|------|---------|
|------|---------|

Bank of New York Mellon

Fees

Notice of Lis Pendens - NOLP (CIV)

| Description | Amount |
|-----------------------------|--------|
| Filing Fee | \$0.00 |
| Filing Total: \$0.00 | |

| | |
|-------------------------------|--------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: \$3.50 | |

| | | | |
|-----------------------------------|-------------------------|---------------------------|-------------|
| Party Responsible for Fees | Bank of New York Mellon | Transaction Amount | \$3.50 |
| Payment Account | Akerman LLP | Transaction Id | 4590484 |
| Filing Attorney | Tenesa Scaturro | Order Id | 003733129-0 |
| Transaction Response | Payment Complete | | |

© 2020 Tyler Technologies

Version: 2019.0.6.8724

Nationwide Legal Nevada, LLC

1609 James M Wood Blvd
Los Angeles, CA 90015
(213) 249-9999 FAX (213) 249-9990



| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|------------------|------------|
| 210025 | January 24, 2019 | NV165404 |

Bill To:

AKERMAN LLP
1635 Village Center Circle Suite 200
Las Vegas, NV 89134

REF:

Case No: A-17-756215-C
POD Date: 1/24/2019

Court: **CLARK COUNTY DISTRICT COURT**Case: **Las Vegas Development Group LLC., a Nevada limited liability company, vs. Dania Hernandez, an individual; et al.,**

Summary: **Please certify the attached document and return tot his office. Please advance fee.Thanks**
COMPLETED AT CLARK COUNTY DISTRICT COURT ON 1/24/2019 AT 11:53 PM

| DESCRIPTION OF SERVICES RENDERED | QUANTITY | UNIT PRICE | AMOUNT |
|--|----------|------------------|----------------|
| Fees Advanced | | | 3.00 |
| Description: COMPLETE, UPLOADED. ROR Documents: Notice of Lis Pendens | | | |
| | | TOTAL DUE | \$ 3.00 |

Thank you for choosing Nationwide Legal Nevada, LLC!

For proper credit please detach this section and return with your payment. **Remittance Copy**

| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|------------------|------------|
| 210025 | January 24, 2019 | NV165404 |

Remit To:

Nationwide Legal Nevada, LLC
1609 James M Wood Blvd
Los Angeles, CA 90015

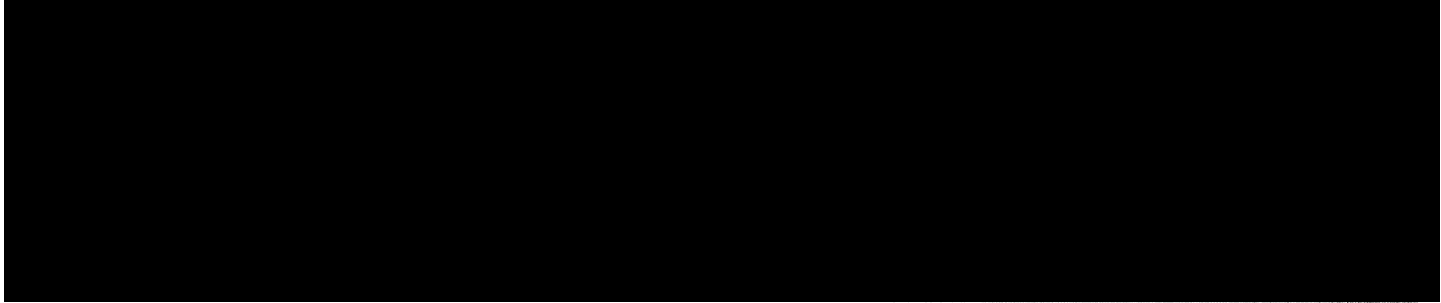
TOTAL DUE:**\$ 3.00**

1. PLEASE INCLUDE INVOICE NUMBER ON PAYMENT.

2. MAKE CHECKS PAYABLE TO **Nationwide Legal Nevada, LLC****Service Type: 002 - SAME DAY COURT RUN**

Order#: NV165404/INVOICEC

JA 0431



Jan 28, 2019

16

DownloadStatuses

Lis Pendens

5

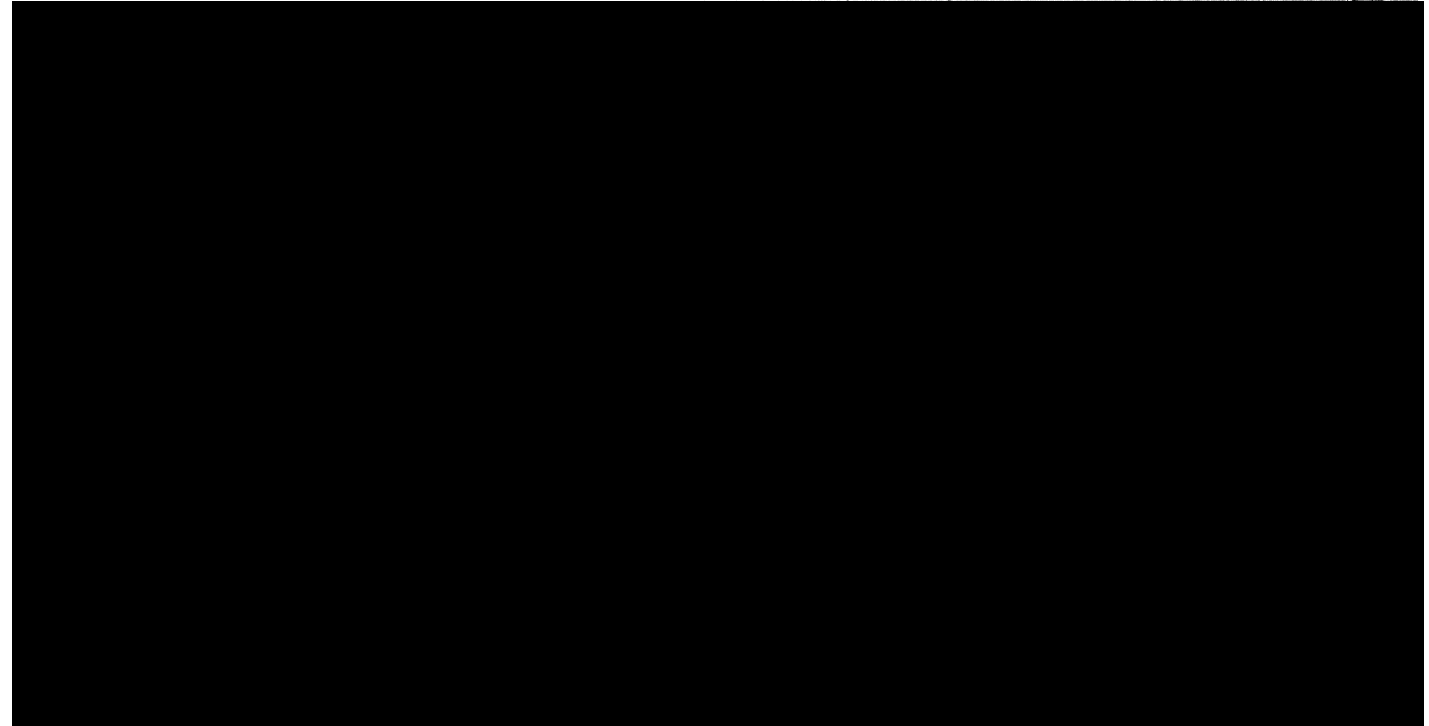
20190128-
0000990

01/28/2019 10:52 AM
PST

40.00 F

4.50 F

44.50



Case # A-17-756215-C - Las Vegas Development Group LLC, Plaintiff

Envelope Information

Envelope Id

4001321

Submitted Date

3/18/2019 9:45 AM PST

Submitted User Name

akermanlas@akerman.com

Case Information

Location

Department 13

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

5/31/2017

Case #

A-17-756215-C

Assigned to Judge

Denton, Mark R.

Filings

Filing Type

EFileAndServe

Filing CodeMotion for Summary Judgment - MSJD
(CIV)**Filing Description**

Motion for Summary Judgment

Client Reference Number**Filing on Behalf of**

Bank of New York Mellon

Filing Status

Accepted

Accepted Date

3/18/2019 9:49 AM PST

Accept Comments

Auto Review Accepted

Lead Document

| File Name | Security | Download |
|-------------------------------------|----------|-----------------------------|
| MOT_[Hernandez,_Diana]_Motion_fo... | | Original File Court Copy |

eService Details

Parties with No eService

| Name | Address |
|-------------------------|---------|
| Bank of New York Mellon | |

Fees

Motion for Summary Judgment - MSJD (CIV)

| | |
|------------------------|-----------------|
| Total Filing Fee | \$200.00 |
| Payment Service Fee | \$6.00 |
| E-File Fee | \$3.50 |
| Envelope Total: | \$209.50 |

| | | | |
|----------------------------|-------------------------|--------------------|-------------|
| Party Responsible for Fees | Bank of New York Mellon | Transaction Amount | \$209.50 |
| Payment Account | Akerman LLP | Transaction Id | 4901247 |
| Filing Attorney | Tenesa Scaturro | Order Id | 004001321-0 |
| Transaction Response | Payment Complete | | |

Nationwide Legal Nevada, LLC

1609 James M Wood Blvd
Los Angeles, CA 90015
(213) 249-9999 FAX (213) 249-9990



| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|---------------|------------|
| 210025 | May 6, 2019 | NV180474 |

Bill To:

AKERMAN LLP
1635 Village Center Circle Suite 200
Las Vegas, NV 89134

REF:

POD DATE: 5/3/2019



Delivery Date/Time: 5/3/2019 1:57 PM

Delivered to: **AKERMAN LLP**
1635 Village Center Circle Suite 200
Las Vegas, NV 89134

| DESCRIPTION OF SERVICES RENDERED | QUANTITY | UNIT PRICE | AMOUNT |
|--|----------|------------|----------|
| Base Charge | | | 15.00 |
| Description: Delivered from 2810 W. Charleston #75 Las Vegas , , 89148 to SM @ 1635 Village Center Circle Suite 200 Las Vegas, NV, 89134 | | | |
| | | TOTAL DUE | \$ 15.00 |

Thank you for choosing Nationwide Legal Nevada, LLC!

For proper credit please detach this section and return with your payment. **Remittance Copy**

| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|---------------|------------|
| 210025 | May 6, 2019 | NV180474 |

Remit To:

Nationwide Legal Nevada, LLC
1609 James M Wood Blvd.
Los Angeles, CA 90015

TOTAL DUE:

\$ 15.00

1. PLEASE INCLUDE INVOICE NUMBER ON PAYMENT.

2. MAKE CHECKS PAYABLE TO **Nationwide Legal Nevada, LLC****Service Type: 010 - STANDARD DELIVERY (4 HRS)**

Order#:NV180474/INVOICEM

JA 0435

Nationwide Legal Nevada, LLC

1609 James M Wood Blvd
Los Angeles, CA 90015
(213) 249-9999 FAX (213) 249-9990



| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|---------------|------------|
| 210025 | May 7, 2019 | NV180679 |

Bill To:

AKERMAN LLP
1635 Village Center Circle Suite 200
Las Vegas, NV 89134

Christine Weiss
(702) 634-5000
christine.weiss@akerman.com
REF: [REDACTED]
Case No: A-17-756215-C
POD Date: 5/7/2019



Court: **CLARK COUNTY DISTRICT COURT**
Case: **Las Vegas Development Group LLC., a Nevada limited liability company, vs. Dania Hernandez, an individual; et al.,**
Summary: **Please deliver Courtesy Copy (1) Motion for Summary Judgment (2) Opposition to Motion for Summary Judgment to Dept. 13. Thank you.**
COMPLETED AT CLARK COUNTY DISTRICT COURT ON 5/7/2019 AT 12:40 PM

| DESCRIPTION OF SERVICES RENDERED | QUANTITY | UNIT PRICE | AMOUNT |
|---|----------|------------|----------|
| Base Charge | | | 25.00 |
| Description: COMPLETE Documents: Courtesy Copy (1) Motion for Summary Judgment (2) Opposition to Motion for Summary Judgment | | | |
| | | TOTAL DUE | \$ 25.00 |

Thank you for choosing Nationwide Legal Nevada, LLC!

For proper credit please detach this section and return with your payment. **Remittance Copy**

| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|---------------|------------|
| 210025 | May 7, 2019 | NV180679 |

Remit To:

Nationwide Legal Nevada, LLC
1609 James M Wood Blvd
Los Angeles, CA 90015

TOTAL DUE:**\$ 25.00**

1. PLEASE INCLUDE INVOICE NUMBER ON PAYMENT.

2. MAKE CHECKS PAYABLE TO **Nationwide Legal Nevada, LLC****Service Type: 020 - STANDARD FILING (4 HRS)**

Order#: NV180679/INVOICEC

JA 0436

Nationwide Legal Nevada, LLC

1609 James M Wood Blvd
Los Angeles, CA 90015
(213) 249-9999 FAX (213) 249-9990



| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|---------------|------------|
| 210025 | May 24, 2019 | NV183542 |

Bill To:

AKERMAN LLP
1635 Village Center Circle Suite 200
Las Vegas, NV 89134

Christine Weiss
(702) 634-5000
christine.weiss@akerman.com
REF: [REDACTED]
Case No: A-17-756215-C
POD Date: 5/24/2019

Court: **CLARK COUNTY DISTRICT COURT**Case: **Las Vegas Development Group, LLC, a Nevada limited liability company vs. Dania V. Hernandez, an individual; et al.,**Summary: **Please deliver Courtesy Copy (1) Motion for Summary Judgment (2) Opposition to Motion for Summary Judgment to Dept. 13. Thank you.****COMPLETED AT CLARK COUNTY DISTRICT COURT ON 5/24/2019 AT 4:05 PM**

| DESCRIPTION OF SERVICES RENDERED | QUANTITY | UNIT PRICE | AMOUNT |
|---|----------|------------|----------|
| Base Charge | | | 25.00 |
| Description: COMPLETE Documents: Courtesy Copy - (1) Motion for Summary Judgment (2) Opposition to Motion for Summary Judgment | | | |
| | | TOTAL DUE | \$ 25.00 |

Thank you for choosing Nationwide Legal Nevada, LLC!

For proper credit please detach this section and return with your payment. **Remittance Copy**

| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|---------------|------------|
| 210025 | May 24, 2019 | NV183542 |

Remit To:

Nationwide Legal Nevada, LLC
1609 James M Wood Blvd
Los Angeles, CA 90015

TOTAL DUE:**\$ 25.00**

1. PLEASE INCLUDE INVOICE NUMBER ON PAYMENT.

2. MAKE CHECKS PAYABLE TO **Nationwide Legal Nevada, LLC****Service Type: 020 - STANDARD FILING (4 HRS)**

Order#: NV183542/INVOICEC

JA 0437

Case # A-17-756215-C - Las Vegas Development Group LLC, Plaintiff

Envelope Information

Envelope Id

4265486

Submitted Date

5/8/2019 3:36 PM PST

Submitted User Name

akermanlas@akerman.com

Case Information

Location

Department 13

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

5/31/2017

Case #

A-17-756215-C

Assigned to Judge

Denton, Mark R.

Filings

Filing Type

EFileAndServe

Filing Code

Stipulation and Order - SAO (CIV)

Filing Description

Stipulation and Order to Extend Briefing
Schedule and Continue Hearing on
Motion for Summary Judgment

Client Reference Number**Filing on Behalf of**

Bank of New York Mellon

Filing Status

Accepted

Accepted Date

5/8/2019 3:38 PM PST

Accept Comments

Auto Review Accepted

Lead Document

| File Name | Security | Download |
|----------------------|----------|-----------------------------|
| DownloadStatuses.pdf | | Original File Court Copy |

eService Details

| Status | Name | Firm | Served | Date Opened |
|--------|------------------|-------------------------------------|--------|----------------------|
| Sent | Roger P. Croteau | Roger P. Croteau & Associates, Ltd. | Yes | 5/8/2019 3:59 PM PST |
| Sent | Croteau Admin | | Yes | Not Opened |
| Sent | Ariel Stern | Akerman LLP | Yes | Not Opened |
| Sent | Tenesa Scaturro | Akerman LLP | Yes | Not Opened |
| Sent | Akerman LLP | Akerman LLP | Yes | 5/8/2019 3:39 PM PST |

Parties with No eService

| Name | Address |
|------|---------|
|------|---------|

Dania V Hernandez

| Name | Address |
|------|---------|
|------|---------|

Las Vegas Development Group LLC

| Name | Address |
|------|---------|
|------|---------|

Bank of New York Mellon

Fees

Stipulation and Order - SAO (CIV)

| Description | Amount |
|-----------------------------|--------|
| Filing Fee | \$0.00 |
| Filing Total: \$0.00 | |

| | |
|-------------------------------|--------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: \$3.50 | |

| | | | |
|-----------------------------------|-------------------------|---------------------------|-------------|
| Party Responsible for Fees | Bank of New York Mellon | Transaction Amount | \$3.50 |
| Payment Account | Akerman LLP | Transaction Id | 5204814 |
| Filing Attorney | Tenesa Scaturro | Order Id | 004265486-0 |
| Transaction Response | Payment Complete | | |

Case # A-17-756215-C - Las Vegas Development Group LLC, Plaintiff

Envelope Information

Envelope Id

4293224

Submitted Date

5/14/2019 3:10 PM PST

Submitted User Name

akermanlas@akerman.com

Case Information

Location

Department 13

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

5/31/2017

Case #

A-17-756215-C

Assigned to Judge

Denton, Mark R.

Filings

Filing Type

EFileAndServe

Filing CodeNotice of Entry of Stipulation and Order -
NTSO (CIV)**Filing Description**Notice Of Entry Of Stipulation And Order
To Extend Briefing Schedule And
Continue Hearing On Motion For
Summary Judgment**Client Reference Number**

325644

Filing on Behalf of

Bank of New York Mellon

Filing Status

Accepted

Accepted Date

5/14/2019 3:12 PM PST

Accept Comments

Auto Review Accepted

Lead Document

File Name

NTC_[Hernandez,_Dania]_Notice_of...

Security**Download**Original File
Court Copy

| | |
|---------------------------------|----------------|
| Name | Address |
| Las Vegas Development Group LLC | |
| Name | Address |
| Bank of New York Mellon | |

1. *Journal of the American Medical Association*, 1997; 277: 1001-1005.

| Description | Amount |
|----------------------|---------------|
| Filing Fee | \$0.00 |
| Filing Total: | \$0.00 |

| | |
|-------------------------------|--------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: \$3.50 | |

| | | | |
|----------------------------|-------------------------|--------------------|-------------|
| Party Responsible for Fees | Bank of New York Mellon | Transaction Amount | \$3.50 |
| Payment Account | Akerman LLP | Transaction Id | 5235711 |
| Filing Attorney | Tenesa Scaturro | Order Id | 004293224-0 |
| Transaction Response | Payment Complete | | |

© 2020 Tyler Technologies

Version: 2019.0.6.8724

Case # A-17-756215-C - Las Vegas Development Group LLC, Plaintiff

Envelope Information

Envelope Id

4371379

Submitted Date

5/30/2019 12:24 PM PST

Submitted User Name

akermanlas@akerman.com

Case Information

Location

Department 13

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

5/31/2017

Case #

A-17-756215-C

Assigned to Judge

Denton, Mark R.

Filings

Filing Type

EFileAndServe

Filing Code

Stipulation and Order - SAO (CIV)

Filing DescriptionStipulation and Order to Continue Hearing
on Motion for Summary Judgment**Client Reference Number****Filing on Behalf of**

Bank of New York Mellon

Filing Status

Accepted

Accepted Date

5/30/2019 12:25 PM PST

Accept Comments

Auto Review Accepted

Lead Document

| File Name | Security | Download |
|-----------------------------------|----------|-----------------------------|
| PLDG_[Hernandez_Diana]_SAO_to_... | | Original File Court Copy |

eService Details

| Status | Name | Firm | Served | Date Opened |
|--------|------------------|-------------------------------------|--------|------------------------|
| Sent | Roger P. Croteau | Roger P. Croteau & Associates, Ltd. | Yes | 5/31/2019 8:26 AM PST |
| Sent | Croteau Admin | | Yes | Not Opened |
| Sent | Ariel Stern | Akerman LLP | Yes | Not Opened |
| Sent | Tenesa Scaturro | Akerman LLP | Yes | Not Opened |
| Sent | Akerman LLP | Akerman LLP | Yes | 5/30/2019 12:34 PM PST |

Parties with No eService

Name **Address**
Dania V Hernandez

Name **Address**
Las Vegas Development Group LLC

Name **Address**
Bank of New York Mellon

Fees

Stipulation and Order - SAO (CIV)

| Description | Amount |
|----------------------|---------------|
| Filing Fee | \$0.00 |
| Filing Total: | \$0.00 |

| | |
|------------------------|---------------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: | \$3.50 |

| | | | |
|-----------------------------------|-------------------------|---------------------------|-------------|
| Party Responsible for Fees | Bank of New York Mellon | Transaction Amount | \$3.50 |
| Payment Account | Akerman LLP | Transaction Id | 5323222 |
| Filing Attorney | Tenesa Scaturro | Order Id | 004371379-0 |
| Transaction Response | Payment Complete | | |

Case # A-17-756215-C - Las Vegas Development Group LLC, Plaintiff

Envelope Information

Envelope Id

4377330

Submitted Date

5/31/2019 11:04 AM PST

Submitted User Name

akermanlas@akerman.com

Case Information

Location

Department 13

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

5/31/2017

Case #

A-17-756215-C

Assigned to Judge

Denton, Mark R.

Filings

Filing Type

EFileAndServe

Filing Code

Notice of Entry - NEO (CIV)

Filing Description

Notice of Entry of Order to Continue
Hearing on Motion for Summary
Judgment

Client Reference Number**Filing Status**

Accepted

Accepted Date

5/31/2019 11:06 AM PST

Accept Comments

Auto Review Accepted

Lead Document

File Name

NTC_[Hernandez,_Dania]_Notice_of...

Security**Download**

Original File
Court Copy

eService Details

| Status | Name | Firm | Served | Date Opened |
|--------|------------------|-------------------------------------|--------|------------------------|
| Sent | Roger P. Croteau | Roger P. Croteau & Associates, Ltd. | Yes | 6/1/2019 1:07 PM PST |
| Sent | Croteau Admin | | Yes | Not Opened |
| Sent | Ariel Stern | Akerman LLP | Yes | Not Opened |
| Sent | Tenesa Scaturro | Akerman LLP | Yes | Not Opened |
| Sent | Akerman LLP | Akerman LLP | Yes | 5/31/2019 11:06 AM PST |

Parties with No eService

Name
Dania V Hernandez

Address

Name
Las Vegas Development Group LLC

Address

Name
Bank of New York Mellon

Address

Fees

Notice of Entry - NEO (CIV)

| Description | Amount |
|----------------------|---------------|
| Filing Fee | \$0.00 |
| Filing Total: | \$0.00 |

| | |
|------------------------|---------------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: | \$3.50 |

| | | | |
|-----------------------------------|-------------------------|---------------------------|-------------|
| Party Responsible for Fees | Bank of New York Mellon | Transaction Amount | \$3.50 |
| Payment Account | Akerman LLP | Transaction Id | 5330326 |
| Filing Attorney | Tenesa Scaturro | Order Id | 004377330-0 |
| Transaction Response | Payment Complete | | |

Case # A-17-756215-C - Las Vegas Development Group LLC, Plaintiff

Envelope Information

Envelope Id

4550988

Submitted Date

7/5/2019 4:21 PM PST

Submitted User Name

akermanlas@akerman.com

Case Information

Location

Department 13

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

5/31/2017

Case #

A-17-756215-C

Assigned to Judge

Denton, Mark R.

Filings

Filing Type

EFileAndServe

Filing Code

Reply in Support - RIS (CIV)

Filing DescriptionReply Supporting Motion for Summary
Judgment**Client Reference Number****Filing on Behalf of**

Bank of New York Mellon

Filing Status

Accepted

Accepted Date

7/5/2019 4:23 PM PST

Accept Comments

Auto Review Accepted

Lead Document

| File Name | Security | Download |
|------------------------------------|----------|-----------------------------|
| OTHER_[Hernandez,_Dania]_Reply_... | | Original File Court Copy |

eService Details

| Status | Name | Firm | Served | Date Opened |
|--------|------------------|-------------------------------------|--------|----------------------|
| Sent | Roger P. Croteau | Roger P. Croteau & Associates, Ltd. | Yes | 7/8/2019 8:30 AM PST |
| Sent | Croteau Admin | | Yes | Not Opened |
| Sent | Ariel Stern | Akerman LLP | Yes | Not Opened |
| Sent | Tenesa Scaturro | Akerman LLP | Yes | Not Opened |
| Sent | Akerman LLP | Akerman LLP | Yes | 7/5/2019 4:29 PM PST |

Parties with No eService

| Name | Address |
|-------------------------|---------|
| Bank of New York Mellon | |

| Name | Address |
|-------------------|---------|
| Dania V Hernandez | |

| Name | Address |
|---------------------------------|---------|
| Las Vegas Development Group LLC | |

Fees

Reply in Support - RIS (CIV)

| Description | Amount |
|----------------------|---------------|
| Filing Fee | \$0.00 |
| Filing Total: | \$0.00 |

| | |
|-------------------------------|--------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: \$3.50 | |

| | | | |
|----------------------------|-------------------------|--------------------|-------------|
| Party Responsible for Fees | Bank of New York Mellon | Transaction Amount | \$3.50 |
| Payment Account | Akerman LLP | Transaction Id | 5527254 |
| Filing Attorney | Tenesa Scaturro | Order Id | 004550988-0 |
| Transaction Response | Payment Complete | | |

Nationwide Legal Nevada, LLC

1609 James M Wood Blvd
Los Angeles, CA 90015
(213) 249-9999 FAX (213) 249-9990



| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|---------------|------------|
| 210025 | July 8, 2019 | NV189507 |

Bill To:

AKERMAN LLP
1635 Village Center Circle Suite 200
Las Vegas, NV 89134

Christine Weiss
(702) 634-5000
christine.weiss@akerman.com
REF: [REDACTED]
Case No: A-17-756215-C
POD Date: 7/8/2019



Court: **CLARK COUNTY DISTRICT COURT**
Case: **Las Vegas Development Group, LLC, a Nevada limited liability company vs. Dania V. Hernandez, an individual; et al.,**
Summary: **Please deliver Courtesy Copy Reply Supporting MSJ to Dept. 13. Thank you.**
COMPLETED AT CLARK COUNTY DISTRICT COURT ON 7/8/2019 AT 12:00 PM

| DESCRIPTION OF SERVICES RENDERED | QUANTITY | UNIT PRICE | AMOUNT |
|---|----------|------------------|-----------------|
| Base Charge | | | 25.00 |
| Description: Completed/ROR Documents: Courtesy Copy - Reply Supporting MSJ | | | |
| | | TOTAL DUE | \$ 25.00 |

Thank you for choosing Nationwide Legal Nevada, LLC!

For proper credit please detach this section and return with your payment. **Remittance Copy**

| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|---------------|------------|
| 210025 | July 8, 2019 | NV189507 |

Remit To:

Nationwide Legal Nevada, LLC
1609 James M Wood Blvd
Los Angeles, CA 90015

| | |
|-------------------|-----------------|
| TOTAL DUE: | \$ 25.00 |
|-------------------|-----------------|

1. PLEASE INCLUDE INVOICE NUMBER ON PAYMENT.
2. MAKE CHECKS PAYABLE TO **Nationwide Legal Nevada, LLC**

Service Type: 020 - STANDARD FILING (4 HRS)

Order#: NV189507/INVOICEC

JA 0449



Remit Payment To:
First American Data Tree, LLC
PO Box 31001-2286
Pasadena, CA 91110-2286
Phone: 800-708-8463 Option 2

Account #: 2006067
Julie Henning;Ivy Fasolini
Akerman LLP
1635 Village Center Circle,
Suite 200
Las Vegas, NV 89134

Phone: (702) 634-5000
Fax:

Invoice #: 20060670120
Invoice Date: 1/31/2020
Billing Cycle: January 1st - January 31st

National Package:

Current Due:

Grand Total:

Credit card charge:

Amount Due: \$0.00

Reference #:

Reference #:

claire.houck@akerman.com

1/15/2020

Specific Document 2016.0509.001635

\$4.83

Subtotal \$4.83

Nationwide Legal Nevada, LLC

1609 James M Wood Blvd
Los Angeles, CA 90015
(213) 249-9999 FAX (213) 249-9990



| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|-------------------|------------|
| 210025 | February 28, 2020 | NV221525 |

Bill To:

AKERMAN LLP
1635 Village Center Circle Suite 200
Las Vegas, NV 89134

REF:

Case No: A-17-756215-C
POD Date: 2/26/2020



| |
|---|
| Servee: Yvette Saucedo |
| Court: DISTRICT COURT CLARK COUNTY |
| Case: LAS VEGAS DEVELOPMENT GROUP, LLC, a Nevada limited liability vs. DANIA V. HERNANDEZ, an individual; et al., |
| Documents: Trial Subpoena - Yvette Saucedo; |

| DESCRIPTION OF SERVICES RENDERED | QUANTITY | UNIT PRICE | AMOUNT |
|--|----------|------------------|------------------|
| Base Charge | | | 80.00 |
| Fees Advanced | | | 41.93 |
| SUMMARY Servee: Yvette Saucedo Address: 3775 W. Teco, # Las Vegas, NV 89118 Result: Personally Served Completed on 2/26/2020 at 3:35 PM | | | |
| | | TOTAL DUE | \$ 121.93 |

Thank you for choosing !

For proper credit please detach this section and return with your payment. **Remittance Copy**

| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|-------------------|------------|
| 210025 | February 28, 2020 | NV221525 |

Remit To:

Nationwide Legal Nevada, LLC
1609 James M Wood Blvd.
Los Angeles, CA 90015

TOTAL DUE:**\$ 121.93**

1. PLEASE INCLUDE INVOICE NUMBER ON PAYMENT.

2. MAKE CHECKS PAYABLE TO **Nationwide Legal Nevada, LLC****Service Type: 31 - RUSH PROCESS - NEXT DAY**

Order#: NV221525/INVOICEP

JA 0451

Nationwide Legal Nevada, LLC

1609 James M Wood Blvd
Los Angeles, CA 90015
(213) 249-9999 FAX (213) 249-9990



| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|-------------------|------------|
| 210025 | February 28, 2020 | NV221528 |

Bill To:

AKERMAN LLP
1635 Village Center Circle Suite 200
Las Vegas, NV 89134

REF:

Case No: A-17-756215-C
POD Date: 2/26/2020



| |
|---|
| Servee: David Alessi - c/o HOA Lawyers Group |
| Court: DISTRICT COURT CLARK COUNTY |
| Case: LAS VEGAS DEVELOPMENT GROUP, LLC, a Nevada limited liability vs. DANIA V. HERNANDEZ, an individual; et al., |
| Documents: Trial Subpoena - David Alessi; |

| DESCRIPTION OF SERVICES RENDERED | QUANTITY | UNIT PRICE | AMOUNT |
|---|----------|------------------|------------------|
| Base Charge | | | 80.00 |
| Fees Advanced | | | 40.00 |
| SUMMARY Address: 9500 W. Flamingo Road, Suite 205, # Las Vegas, NV 89147 Completed on 2/26/2020 at 4:10 PM | | | |
| | | TOTAL DUE | \$ 120.00 |

Thank you for choosing !

For proper credit please detach this section and return with your payment. **Remittance Copy**

| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|-------------------|------------|
| 210025 | February 28, 2020 | NV221528 |

Remit To:

Nationwide Legal Nevada, LLC
1609 James M Wood Blvd.
Los Angeles, CA 90015

TOTAL DUE:**\$ 120.00**

1. PLEASE INCLUDE INVOICE NUMBER ON PAYMENT.

2. MAKE CHECKS PAYABLE TO **Nationwide Legal Nevada, LLC****Service Type: 31 - RUSH PROCESS - NEXT DAY**

Order#: NV221528/INVOICEP

JA 0452

Case # A-17-756215-C - Las Vegas Development Group LLC, Plaintiff

Envelope Information

Envelope Id

5694539

Submitted Date

2/24/2020 4:33 PM PST

Submitted User Name

akermanlas@akerman.com

Case Information

Location

Department 13

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

5/31/2017

Case #

A-17-756215-C

Assigned to Judge

Denton, Mark R.

Filings

Filing Type

EFileAndServe

Filing Code

Pre-trial Memorandum - PMEM (CIV)

Filing Description

Individual Pre-Trial Memorandum

Client Reference Number**Filing on Behalf of**

Bank of New York Mellon

Filing Status

Accepted

Accepted Date

2/24/2020 4:35 PM PST

Accept Comments

Auto Review Accepted

Lead Document

| File Name | Security | Download |
|----------------------------------|----------|-----------------------------|
| OTHER_[Hernandez,_Dania]_BONY... | | Original File Court Copy |

eService Details

| Status | Name | Firm | Served | Date Opened |
|--------|------------------|-------------------------------------|--------|-----------------------|
| Sent | Roger P. Croteau | Roger P. Croteau & Associates, Ltd. | Yes | 2/24/2020 4:37 PM PST |
| Sent | Croteau Admin | | Yes | 2/24/2020 4:48 PM PST |
| Sent | Ariel Stern | Akerman LLP | Yes | Not Opened |
| Sent | Rex Garner | Akerman LLP | Yes | Not Opened |
| Sent | Tenesa S Powell | Akerman LLP | Yes | Not Opened |
| Sent | Akerman LLP | Akerman LLP | Yes | 2/24/2020 4:35 PM PST |

Parties with No eService

| Name | Address |
|-------------------------|---------|
| Bank of New York Mellon | |

| Name | Address |
|-------------------|---------|
| Dania V Hernandez | |

| Name | Address |
|---------------------------------|---------|
| Las Vegas Development Group LLC | |

Fees

Pre-trial Memorandum - PMEM (CIV)

| Description | Amount |
|----------------------|---------------|
| Filing Fee | \$0.00 |
| Filing Total: | \$0.00 |

| | |
|-------------------------------|--------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: \$3.50 | |

| | | | |
|----------------------------|-------------------------|--------------------|-------------|
| Party Responsible for Fees | Bank of New York Mellon | Transaction Amount | \$3.50 |
| Payment Account | Akerman LLP | Transaction Id | 6817532 |
| Filing Attorney | Tenesa Scaturro | Order Id | 005694539-0 |
| Transaction Response | Payment Complete | | |

Case # A-17-756215-C - Las Vegas Development Group LLC, Plaintiff

Envelope Information

Envelope Id

5701905

Submitted Date

2/25/2020 4:12 PM PST

Submitted User Name

akermanlas@akerman.com

Case Information

Location

Department 13

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

5/31/2017

Case #

A-17-756215-C

Assigned to Judge

Denton, Mark R.

Filings

Filing Type

EFileAndServe

Filing CodeJoint Pre-Trial Memorandum - JPTM
(CIV)**Filing Description**

Amended joint Pretrial Memorandum

Client Reference Number

325644

Filing on Behalf of

Bank of New York Mellon

Filing Status

Accepted

Accepted Date

2/25/2020 4:13 PM PST

Accept Comments

Auto Review Accepted

Lead Document

| File Name | Security | Download |
|----------------------------------|----------|-----------------------------|
| OTHER_[Hernandez,_Dania]_AMEN... | | Original File Court Copy |

eService Details

| Status | Name | Firm | Served | Date Opened |
|--------|------------------|-------------------------------------|--------|-----------------------|
| Sent | Roger P. Croteau | Roger P. Croteau & Associates, Ltd. | Yes | Not Opened |
| Sent | Croteau Admin | | Yes | 2/26/2020 9:32 AM PST |
| Sent | Ariel Stern | Akerman LLP | Yes | Not Opened |
| Sent | Rex Garner | Akerman LLP | Yes | Not Opened |
| Sent | Tenesa S Powell | Akerman LLP | Yes | Not Opened |
| Sent | Akerman LLP | Akerman LLP | Yes | Not Opened |

Parties with No eService

Name **Address**
Dania V Hernandez

Name **Address**
Las Vegas Development Group LLC

Name **Address**
Bank of New York Mellon

Fees

Joint Pre-Trial Memorandum - JPTM (CIV)

| Description | Amount |
|----------------------|---------------|
| Filing Fee | \$0.00 |
| Filing Total: | \$0.00 |

| | |
|------------------------|---------------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: | \$3.50 |

| | | | |
|-----------------------------------|-------------------------|---------------------------|-------------|
| Party Responsible for Fees | Bank of New York Mellon | Transaction Amount | \$3.50 |
| Payment Account | Akerman LLP | Transaction Id | 6826043 |
| Filing Attorney | Tenesa Scaturro | Order Id | 005701905-0 |
| Transaction Response | Payment Complete | | |

Case # A-17-756215-C - Las Vegas Development Group LLC, Plaintiff

Envelope Information

Envelope Id

5716371

Submitted Date

2/27/2020 4:14 PM PST

Submitted User Name

akermanlas@akerman.com

Case Information

Location

Department 13

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

5/31/2017

Case #

A-17-756215-C

Assigned to Judge

Denton, Mark R.

Filings

Filing Type

EFileAndServe

Filing Code

Stipulation - STIP (CIV)

Filing Description

Stipulated Facts for Trial

Client Reference Number**Filing on Behalf of**

Bank of New York Mellon

Filing Status

Accepted

Accepted Date

2/27/2020 4:15 PM PST

Accept Comments

Auto Review Accepted

Lead Document

| File Name | Security | Download |
|------------------------------------|----------|-----------------------------|
| TRIAL_PREP_[Hernandez,_Diana]_S... | | Original File Court Copy |

eService Details

Parties with No eService

| Name | Address |
|-------------------------|---------|
| Bank of New York Mellon | |

Fees

Stipulation - STIP (CIV)

| | |
|-------------------------------|--------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: \$3.50 | |

| | | | |
|----------------------------|-------------------------|--------------------|-------------|
| Party Responsible for Fees | Bank of New York Mellon | Transaction Amount | \$3.50 |
| Payment Account | Akerman LLP | Transaction Id | 6842158 |
| Filing Attorney | Rex Garner | Order Id | 005716371-0 |
| Transaction Response | Payment Complete | | |

Case # A-17-756215-C - Las Vegas Development Group LLC, Plaintiff

Envelope Information

Envelope Id

6222468

Submitted Date

6/23/2020 4:59 PM PST

Submitted User Name

akermanlas@akerman.com

Case Information

Location

Department 13

Category

Civil

Case Type

Other Title to Property

Case Initiation Date

5/31/2017

Case #

A-17-756215-C

Assigned to Judge

Denton, Mark R.

Filings

Filing Type

EFileAndServe

Filing Code

Notice of Intent - NI (CIV)

Filing Description

Notice of Intent to Present Records by
Certificate of Custodian of Records and
Notice of Intent to Present Witnesses by
Phone

Client Reference Number**Filing on Behalf of**

Bank of New York Mellon

Filing Status

Accepted

Accepted Date

6/23/2020 5:00 PM PST

Accept Comments

Auto Review Accepted

Lead Document

File Name

NTC_[Hernandez,_Dania]_Notice_of...

Security

Public Filed Document

Download

Original File
Court Copy

eService Details

| Status | Name | Firm | Served | Date Opened |
|--------|------------------|-------------------------------------|--------|------------------------|
| Sent | Roger P. Croteau | Roger P. Croteau & Associates, Ltd. | Yes | Not Opened |
| Sent | Croteau Admin | | Yes | 6/24/2020 10:57 AM PST |
| Sent | Natalie Winslow | Akerman LLP | Yes | Not Opened |
| Sent | Rex Garner | Akerman LLP | Yes | Not Opened |
| Sent | Akerman LLP | Akerman LLP | Yes | Not Opened |

Parties with No eService

Name
Dania V Hernandez

Address

Name
Las Vegas Development Group LLC

Address

Name
Bank of New York Mellon

Address

Fees

Notice of Intent - NI (CIV)

| Description | Amount |
|-----------------------------|--------|
| Filing Fee | \$0.00 |
| Filing Total: \$0.00 | |

| | |
|-------------------------------|--------|
| Total Filing Fee | \$0.00 |
| E-File Fee | \$3.50 |
| Envelope Total: \$3.50 | |

| | | | |
|-----------------------------------|-------------------------|---------------------------|-------------|
| Party Responsible for Fees | Bank of New York Mellon | Transaction Amount | \$3.50 |
| Payment Account | Akerman LLP | Transaction Id | 7352051 |
| Filing Attorney | Rex Garner | Order Id | 006222468-0 |
| Transaction Response | Payment Complete | | |

Nationwide Legal Nevada, LLC

1609 James M Wood Blvd
Los Angeles, CA 90015
(213) 249-9999 FAX (213) 249-9990



| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|---------------|------------|
| 210025 | July 24, 2020 | NV229118 |

Bill To:

AKERMAN LLP
1635 Village Center Circle Suite 200
Las Vegas, NV 89134

Patricia Larsen
(702) 634-5000
patricia.larsen@akerman.com
REF: [REDACTED]
POD DATE: 7/24/2020



Delivery Date/Time: 7/24/2020 10:22 AM

Delivered to: **Clark Place**
300 E. Clark Avenue
Las Vegas, NV 89101

| DESCRIPTION OF SERVICES RENDERED | QUANTITY | UNIT PRICE | AMOUNT |
|---|----------|------------|----------|
| Base Charge | 11.00 | 1.50 | 16.50 |
| Description: Delivered from 1635 Village Center Circle Suite 200 Las Vegas, NV, 89134 to Nick thomasetit @ 300 E. Clark Avenue Las Vegas, NV, 89101 | | | |
| | | TOTAL DUE | \$ 16.50 |

Thank you for choosing Nationwide Legal Nevada, LLC!

For proper credit please detach this section and return with your payment. **Remittance Copy**

| ACCOUNT NO: | DATE ENTERED: | CONTROL #: |
|-------------|---------------|------------|
| 210025 | July 24, 2020 | NV229118 |

Remit To:

Nationwide Legal Nevada, LLC
1609 James M Wood Blvd.
Los Angeles, CA 90015

TOTAL DUE:

\$ 16.50

1. PLEASE INCLUDE INVOICE NUMBER ON PAYMENT.

2. MAKE CHECKS PAYABLE TO **Nationwide Legal Nevada, LLC****Service Type: 010 - STANDARD DELIVERY (4 HRS)**

Order#: NV229118/INVOICEM

JA 0466

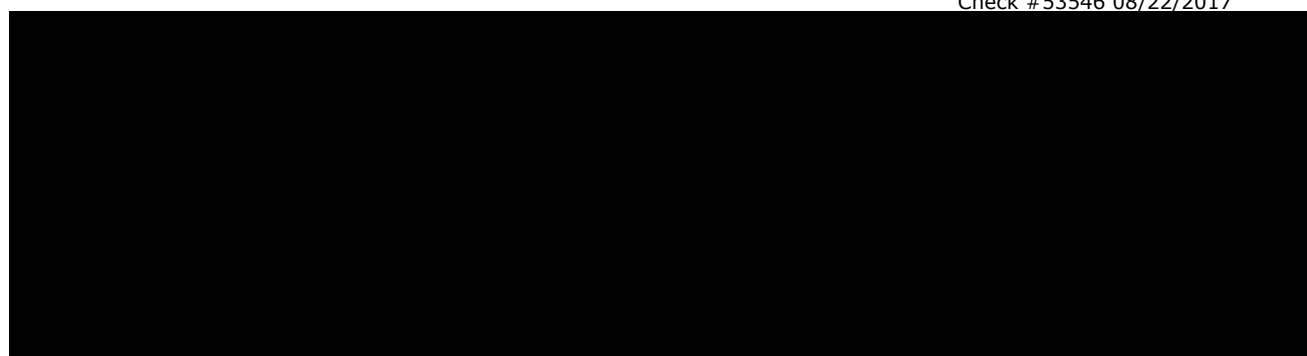
EXHIBIT B

EXHIBIT B

Recap of Cost Detail

| Date | Timekeeper | Name / Invoice Number | Code | Rate | Quantity | Amount | Description |
|-----------|------------|-------------------------|------|--------|----------|--------|--|
| 6/21/2017 | 1709 | WILLIAM P. HELLER | 299 | 60.00 | 1.00 | 60.00 | OTHER CHARGES |
| 7/27/2017 | | Invoice=9262258 | | 60.00 | 1.00 | 60.00 | - DOUGLAS E MILES INC - Sign Affidavits / Print emails to be Notarized. Inv#0329. PJ/4926 Vendor=DOUGLAS E MILES INC **USE V# 87117** Balance= .00 Amount= 910.00 Check #11374333 06/29/2017 |
| | | Voucher=1467519 Paid | | | | | |
| 6/30/2017 | 1709 | WILLIAM P. HELLER | 235 | 18.00 | 1.00 | 18.00 | DELIVERY SERVICE |
| 7/27/2017 | | Invoice=9262258 | | 18.00 | 1.00 | 18.00 | - NATIONWIDE LEGAL NEVADA LLC - 6/29/17; Order#NV84044; Roger Croteau to Akerman; Please pick up signed order and return to this office; Inv#00000001733. JH/5356 Vendor=NATIONWIDE LEGAL LLC Balance= .00 Amount= 3987.00 Check #11374879 07/13/2017 |
| | | Voucher=1470087 Paid | | | | | |
| 7/8/2017 | 1709 | WILLIAM P. HELLER | 272 | 3.50 | 1.00 | 3.50 | FILING FEES |
| 8/23/2017 | | Invoice=9271449 | | 3.50 | 1.00 | 3.50 | - BANK OF AMERICA - 114; E- File#1094681; 6/16/17; Clark County District Court; Initial Appearance Fee Disclosure. JH/5356 Vendor=BANK OF AMERICA Balance= .00 Amount= 9144.82 Check #53078 07/31/2017 |
| | | Voucher=1472610 Paid | | | | | |
| 7/8/2017 | 1709 | WILLIAM P. HELLER | 272 | 223.00 | 1.00 | 223.00 | FILING FEES |
| 8/23/2017 | | Invoice=9271449 | | 223.00 | 1.00 | 223.00 | - BANK OF AMERICA - 98; E- File#1092655; 6/15/17; Clark County District Court; The Bank of New York Mellon as Trustee's Answer to Plaintiff's Complaint and Counterclaims. JH/5356 Vendor=BANK OF AMERICA Balance= .00 Amount= 9144.82 Check #53078 07/31/2017 |
| | | Voucher=1472610 Paid | | | | | |
| 7/8/2017 | 1709 | WILLIAM P. HELLER | 272 | 10.19 | 1.00 | 10.19 | FILING FEES |
| 8/23/2017 | | Invoice=9271449 | | 10.19 | 1.00 | 10.19 | - BANK OF AMERICA - 102; E- File#1092655; 6/15/17; Clark County District Court; The Bank of New York Mellon as Trustee's Answer to Plaintiff's Complaint and Counterclaims. JH/5356 Vendor=BANK OF AMERICA Balance= .00 Amount= 9144.82 Check #53078 07/31/2017 |
| | | Voucher=1472610 Paid | | | | | |

| | | | | | | | |
|-----------|------|----------------------|-----|------|------|------|--|
| 7/8/2017 | 1709 | WILLIAM P. HELLER | 272 | 3.50 | 1.00 | 3.50 | FILING FEES |
| 8/23/2017 | | Invoice=9271449 | | 3.50 | 1.00 | 3.50 | - BANK OF AMERICA - 293; E-File#1178481; 7/6/17; Clark County District Court; Stipulation and Order to Extend Briefing Schedule and to Continue Hearing on Motion to Dismiss Counterclaim and for Summary Judgment. JH/5356 Vendor=BANK OF AMERICA Balance= .00 Amount= 9144.82 Check #53078 07/31/2017 |
| | | Voucher=1472610 Paid | | | | | |
| 8/8/2017 | 1709 | WILLIAM P. HELLER | 272 | 3.50 | 1.00 | 3.50 | FILING FEES - BANK OF AMERICA - 8, E-File#1182547, 7/7/17, Clark County District Court, Notice of Entry of Stipulation and Order to Extend Briefing Schedule and Continue Hearing on Motion to Dismiss Counterclaim and for Summary Judgment. JH/5356 Vendor=BANK OF AMERICA Balance= .00 Amount= 12768.94 Check #53546 08/22/2017 |
| 9/25/2017 | | Invoice=9281631 | | 3.50 | 1.00 | 3.50 | |
| | | Voucher=1476111 Paid | | | | | |
| 8/8/2017 | 1709 | WILLIAM P. HELLER | 272 | 3.50 | 1.00 | 3.50 | FILING FEES - BANK OF AMERICA - 176, E-File#1263611, 7/25/17, Clark County District Court, The Bank of New York Mellon, as Trustee's Opposition to Las Vegas Development Group, LLC's Motion to Dismiss and Motion for Summary Judgment. JH/5356 Vendor=BANK OF AMERICA Balance= .00 Amount= 12768.94 Check #53546 08/22/2017 |
| 9/25/2017 | | Invoice=9281631 | | 3.50 | 1.00 | 3.50 | |
| | | Voucher=1476111 Paid | | | | | |



| | | | | | | | |
|------------|------|----------------------|-----|-------|------|-------|---|
| 12/22/2017 | 1709 | WILLIAM P. HELLER | 235 | 55.00 | 1.00 | 55.00 | DELIVERY SERVICE - NATIONWIDE LEGAL NEVADA LLC |
| 1/31/2018 | | Invoice=9315866 | | 55.00 | 1.00 | 55.00 | - 12/19/17, Order#NV109321, Akerman to Alessi & Koenig, Alternative Dispute Resolution Program Overview, Inv#00000003717. JH/5356 Vendor=NATIONWIDE LEGAL LLC Balance= .00 Amount= 6039.10 Check #11382330 01/04/2018 |
| | | Voucher=1496506 Paid | | | | | |

| | | | | | | | |
|-----------|------|-------------------------|-----|------|------|------|--|
| 2/8/2018 | 1709 | WILLIAM P. HELLER | 272 | 3.50 | 1.00 | 3.50 | FILING FEES |
| 3/29/2018 | | Invoice=9333328 | | 3.50 | 1.00 | 3.50 | - BANK OF AMERICA - 409; E-File#2061049; 1/26/18; Clark County District Court; Notice of Completion of NRED Mediation. JH/5356 |
| | | Voucher=1505120 Paid | | | | | Vendor=BANK OF AMERICA Balance= .00 Amount= 15042.93 Check #58340 03/01/2018 |

| | | | | | | | |
|-----------|------|-------------------------|-----|-------|------|-------|---|
| 5/25/2018 | 1709 | WILLIAM P. HELLER | 271 | 55.00 | 1.00 | 55.00 | SERVICE OF PROCESS |
| 6/20/2018 | | Invoice=9359777 | | 55.00 | 1.00 | 55.00 | - NATIONWIDE LEGAL LLC - 5/20/18; Order#NV132026; Akerman to Alessi & Koenig; Subpoena Duces Tecum to Alessi & Koenig; Inv#00000005220. JH/5356 |
| | | Voucher=1520822 Paid | | | | | Vendor=NATIONWIDE LEGAL LLC Balance= .00 Amount= 4601.29 Check #11389235 06/07/2018 |

| | | | | | | | |
|-----------|------|-------------------------|-----|-------|------|-------|---|
| 5/25/2018 | 1709 | WILLIAM P. HELLER | 271 | 55.00 | 1.00 | 55.00 | SERVICE OF PROCESS |
| 6/20/2018 | | Invoice=9359777 | | 55.00 | 1.00 | 55.00 | - NATIONWIDE LEGAL LLC - 5/20/18; Order#NV132027; Akerman to Hidden Canyon Owners Association; Subpoena Duces Tecum to Hidden Canyon Owners Association; Inv#00000005220. JH/5356 |
| | | Voucher=1520822 Paid | | | | | Vendor=NATIONWIDE LEGAL LLC Balance= .00 Amount= 4601.29 Check #11389235 06/07/2018 |

| | | | | | | | |
|------------|------|-------------------------|-----|--------|------|--------|--|
| 11/9/2018 | 1709 | WILLIAM P. HELLER | 299 | 750.00 | 1.00 | 750.00 | OTHER CHARGES |
| 12/28/2018 | | Invoice=9415853 | | 750.00 | 1.00 | 750.00 | - R SCOTT DUGAN APPRAISAL CO INC - Property Appraisal of 1524 Highfield Court, N. Las Vegas, NV 89032. BS/5479 |
| | | Voucher=1545460 Paid | | | | | Vendor=R SCOTT DUGAN APPRAISAL CO INC Balance= .00 Amount= 750.00 Check #11396253 11/15/2018 |

| | | | | | | | |
|------------|------|-------------------|-----|-------|------|-------|---|
| 11/15/2018 | 1709 | WILLIAM P. HELLER | 271 | 88.43 | 1.00 | 88.43 | SERVICE OF PROCESS |
| 12/28/2018 | | Invoice=9415853 | | 88.43 | 1.00 | 88.43 | - AMERICAN LEGAL INVESTIGATION S - 11/12/18; Order#55095854; Akerman to Alessi & Koenig; Please Serve the Subpoena for the Deposition of Alessi & Koenig; Inv#37019531. JH/5356 |
| | | Voucher=1546993 | | | | | Vendor=AMERICAN LEGAL INVESTIGATION SERVICES NE |

| | | | | | | |
|------------|------|-------------------------|-----|--------|------|---|
| | | Paid | | | | Balance= .00 Amount= 7032.17 Check #11396718 11/29/2018 |
| 12/20/2018 | 1709 | WILLIAM P. HELLER | 275 | 426.90 | 1.00 | 426.90 COURT REPORTER - OASIS REPORTING SVCS LLC - |
| 1/29/2019 | | Invoice=9424326 | | 426.90 | 1.00 | 426.90 Original and 1 Certified Copy of Transcript & Index of David Alessi taken on 11/29/18. Inv#37991. TP/4842 Vendor=OASIS REPORTING SVCS LLC Balance= .00 Amount= 426.90 Check #11397967 12/27/2018 |
| | | Voucher=1551861 Paid | | | | |
| 1/25/2019 | 1709 | WILLIAM P. HELLER | 235 | 3.00 | 1.00 | 3.00 DELIVERY SERVICE |
| 2/25/2019 | | Invoice=9432756 | | 3.00 | 1.00 | 3.00 - NATIONWIDE LEGAL LLC - 1/24/19; Order#NV165404; Akerman to Clark County District Court; Please certify the attached document and return to this office and advance fees; Inv#00000008042. JH/5356 Vendor=NATIONWIDE LEGAL LLC Balance= .00 Amount= 2758.50 Check #11399499 01/31/2019 |
| | | Voucher=1557737 Paid | | | | |
| 1/28/2019 | 1709 | WILLIAM P. HELLER | 273 | 44.50 | 1.00 | 44.50 RECORDING FEES |
| 2/25/2019 | | Invoice=9432756 | | 44.50 | 1.00 | 44.50 - SIMPLIFILE - 1/28/19; Hernandez; Clark County; Lis Pendens; Inv#201901280000990. JH/5356 Vendor=SIMPLIFILE Balance= .00 Amount= 44.50 Check #67710 02/04/2019 |
| | | Voucher=1557929 Paid | | | | |
| 2/8/2019 | 1709 | WILLIAM P. HELLER | 272 | 3.50 | 1.00 | 3.50 FILING FEES |
| 3/15/2019 | | Invoice=9439941 | | 3.50 | 1.00 | 3.50 - BANK OF AMERICA - 149; E- File#3733129; 1/22/19; District of Clark County; Notice of Lis Pendens. JH/5356 Vendor=BANK OF AMERICA Balance= .00 Amount= 12001.89 Check #68248 02/19/2019 |
| | | Voucher=1560612 Paid | | | | |
| 4/8/2019 | 1709 | WILLIAM P. HELLER | 272 | 200.00 | 1.00 | 200.00 FILING FEES |
| 5/21/2019 | | Invoice=9458903 | | 200.00 | 1.00 | 200.00 - BANK OF AMERICA - 67; E- File#4001321; 3/18/19; Clark County District Court; Motion for Summary Judgment. JH/5356 Vendor=BANK OF AMERICA Balance= .00 Amount= 8464.52 Check #70358 04/29/2019 |
| | | Voucher=1571993 Paid | | | | |
| 4/8/2019 | 1709 | WILLIAM P. HELLER | 272 | 9.50 | 1.00 | 9.50 FILING FEES |
| 5/21/2019 | | Invoice=9458903 | | 9.50 | 1.00 | 9.50 - BANK OF AMERICA - 68; E- File#4001321; 3/18/19; Clark County District Court; Motion for Summary Judgment. JH/5356 Vendor=BANK OF AMERICA Balance= .00 Amount= 8464.52 Check #70358 04/29/2019 |
| | | Voucher=1571993 Paid | | | | |
| 5/10/2019 | 1709 | WILLIAM P. HELLER | 235 | 15.00 | 1.00 | 15.00 DELIVERY SERVICE |
| 6/25/2019 | | Invoice=9468442 | | 15.00 | 1.00 | 15.00 - NATIONWIDE LEGAL LLC - 5/6/19; |

| | | | | | | | |
|-----------|------|-------------------------|-----|-------|------|-------|--|
| | | | | | | | Order#NV180474; Croteau Law to Akerman; Please pick up signed SAO and return to this office; Inv#00000009685. JH/5356 Vendor=NATIONWIDE LEGAL LLC Balance= .00 Amount= 3021.50 Check #11404397 05/23/2019 |
| | | Voucher=1575803 Paid | | | | | |
| 5/10/2019 | 1709 | WILLIAM P. HELLER | 235 | 25.00 | 1.00 | 25.00 | DELIVERY SERVICE |
| 6/25/2019 | | Invoice=9468442 | | 25.00 | 1.00 | 25.00 | - NATIONWIDE LEGAL LLC - 5/7/19; Order#NV180679; Akerman to Clark County District Court; Please deliver Courtesy Copy (1) Motion for Summary Judgment (2) Opposition to Motion for; Inv#00000009685. JH/5356 Vendor=NATIONWIDE LEGAL LLC Balance= .00 Amount= 3021.50 Check #11404397 05/23/2019 |
| | | Voucher=1575803 Paid | | | | | |
| 5/24/2019 | 1709 | WILLIAM P. HELLER | 235 | 25.00 | 1.00 | 25.00 | DELIVERY SERVICE |
| 6/25/2019 | | Invoice=9468442 | | 25.00 | 1.00 | 25.00 | - NATIONWIDE LEGAL LLC - 5/24/19; Order#NV183542; Akerman to Clark County District Court; Please deliver Courtesy Copy (1) Motion for Summary Judgment (2) Opposition to Motion for Summary Judgment; Inv#00000009884. JH/5356 Vendor=NATIONWIDE LEGAL LLC Balance= .00 Amount= 4617.50 Check #11404828 05/31/2019 |
| | | Voucher=1577551 Paid | | | | | |
| 6/8/2019 | 1709 | WILLIAM P. HELLER | 272 | 3.50 | 1.00 | 3.50 | FILING FEES |
| 7/24/2019 | | Invoice=9477070 | | 3.50 | 1.00 | 3.50 | - BANK OF AMERICA - 40; E-File#4293224; 5/14/19; Clark County District Court; Notice of Entry of Stipulation and Order to Extend Briefing Schedule and Continue Hearing on Motion for Summary Judgment. JH/5356 Vendor=BANK OF AMERICA Balance= .00 Amount= 10905.98 Check #71889 06/14/2019 |
| | | Voucher=1579787 Paid | | | | | |
| 6/8/2019 | 1709 | WILLIAM P. HELLER | 272 | 3.50 | 1.00 | 3.50 | FILING FEES |
| 7/24/2019 | | Invoice=9477070 | | 3.50 | 1.00 | 3.50 | - BANK OF AMERICA - 3; E-File#4265486; 5/8/19; Clark County District Court; Stipulation and Order to Extend Briefing Schedule and Continue Hearing on Motion for Summary Judgment. JH/5356 Vendor=BANK OF AMERICA Balance= .00 Amount= 10905.98 Check #71889 06/14/2019 |
| | | Voucher=1579787 Paid | | | | | |
| 6/8/2019 | 1709 | WILLIAM P. HELLER | 272 | 3.50 | 1.00 | 3.50 | FILING FEES |
| 7/24/2019 | | Invoice=9477070 | | 3.50 | 1.00 | 3.50 | - BANK OF AMERICA - 140; E-File#4371379; 5/30/19; Clark County District Court; Stipulation and Order to Continue Hearing on Motion for Summary Judgment. |

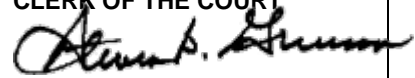
| | | | | | | |
|-----------|------|-------------------------|-----|------|------|---|
| | | Voucher=1579787 Paid | | | | JH/5356 Vendor=BANK OF AMERICA Balance= .00 Amount= 10905.98 Check #71889 06/14/2019 |
| 6/8/2019 | 1709 | WILLIAM P. HELLER | 272 | 3.50 | 1.00 | 3.50 FILING FEES |
| 7/24/2019 | | Invoice=9477070 | | 3.50 | 1.00 | 3.50 - BANK OF AMERICA - 157; E- File#4377330; 5/31/19; Clark County District Court; Notice of Entry of Order to Continue Hearing on Motion for Summary Judgment. JH/5356 Vendor=BANK OF AMERICA Balance= .00 Amount= 10905.98 Check #71889 06/14/2019 |
| | | Voucher=1579787 Paid | | | | |
| 7/8/2019 | 1709 | WILLIAM P. HELLER | 272 | 3.50 | 1.00 | 3.50 FILING FEES |
| 8/26/2019 | | Invoice=9486609 | | 3.50 | 1.00 | 3.50 - BANK OF AMERICA - 205; E- File#4550988; 7/5/19; Clark County District Court; Reply Supporting Motion for Summary Judgment. JH/5356 Vendor=BANK OF AMERICA Balance= .00 Amount= 12786.37 Check #72677 07/12/2019 |
| | | Voucher=1583946 Paid | | | | |

| | | | | | | |
|-----------|------|-------------------------|-----|-------|------|---|
| 7/12/2019 | 1709 | WILLIAM P. HELLER | 235 | 25.00 | 1.00 | 25.00 DELIVERY SERVICE |
| 8/26/2019 | | Invoice=9486609 | | 25.00 | 1.00 | 25.00 - NATIONWIDE LEGAL LLC - 7/8/19; Order#NV189507-01; Akerman to Clark County District Court; Please deliver Courtesy Copy- Reply Supporting MSJ to Dept. 13; Inv#00000010824. JH/5356 Vendor=NATIONWIDE LEGAL LLC Balance= .00 Amount= 2704.00 Check #11407057 07/25/2019 |
| | | Voucher=1585805 Paid | | | | |

| | | | | | | | |
|-----------|------|-------------------------|-----|--------|------|--------|--|
| 2/8/2020 | 1709 | WILLIAM P. HELLER | 273 | 4.83 | 1.00 | 4.83 | RECORDING FEES - BANK OF AMERICA - 134Q; Reference#325644- Hernandez; 1/31/2020; DataTree; Retrieval of Recorded Property Documents. JH/5356 Vendor=BANK OF AMERICA Balance= .00 Amount= 8749.99 Check #79673 02/26/2020 |
| 3/25/2020 | | Invoice=9550076 | | 4.83 | 1.00 | 4.83 | |
| | | Voucher=1620008 Paid | | | | | |
| 2/29/2020 | 1709 | WILLIAM P. HELLER | 271 | 121.93 | 1.00 | 121.93 | SERVICE OF PROCESS - NATIONWIDE LEGAL LLC - 2/25/2020; Order#NV221525; Akerman to Yvette Sauceda; Please serve the attached Trial Subpoena, advance witness fee; Inv#00000016056. JH/5356 Vendor=NATIONWIDE LEGAL LLC Balance= .00 Amount= 2603.06 Check #11416730 03/13/2020 |
| 3/25/2020 | | Invoice=9550076 | | 121.93 | 1.00 | 121.93 | |
| | | Voucher=1622405 Paid | | | | | |
| 2/29/2020 | 1709 | WILLIAM P. HELLER | 271 | 120.00 | 1.00 | 120.00 | SERVICE OF PROCESS - NATIONWIDE LEGAL LLC - 2/25/2020; Order#NV221528; Akerman to David Alessi- c/o HOA Lawyers Group; Please serve the attached Trial Subpoena, advance witness fee; Inv#00000016056. JH/5356 Vendor=NATIONWIDE LEGAL LLC Balance= .00 Amount= 2603.06 Check #11416730 03/13/2020 |
| 3/25/2020 | | Invoice=9550076 | | 120.00 | 1.00 | 120.00 | |
| | | Voucher=1622405 Paid | | | | | |

| | | | | | | | |
|-----------|------|-------------------------|-----|--------|------|--------|--|
| 3/4/2020 | 1709 | WILLIAM P. HELLER | 299 | 487.50 | 1.00 | 487.50 | OTHER CHARGES - HOLO DISCOVERY - Trial Support and Exhibit Preparation. Inv#9330. CH/5623 Vendor=HOLO DISCOVERY Balance= .00 Amount= 487.50 Check #11416771 03/13/2020 |
| 4/20/2020 | | Invoice=9560265 | | 487.50 | 1.00 | 487.50 | |
| | | Voucher=1621683 Paid | | | | | |
| 3/8/2020 | 1709 | WILLIAM P. HELLER | 272 | 3.50 | 1.00 | 3.50 | FILING FEES - BANK OF AMERICA - 117; E- File#5716371; 2/27/2020; Clark County District Court; Stipulated Facts for Trial. JH/5356 |
| 4/20/2020 | | Invoice=9560265 | | 3.50 | 1.00 | 3.50 | |

| | | | | | | | |
|-----------|------|-------------------------|-----|-------|------|-------|---|
| | | Voucher=1623364 Paid | | | | | Vendor=BANK OF AMERICA Balance= .00 Amount= 6432.36 Check #80430 03/20/2020 |
| 3/8/2020 | 1709 | WILLIAM P. HELLER | 272 | 3.50 | 1.00 | 3.50 | FILING FEES |
| 4/20/2020 | | Invoice=9560265 | | 3.50 | 1.00 | 3.50 | - BANK OF AMERICA - 82; E- File#5694539; 2/24/2020; Clark County District Court; Individual Pre-Trial Memorandum. JH/5356 |
| | | Voucher=1623364 Paid | | | | | Vendor=BANK OF AMERICA Balance= .00 Amount= 6432.36 Check #80430 03/20/2020 |
| 3/8/2020 | 1709 | WILLIAM P. HELLER | 272 | 3.50 | 1.00 | 3.50 | FILING FEES |
| 4/20/2020 | | Invoice=9560265 | | 3.50 | 1.00 | 3.50 | - BANK OF AMERICA - 96; E- File#5701905; 2/25/2020; Clark County District Court; Amended Joint Pretrial Memorandum. JH/5356 |
| | | Voucher=1623364 Paid | | | | | Vendor=BANK OF AMERICA Balance= .00 Amount= 6432.36 Check #80430 03/20/2020 |
| 7/8/2020 | 1709 | WILLIAM P. HELLER | 272 | 3.50 | 1.00 | 3.50 | FILING FEES |
| 8/21/2020 | | Invoice=9596595 | | 3.50 | 1.00 | 3.50 | - BANK OF AMERICA - 35; E- File#6222468; 6/23/20; Clark County District Court; Notice of Intent to Present Records by Certificate of Custodian of Records and Notice of Intent to Present Witnesses by Phone. JH/5356 |
| | | Voucher=1632585 Paid | | | | | Vendor=BANK OF AMERICA Balance= .00 Amount= 4446.17 Check #81927 07/23/2020 |
| 7/24/2020 | 1709 | WILLIAM P. HELLER | 235 | 16.50 | 1.00 | 16.50 | DELIVERY SERVICE |
| 8/21/2020 | | Invoice=9596595 | | 16.50 | 1.00 | 16.50 | - NATIONWIDE LEGAL LLC - 7/23/20; Order#NV229118; Akerman to Clark Place; Pick up flash drive from our office and deliver to court; Inv#00000019560. JH/5356 |
| | | Voucher=1634318 Paid | | | | | Vendor=NATIONWIDE LEGAL LLC Balance= .00 Amount= 1662.50 * Check #11421255 09/03/2020 |



NJUD
ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
REX D. GARNER, ESQ.
Nevada Bar No. 9401
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: ariel.stern@akerman.com
Email: natalie.winslow@akerman.com
Email: rex.garner@akerman.com

*Attorneys for The Bank of New York Mellon f/k/a
The Bank of New York, as Trustee for the
Certificateholders of CWABS, Inc., Asset-Backed
Certificates, Series 2006-7*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC, a
Nevada limited liability company,

Plaintiff,

vs.

DANIA V. HERNANDEZ, an individual; THE
BANK OF NEW YORK MELLON F/K/A THE
BANK OF NEW YORK, AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF CWABS,
INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-7, a national banking association;
DOE individuals I through XX; and ROE
CORPORATIONS I through XX,

Defendants.

Case No.: A-17-756215-C

Dept. No.: XIII

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
JUDGMENT**

1 THE BANK OF NEW YORK MELLON F/K/A
2 THE BANK OF NEW YORK, AS TRUSTEE
3 FOR THE CERTIFICATEHOLDERS OF
4 CWABS, INC., ASSET-BACKED
5 CERTIFICATES, SERIES 2006-7,

6 Counterclaimant,

7 vs.

8 LAS VEGAS DEVELOPMENT GROUP, LLC, a
9 Nevada limited liability company,

10 Counterdefendant.

11 **TO: ALL PARTIES OF RECORD AND THEIR COUNSEL:**

12 PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law, and Judgment has
13 been entered on September 17, 2020, a copy of which is attached hereto.

14 DATED October 1, 2020.

15 **AKERMAN LLP**

16 /s/ Rex D. Garner, Esq.

17 ARIEL E. STERN, ESQ.

18 Nevada Bar No. 8276

19 NATALIE L. WINSLOW, ESQ.

20 Nevada Bar No. 12125

21 REX D. GARNER, ESQ.

22 Nevada Bar No. 9401

23 1635 Village Center Circle, Suite 200

24 Las Vegas, Nevada 89134

25 *Attorneys for The Bank of New York Mellon f/k/a The*
26 *Bank of New York, as Trustee for the Certificateholders*
27 *of CWABS, Inc., Asset-Backed Certificates, Series 2006-*
28 *7*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of October, 2020 and pursuant to NRCP 5(b), I served via the Clark County electronic filing system a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**, addressed to:

Roger P. Croteau & Associates, Ltd.

Roger P. Croteau croteaulaw@croteaulaw.com

Croteau Admin receptionist@croteaulaw.com

/s/ Patricia Larsen

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A

Heather S. Hume
CLERK OF THE COURT

1 **FFCL**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4 LAS VEGAS DEVELOPMENT GROUP,
5 LLC, a Nevada limited liability company,

Case No.: A-17-756215-C
Dept. No.: XIII

6 Plaintiff,

7 vs.

8 DANIA V. HERNANDEZ, an individual;
9 THE BANK OF NEW YORK MELLON
F/K/A THE BANK OF NEW YORK, AS
10 TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWABS,
11 INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-7, a national banking
12 association; DOE individuals I through XX;
and ROE CORPORATIONS I through XX,

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND JUDGMENT**

13 Defendants.

14 THE BANK OF NEW YORK MELLON
F/K/A THE BANK OF NEW YORK, AS
15 TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWABS,
16 INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-7,

17 Counterclaimant,

18 vs.

19 LAS VEGAS DEVELOPMENT GROUP,
20 LLC, a Nevada limited liability company,

21 Counterdefendant.

22 THIS MATTER having come on for non-jury trial on July 28 and 29, 2020, Plaintiff
23 appearing by and through Roger P. Croteau, Esq. of the firm of Roger P. Croteau &
24 Associates, Ltd., and the entity Defendants appearing by and through Rex D. Garner, Esq. of
25 the firm of Akerman LLP;

26 AND, the Court having heard the testimony of witnesses and received other evidence
27 and heard the argument of counsel and having taken the matter under advisement pending
28

1 submission of proposed findings of fact and conclusions of law and judgment, and being now
2 fully advised in the premises;

3 NOW, THEREFORE the Court hereby makes the following

4 **FINDINGS OF FACT**

5 ***The Subject Property, Note, and Deed of Trust***

6 1. On April 10, 2006 Dania Hernandez purchased the property located at 1524
7 Highfield Court, Las Vegas, Nevada, financed with a loan from Countrywide Home Loans,
8 Inc. in the amount of \$208,000.00. The loan was evidenced by a note and secured by a deed
9 of trust recorded against the property on April 19, 2006. **Trial Ex. 26; Stipulated Facts, ¶**
10 **1.**¹

11 2. The deed of trust was assigned to BoNYM in 2011 via a recorded assignment
12 of deed of trust. **Trial Ex. 32; Stipulated Facts, ¶ 2.**

13 ***The HOA Foreclosure and the Tender***

14 3. The property is located in the Hidden Canyon Owners Association (HOA) and
15 is subject to the HOA's covenants, conditions, and restrictions (CC&Rs). **Stipulated Facts, ¶**
16 **3.**

17 4. Hernandez failed to pay the HOA all amounts due to it, so the HOA, through
18 its agent, Alessi & Koenig, LLC (Alessi), recorded a notice of delinquent assessment lien on
19 June 3, 2009. Per the notice, the amount due to HOA was \$571.85. **Trial Ex. 27; Stipulated**
20 **Facts, ¶ 4.**

21 5. The HOA, through its agent Alessi, recorded a notice of default on September
22 2, 2009.² The notice states the amount due to HOA was \$1,404.49. **Trial Ex. 28; Stipulated**
23 **Facts, ¶ 5.**

24
25 ¹ The stipulated facts were filed February 27, 2020.

26 ² Assembly Bill 204 in the 2009 legislative session amended NRS 116.3116, increasing the
27 superpriority from 6 months to 9 months. This bill took effect October 1, 2009. The action to
28 enforce the lien in this case, having started before October 1, 2009, means the HOA's
superpriority lien in this case was limited to 6 months. *See Saticoy Bay LLC Series 2021*
Gray Eagle Way v. JPMorgan Chase Bank, N.A., 388 P.3d 226, 231, 133 Nev. Adv. Op. 3
(2017) (serving a notice of delinquent assessments constitutes institution of an action to
enforce the lien) ("As such, a party has instituted "proceedings to enforce the lien" for

1 6. On October 20, 2009, Miles Bauer Bergstrom & Winters LLP (**Miles Bauer**),
2 as the attorneys of MERS, as nominee for BAC Home Loans Servicing, LP, as then-servicer
3 of the loan, requested a breakdown of the HOA arrears from Alessi, and the identification of
4 the superpriority amount owed to HOA. **Stipulated Facts, ¶ 6.**

5 7. On or about December 17, 2009, Alessi provided a facsimile cover letter and
6 Resident Transaction Detail, which revealed the HOA charged assessments for common
7 expenses of \$118.00 annually, and showing the account had no charges for nuisance
8 abatement or exterior maintenance. **Stipulated Facts, ¶¶ 7–9.** Such item did not give a
9 monthly breakdown, but such a breakdown would amount to \$9.83 monthly.

10 8. On January 21, 2010, Miles Bauer sent a letter, together with a check payable
11 to Alessi in the amount of \$88.50 to Alessi, purporting to represent 9 months of assessments,
12 *i.e.* nine-twelfths of the HOA annual assessment of \$118.00. **Trial Ex. 41; Stipulated Facts,**
13 **¶ 10.**

14 9. Alessi refused Miles Bauer's payment. **Trial Ex. 41; Stipulated Facts, ¶ 11.**

15 10. At the time Alessi rejected Miles Bauer's payment, it explained its reasoning
16 for doing so in a letter found within Alessi's file for this property's foreclosure, which had
17 nothing to do with a 9-month versus 12-month difference, but instead with Alessi's
18 understanding and belief that the superpriority included its fees and costs in addition to
19 assessments owed:

20 ". . . we are unable to accept the partial payments offered by your clients as
21 payment in full. . . . case authority exists which provides that the association's lien
22 also includes the reasonable cost of collection of those assessments.

23 If the association were to accept your offer that only includes assessments, Alessi
24 & Koenig would be left with a lien against the association for our substantial out-
of-pocket expenses and fees generated. . . ."

Trial Ex. 41 at 41-069; see also Trial Ex. 40.

25
26
27 purposes of NRS 116.3116(6) when it provides the notice of delinquent assessment. This
28 interpretation conforms to our decision in *SFR*, where we stated that "[t]o initiate foreclosure
under NRS 116.31162 through NRS 116.31168, a Nevada HOA must notify the owner of the
delinquent assessments.").

1 11. Alessi & Koenig's letter did not identify a different dollar amount that it
2 believed was the superpriority. **Trial Ex. 41** at 41-069.

3 12. Alessi & Koenig reiterated their policy two years later in another letter to
4 Miles Bauer:

5 ". . . In the opinion, the Commission concluded that associations may collect, as
6 part of the super priority lien, the costs of collecting as authorized by NRS
7 116.310313.

8 Furthermore, the nine-month super-priority is not triggered until the beneficiary
under the first deed of trust forecloses."

9 **Trial Ex. 39.**

10 13. The HOA, through its agent Alessi, recorded a notice of sale on August 9,
11 2010. The notice states the amount due to HOA was \$2,862.23. **Trial Ex. 29; Stipulated**
12 **Facts, ¶ 12.**

13 14. Alessi, on behalf of the HOA, auctioned the property on March 2, 2011, and
14 the HOA won the bidding with a credit bid for all amounts owed to it. **Testimony of Yvette**
15 **Sauceda** (HOA representative). A foreclosure deed in favor of the HOA was recorded March
16 3, 2011. **Trial Ex. 30; Stipulated Facts, ¶ 13.**

17 15. Because the HOA credit bid, no money changed hands as a consequence of the
18 auction, and the assessment balance to the HOA remained unpaid. **Testimony of Yvette**
19 **Sauceda** (HOA representative); *see also* **Trial Ex. 46** at 46-029.

20 16. Not until weeks later through a non-NRS-116 sale to LVDG did the HOA get
21 funds and apply them to the assessments that comprised the superpriority. **Testimony of**
22 **Yvette Saucedo.**

23 17. On March 30, 2011, the HOA quitclaimed its interest to LVDG in exchange
24 for \$4,500.00. **Trial Ex. 31; Stipulated Facts, ¶ 14.**

25 18. At the time of the HOA's foreclosure sale, the property's fair market value was
26 \$76,000.00, meaning both the auction price and the amount LVDG paid were less than 6% of
27 the fair market value. **Stipulated Facts, ¶ 15.**

1 Any of the foregoing Findings of Fact that are more appropriately to be considered
2 Conclusions of Law shall be so deemed.

3 FROM the foregoing Findings of Fact, the Court hereby makes the following

4 **CONCLUSIONS OF LAW**

5 ***Burdens of Proof***

6 1. As explained by the Nevada Supreme Court, "the burden of proof rests with
7 the party seeking to quiet title in its favor." *Shadow Wood Homeowners Ass'n, Inc. v. N.Y.*
8 *Cnty. Bancorp.*, 132 Nev. 49, 366 P.3d 1105 (2016) (citing *Breliant v. Preferred Equities*
9 *Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996)); *see also Res. Grp., LLC as Tr. of E.*
10 *Sunset Rd. Tr. v. Nevada Ass'n Servs., Inc.*, 135 Nev. Adv. Op. 8, 437 P.3d 154, 156 (2019)
11 ("each party to a quiet title action has the burden of demonstrating superior title in himself or
12 herself").

13 2. LVDG bears the burden of proof on all its claims against defendants, and
14 BoNYM bears the burden of proof on its counterclaims and defenses.

15 3. Further, deed recitals are not conclusive. *See Shadow Wood, supra*. To the
16 extent there is any evidentiary value found in deed recitals, it is limited only to "default,
17 notice, and publication," and statutory prerequisites to the sale. *Id.* The recitals do not
18 address the issues in this case, including tender and the equities of the sale. *Shadow Wood*,
19 132 Nev., Adv. Op. 5, 366 P.3d at 1110 (explaining deed recitals do not eliminate equitable
20 relief).

21 ***Bank of America's tender did not itself preserve the deed of trust***

22 4. Under NRS 116.3116(2), an association's lien is split "into two pieces, a
23 superpriority piece and a sub-priority piece." *SFR Investments Pool 1, LLC v. U.S. Bank,*
24 *N.A.*, 130 Nev. 742, 745, 334 P.3d 408, 411 (2014). If a senior deed of trust holder pays or
25 tenders payment of the superpriority before the HOA's sale, the superpriority piece is
26 satisfied, meaning the HOA's auction cannot affect the senior deed of trust. *Bank of America,*
27 *N.A. v. SFR Invs. Pool 1, LLC*, 134 Nev. Adv. Op. 72, 427 P.3d 113 (2018) (*Diamond Spur*)
28

1 ("Bank of America's tender cured the default and prevented foreclosure as to the superpriority
2 portion of the HOA's lien by operation of law.").

3 5. Just as it did in *Diamond Spur*, here Miles Bauer sent a letter to the HOA's
4 collection agent, seeking to determine the superpriority amount of the HOA's lien and
5 "offer[ing] to pay that sum upon presentation of adequate proof of the same by the HOA."
6 **Trial Ex. 41; Stip. Facts**, at ¶ 6. In response, Alessi provided a ledger. **Trial Ex. 41; Stip.**
7 **Facts**, at ¶ ¶ 7–9.

8 6. Based on the ledger, which showed the account had no nuisance or
9 maintenance charges under NRS 116.310312, but which did not identify a superpriority
10 amount, Miles Bauer sent a check purporting to represent 9 months of assessments. *See*
11 *Finding of Fact No. 8, supra*. **Trial Ex. 41; Stipulated Facts, ¶ 10.**

12 7. Alessi rejected the payment. *See id.*; **Stip. Facts**, at ¶ 11. The Nevada
13 Supreme Court has recently held that if an HOA makes assessments payable annually, the
14 entire assessment amount can have superpriority status if it becomes due within the nine
15 months preceding the notice of delinquent assessments, which is the case here. *Anthony S.*
16 *Noonan IRA, LLC v. U.S. Bank Nat'l Ass'n EE*, 136 Nev. Adv. Op. 41, 466 P.3d 1276 (2020).

17 8. The Nevada Supreme Court has confirmed that Miles Bauer could rely on the
18 information provided by an association's collection agent in calculating their superpriority
19 tenders in *Diamond Spur*, explaining:

20
21 The record establishes that Bank of America tendered the correct amount to
22 satisfy the superpriority portion of the lien on the property. **Pursuant to the**
23 **HOA's accounting**, nine months' **worth** of assessment fees totaled \$720, **and**
24 **the HOA did not indicate that the property had any charges for**
25 **maintenance or nuisance abatement**. Bank of America sent the HOA a
26 check for \$720 in June 2012. On the record presented, this was the full
27 superpriority amount.

28 134 Nev. at 607 (emphasis added). Earlier in the opinion, the Court stated that Miles Bauer
tendered the correct superpriority amount "based on the HOA's representations" to Miles
Bauer. *See id.*, at 605; *see also* 74 AM. JUR. 2d *Tender* § 4 (explaining that offering to pay a
specific amount is "excused" if "the amount depends on the balance shown by accounts that
are inaccessible to the party from whom the tender would otherwise be required . . . and such

1 information is ascertainable only from the accounts of the creditor, who does not disclose the
2 required information to the debtor"). Miles Bauer had a right to rely on the document
3 provided to them by Alessi to calculate the superpriority amount, and Alessi never suggested
4 a different dollar amount. Moreover, the Supreme Court's use of the term "worth" supports
5 the notion that the yearly assessment in this case could be properly apportioned to determine
6 the monetary amount represented by nine months. However, the Nevada Supreme Court has
7 otherwise ruled in *Noonan, supra*.

8 9. However, Alessi rejected the tender check not because Miles Bauer's
9 superpriority calculation was off by a few dollars—Alessi rejected the check because it was
10 not for the full amount secured by the HOA's **entire** lien (both subpriority and superpriority
11 portions), just as its letter to Miles Bauer said. **Trial Ex. 41** at 41-069.

12 10. The Nevada Supreme Court has held that "... an offer to pay the superpriority
13 amount in the future, once that amount is determined, does not constitute a tender sufficient to
14 preserve the first deed of trust." *7510 Perla Del Mar Ave. Tr. v. Bank of America, N.A.*, 136
15 Nev. Adv. Op. 6, 458 P.3d 348, 349 (2020). (*Perla*)

16 *Alternatively, Miles Bauer was excused from tendering a superpriority payment because it*
17 *would have been futile*

18 11. However, a tendering party can also establish excuse from formal
19 tender/delivery of money. *Perla, supra*, at 349 ("formal tender is excused when the evidence
20 shows that the party entitled to payment had a known policy of rejecting [superpriority]
21 payments.").

22 12. The *Perla* decision confirms long-standing law that delivery of payment is *not*
23 always necessary to effectuate a legal tender.³ To be sure, a creditor like an HOA and its
24

25 ³ See, e.g., *Guthrie v. Curnutt*, 417 F.2d 764, 765–66 (10th Cir. 1969) ("[W]hen a party, able
26 and willing to do so, offers to pay another a sum of money and is told that it will not be
27 accepted, the offer is a tender without the money being produced."); *In re Pickel*, 493 B.R.
28 258, 271 (Bankr. D.N.M. 2013) ("Tender is unnecessary if the other party has stated that the
amount due would not be accepted."); *Mark Turner Props., Inc. v. Evans*, 554 S.E.2d 492,
495 (Ga. 2001) ("Tender of an amount due is waived when the party entitled to payment, by
declaration or by conduct, proclaims that, if tender of the amount due is made, an acceptance
of 'it will be refused.' (internal quotation marks and alterations omitted)); 74 Am. Jur. 2d
Tender § 4 (2012) ("A tender of an amount due is waived when the party entitled to payment,

1 collection agent can waive or excuse payment, and they can do this by words or by conduct.
2
3 *Id.*

4 13. In addition to waiver, a creditor's words or actions—like Alessi's ordinary
5 course of business to reject payments—can render payment futile, in which case the law will
6 not require a payor to perform a useless or futile act.⁴

7 14. Here, Alessi had a well-known policy of rejecting Miles Bauer's payments, as
8 its letter acknowledges:

9 ". . . we are unable to accept the partial payments offered by your clients as
10 payment in full . . . case authority exists which provides that the association's
11 lien also includes the reasonable cost of collection of those assessments.

12 If the association were to accept your offer that only includes assessments,
13 Alessi & Koenig would be left with a lien against the association for our
14 substantial out-of-pocket expenses and fees generated. . . ."

15 **Trial Ex. 41** at 069; *see also* **Trial Ex. 39** ("Furthermore, the nine-month super-priority is not
16 triggered until the beneficiary under the first deed of trust forecloses.").

17 by declaration or by conduct, proclaims that, if tender of the amount due is made, it will not
18 be accepted."); 86 C.J.S. Tender § 5 (2017) (tender "is waived when the party entitled to
19 payment, by declaration or conduct . . . makes clear that they will not perform, or they have
20 evaded tender, or in any other way obstructs or prevents a tender"); *cf. Cladianos v. Friedhoff*,
21 69 Nev. 41, 45, 240 P.2d 208, 210 (1952) ("The law is clear . . . that any affirmative tender of
22 performance is excused when performance has in effect been prevented by the other party to
23 the contract."); *see also Perla*, 2020 WL 966026, *3 (citing multiple cases on waiver, excuse,
24 and futility).

25 ⁴ *See, e.g., Telemark Dev. Grp., Inc. v. Mengelt*, 313 F.3d 972, 978 (7th Cir. 2002) ("tender
26 may be excused when the conduct of the creditor makes it 'reasonably clear that such [tender]
27 would be a vain, idle, or useless act."); *Quality Motors v. Hays*, 225 S.W.2d 326 (Ark. 1949)
28 (tender is immaterial when it would be vain and useless); *Donnellan v. Rocks*, 22 Cal. App. 3d
925, 929 (1st Dist. 1972) ("it is equally well established that the law does not require the
performance of an idle act and a formal tender of performance is excused by the refusal in
advance of the party to accept the performance."); *Fox Run Properties, LLC v. Murray*, 654
S.E.2d 676 (Ga. App. 2007) ("tender is excused or waived where the seller, by conduct or
declaration, proclaims that if a tender should be made, acceptance would be refused" because
"the law does not require a futile tender or other useless act."); *Chapman v. Olbrich*, 217
S.W.3d 482, 491 (Tex. App. 2006) ("Tender of performance is excused under certain
circumstances, such as when a tender would be futile"); *Roundville Partners, L.L.C. v. Jones*,
118 S.W.3d 73, 79 (Tex. App. 2003) ("when actual tender would have been a useless act, an
idle ceremony, or wholly nugatory, constructive tender will suffice."); *Schmitt v. Sapp*, 71
Ariz. 48, 223 P.2d 403, 406–07 (1950) ("An actual tender is unnecessary where it is apparent
the other party will not accept it. The law does not require one to do a vain and futile thing.").

1 15. Alessi's known policy of rejecting Miles Bauer tenders because it believed the
2 tender letter had conditional language has been acknowledged by at least one other court.
3 *Bank of America, N.A. v. Bernini Dr Trust*, Case No. 2:16-cv-00474-APG-BNW, 2020 WL
4 1044005 (D. Nev. 2020).

5 16. By its word and by its conduct in rejecting payments, Alessi had the same
6 policy under which the Nevada Supreme Court held delivering payment was excused entirely,
7 so the deed holder was excused from sending payment at all. But here, Miles Bauer actually
8 delivered payment, so the first deed of trust should fare no worse than in *Perla*.

9 17. Based on Alessi's words and conduct, Alessi would have also rejected payment
10 for a full annual assessment, so the deed holder was excused from sending such payment
11 under *Perla*.

12 ***Alternatively, Bank of America substantially complied with its payment obligations***

13 18. The doctrine of "[s]ubstantial compliance may be sufficient to avoid harsh,
14 unfair[,] or absurd consequences." *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470,
15 475–76, 255 P.3d 1275, 1278 (2011) (internal quotation omitted); *see also Fondren v. K/L*
16 *Complex Ltd.*, 106 Nev. 705, 713, 800 P.2d 719 (1990) ("[i]t is not realistic to become so
17 technical that such errors defeat an otherwise valid lien for a large amount.") (citing *Hayes v.*
18 *Pigg*, 267 Or. 143, 515 P.2d 924 (1973)); *see also Nevada Equities v. Willard Pease Drilling*
19 *Co.*, 84 Nev. 300, 303, 440 P.2d 122, 123 (1968) ("We shall not condone a forfeiture in the
20 absence of any ascertainable public policy requiring us to do so."); *Claybaugh v. Gancarz*, 81
21 Nev. 64, 78, 398 P.2d 695, 703 (1965) ("[e]very reasonable doubt will be resolved in favor of
22 the validity of a mining claim as against the assertion of a forfeiture.") (internal citations
23 omitted).

24 19. The Nevada Supreme Court has applied the substantial compliance doctrine to
25 various requirements under NRS 116. *See, e.g., Saticoy Bay 9050 W Warm Springs 2079 v.*
26 *NAS*, 444 P.3d 428, 135 Nev. Adv. Op. 23 (2019) (applying substantial compliance standard
27 to homeowner's redemption under NRS 116.31166(4)); *U.S. Bank, N.A. v. Resources Grp.*,
28 444 P.3d 442, 448, 135 Nev. Adv. Op. 26 (2019) (remanding for analysis of HOA trustee's

1 substantial compliance NRS 116 notice requirements); *Black's Law Dictionary* 524 (10th ed.
2 2014) (*de minimis non curat lex*, meaning the law does not concern itself with trifles).

3 20. If lenders have the right to pay the superpriority amount, then lenders must
4 also have the right to know what that amount is. See *U.S. Bank ND, N.A. v. Resources Group,*
5 *LLC*, 135 Nev. Adv. Op. 26, 444 P.3d 442, 447 (2019) (explaining that the "Legislature has
6 mandated [that] the deed of trust holder [have] time to cure" a superpriority lien).

7 21. Alessi rejected the superpriority tender, without telling Miles Bauer anything
8 about paying an annual assessment or any other specified amount. Even if Miles Bauer had
9 sent a check in the amount of twelve months and not just nine months of assessments, Alessi's
10 consistent policy of rejecting Miles Bauer's superpriority tenders leaves no doubt the result
11 would have been the same—Alessi would have rejected the payment.

12 22. If homeowners and HOAs are entitled to the doctrine of substantial compliance
13 under NRS 116, so are BoNYM and Miles Bauer. Otherwise, the result is "harsh, unfair, and
14 absurd" in light of Miles Bauer's tender of its best estimate of the superpriority amount and
15 Alessi's rejection of that tender for reasons wholly unrelated to any *de minimis* miscalculation
16 of the superpriority amount.

17 23. A 3-month shortage (here, \$29.50) should not, under the substantial
18 compliance doctrine, eliminate a deed securing repayment of a loan in the original amount of
19 \$208,000.00—well over 7,000 times greater than the alleged deficiency in Miles Bauer's
20 check.

21 *Alternatively, the deed of trust survived the HOA's sale as a matter of equity*

22 24. The Nevada Supreme Court confirmed an HOA foreclosure sale is void where
23 the party challenging the sale can show an inadequate sales price and additional "proof of
24 some element of fraud, unfairness, or oppression [that] accounts for and brings about the
25 inadequacy of price." *Nationstar Mortg. LLC v. Saticoy Bay LLC Series 2227 Shadow*
26 *Canyon*, 133 Nev. 740, 405 P.3d 641 (Nev. 2017) (*Shadow Canyon*).

27 25. In *Shadow Canyon*, the court rejected an argument that a sales price of under
28 20% of the fair market value renders the sale *per se* void, instead finding the court should

1 engage in more of a sliding scale analysis. *Id.* at 643 (quoting *Golden v. Tomiyasu*, 387 P.2d
2 989, 995 (1963) ("While mere inadequacy of price has rarely been held sufficient in itself to
3 justify setting aside a judicial sale of property, courts are not slow to seize upon other
4 circumstances impeaching the fairness of the transaction as a cause for vacating it, especially
5 if the inadequacy be so gross as to shock the conscience.")). Specifically, where there is a
6 wide disparity in price, a party challenging the sale "may require less evidence of fraud,
7 unfairness, or oppression to justify setting aside the sale." *Id.* at 643–44 (citing *Golden v.*
8 *Tomiyasu*, 79 Nev. at 515–16.)

9 ***The auction price was inadequate***

10 26. A price below 20% of fair market value is "obviously inadequate." *See*
11 *Shadow Wood Homeowners Ass'n, Inc. v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. 49, 60, 366
12 P.3d 1105, 1112 (2016).

13 27. The undisputed evidence here shows the property had a fair market value of
14 \$76,000.00 as of the date of the foreclosure. Stipulated Fact # 15. The HOA's credit bid was
15 \$4,310.82. Trial Ex. 30. LVDG purchased the property for \$4,500.00. Trial Ex. 31. The
16 sales price at auction and paid by LVDG were each approximately 6% of the fair market
17 value and were, therefore, grossly inadequate prices.

18 28. The lower the price, the less fraud and unfairness is required to set aside the
19 sale or to declare, under equity, this sale did harm a senior lienholder's interest. *See*
20 *Ballentyne v. Smith*, 205 U.S. 285, 290 (1907) ("if there be great inadequacy, slight
21 circumstances of unfairness in the conduct of the party benefitted by the sale will be sufficient
22 to justify setting it aside. It is difficult to formulate any rule more definite than this, and each
23 case must stand on its own particular facts."); *Shadow Canyon*, 405 P.3d at 648–49 (quoting
24 *Golden v. Tomiyasu*, 387 P.2d 989, 995 (1963) ("While mere inadequacy of price has rarely
25 been held sufficient in itself to justify setting aside a judicial sale of property, courts are not
26 slow to seize upon other circumstances impeaching the fairness of the transaction as a cause
27 for vacating it, especially if the inadequacy be so gross as to shock the conscience."); *see also*
28 *U.S. Bank ND, N.A. v. Resources Group, LLC*, 135 Nev. Adv. Op. 26, 444 P.3d 442, 448

1 (2019) ("The relationship is hydraulic: where the inadequacy is palpable and great, very slight
2 additional evidence of unfairness or irregularity is sufficient to authorize the granting of the
3 relief sought.") (quoting *Shadow Canyon*, 133 Nev. at 749).

4 ***The HOA's foreclosure involved unfairness and oppression***

5 29. In *Shadow Canyon*, the Nevada Supreme Court indicated that whether a lender
6 "tried to tender payment" before the sale is "significant[]" to determine whether the lender's
7 deed of trust survived as an equitable matter. 405 P.3d at 650.

8 30. As described above, Miles Bauer tendered nine months of assessments on a
9 lien for which, based on the statute when initiated, limited the superpriority to six months.⁵
10 To the extent there was any deficiency with the tender, it was inequitable for Alessi to reject it
11 without identifying an alternative superpriority. And Alessi's blanket policy of rejecting
12 payments the senior lender was entitled to make is also unfair and oppressive.

13 31. The credit bid and lack of distribution of auction proceeds also establish
14 unfairness if this HOA sale is construed as a superpriority sale.

15 32. In an unpublished decision, the Nevada Supreme Court reversed a lower court
16 decision under unfairness, saying genuine issues of material fact existed concerning both the
17 opening bid amount and how the funds from sale were distributed. *JPMorgan Chase Bank,*
18 *N.A. v. 1209 Village Walk Trust, LLC*, 424 P.3d 813 (table), No. 69784, 2018 WL 1448805
19 (Nev. Mar. 20, 2018). First, the court expressed concern that "if the HOA trustee set the sale
20 price for the entire lien amount rather than the superpriority portion, it may have chilled
21 bidding on the property." *Id.* at 6. Next, the court opined about distribution of sale proceeds,
22 saying, "The HOA may have owed JPMorgan any amount beyond the superpriority portion of
23 the assessment lien, as JPMorgan's interest as the holder of the first deed of trust was superior
24 to the subpriority portion of the assessment lien."⁶

25
26 ⁵ See footnote 2, *supra*.

27 ⁶ The 2013 JEB Report, often cited and relied upon in Nevada Supreme Court opinions,
28 explains through illustration that if an HOA forecloses on a superpriority lien, the HOA must
pay the first mortgage holder before paying itself the subpriority portion of HOA's lien
(Example 2).

1 33. Here, the HOA credit bid its entire lien, and it distributed zero dollars to the
2 first deed holder after sale and again after selling the property to LVDG. The HOA should
3 have had to pay the senior lender before paying itself the subpriority portion of the lien, as
4 explained in *Village Walk Trust* and the 2013 JEB Report, Example 2, unless the HOA
5 foreclosure did not contain a superpriority, in which case the HOA could keep all sale
6 proceeds without affecting BoNYM's deed of trust.

7 34. In fact, because no money was paid at the NRS 116 sale, and the full
8 assessment balance owed to the HOA remained outstanding after the HOA's sale, no one
9 satisfied the superpriority. Testimony of Yvette Saucedo (HOA representative). The HOA
10 could not have sold a lien containing a superpriority if all the amounts that could have
11 comprised the superpriority portion of the lien remained unpaid after the auction.

12 ***The balance of equities shows no harm to LVDG***

13 35. In balancing the equities, LVDG has offered no evidence of harm.

14 36. Moreover, it is not harmed by a finding that the deed of trust survived the sale.
15 LVDG purchased the property knowing all title risks, including the certainty it could not get
16 title insurance without litigation. Testimony of Charles Schmidt. LVDG offered no proof its
17 predecessor, the HOA, was a bona fide purchaser, which was its burden to do. *See, e.g.,*
18 *Berge v. Fredericks*, 95 Nev. 183, 185, 591 P.2d 246, 248 (1979) (explaining that the
19 **putative bona fide purchaser "was required to show** that legal title had been transferred to
20 her before she had notice of the prior conveyance to appellant") (emphasis added); *see also*
21 *RLP-Ampus Place, LLC v. U.S. Bank, N.A.*, 408 P.3d 557 (table), 2017 WL 6597148, at *1
22 (Nev. Dec. 22, 2017) (unpublished) ("[A] putative BFP must introduce some evidence to
23 support its BFP status beyond simply claiming that status.").

24 37. The HOA took no position on what effect its foreclosure had on the senior
25 deed, and no evidence was presented it believed it was getting clear title. The HOA's own
26 notice of sale warned bidders the sale came with no covenants or warranties, and the
27 foreclosure deed to the HOA similarly disclaimed any warranty. Trial Exs. 29 and 30.

1 38. In addition, *Thompson on Real Property* (often cited by the Nevada Supreme
2 Court) instructs: "In applying the equitable doctrine of bona fide purchaser, some courts have
3 held that one who takes by quitclaim deed cannot be a bona fide purchaser because the deed
4 purports to convey only such right, title or interest as the grantor may have, and thus the deed
5 carries notice of every defect in the grantor's title." 11 David A. Thomas, *Thompson on Real*
6 *Property*, § 92.09(c), at 191 (2008); *see also* 6A C.J.S. Deeds § 327 ("It is well established
7 that a quitclaim deed only conveys such title or interest as possessed by the grantor at the time
8 of the making of the deed . . . and 'one who accepts a quitclaim deed is conclusively presumed
9 to have agreed to take the title subject to all risks as to defects and [e]ncumbrances'").⁷

10 39. LVDG accepted a quitclaim deed from the HOA. Trial Ex. 31.

11 40. To the extent the actual payment did not satisfy the superpriority, and to the
12 extent Alessi's policy did not excuse delivery of payment, the equities balance in favor of
13 setting aside any superpriority portion of the HOA's sale here.

14 ***There is no presumption the deed of trust was extinguished, and BoNYM had no obligation***
15 ***to file a lawsuit to confirm what the tender automatically accomplished***

16 41. There is nothing in NRS 116, the text or commentary to the Uniform Common
17 Interest Ownership Act, or the Nevada Supreme Court's published decisions creating a
18 presumption that an HOA foreclosure extinguishes a senior mortgage.

19 42. No statute of limitation applies to BoNYM's affirmative defenses based on the
20 tender facts. Decades ago, the Nevada Supreme Court examined the issue of applying statutes
21 of limitations to defenses and concluded: "Limitations do not run against defenses." *Dredge*
22 *Corp. v. Wells Cargo, Inc.*, 80 Nev. 99, 101, 389 P.2d 394, 396 (Nev. 1964).

23
24 ⁷ *See also Bright v. Johnson*, 302 S.W.3d 483, 492 (Tex. App. 2009) ("[A] subsequent
25 purchaser is not a bona fide purchaser if the conveyance is made without warranty."); *Fla. E.*
26 *Coast Ry v. Patterson*, 539 So.2d 575, 577 (Fla. 3rd DCA 1992) (quoting *St. Clair v. City*
27 *Bank & Trust Co.*, 175 So.2d 791, 792 (Fla. 2d DCA 1965)) ("It is well established that a
quitclaim deed only conveys such title or interest as possessed by the grantor . . . and 'one
who accepts a quitclaim deed is conclusively presumed to have agreed to take the title subject
to all risks as to defenses and incumbrances [sic]."); *Crump v. Knight*, 56 So.2d 625, 628
(Ala. 1952) ("One who takes under a quitclaim deed acquires only such title and interest as
his grantor had, and is not within the protection of a bona fide purchaser.").

1 43. The reasoning behind this statement follows in the next sentence of the
2 opinion: "The statute is available only as a shield, not a sword." *Id.*; *see also City of Saint*
3 *Paul, Alaska v. Evans*, 344 F.3d 1029, 1033–34 (9th Cir. 2003) (examining "the interplay
4 between statutes of limitations and defenses" and concluding that such limitations do not
5 apply to defenses because "[w]ithout this exception, potential plaintiffs could simply wait
6 until all available defenses are time barred and then pounce on the helpless defendant").

7 44. *Dredge*, in turn, cited to a Second Circuit case called *Luckenbach Steamship*
8 *Co. v. United States*, 312 F.2d 545, 548 (2d Cir. 1963), which held that "[l]imitations statutes
9 do not apply to declaratory judgments as such. Declaratory relief is a mere procedural device
10 by which various types of substantive claims may be vindicated. There are no statutes which
11 provide that declaratory relief will be barred after a certain period of time."

12 45. Here, LVDG filed suit seeking a declaration that when it purchased the
13 property from the HOA, which had purchased the property at its own foreclosure sale—an
14 auction which came with pre-sale warnings disclaiming any guarantee or covenant concerning
15 the quality of title or the sale's effect on other liens—it purchased title free of the deed of
16 trust.

17 46. BoNYM asserted several defenses to LVDG's requested relief, including
18 tender and inequities of the sale. As defenses, no limitations period can apply to defeat them
19 as time barred.

20 *If LVDG's claims are timely, BoNYM's compulsory counterclaims on the same operative*
21 *facts must be as well*

22 47. Although the court can rule on the tender as a *defense* without examining the
23 same argument as a *counterclaim* that may be subject to a limitations period, the
24 counterclaims are timely because they are compulsory under NRCP 13.

25 48. If a counterclaim "arises out of the transaction or occurrence that is the subject
26 matter of the opposing party's claim and does not require for its adjudication the presence of
27 third parties of whom the court cannot acquire jurisdiction," then it qualifies as a compulsory
28 counterclaim. NRCP 13(a); *see also Yates v. Washoe Cty. Sch. Dist.*, No. 03:07-CV-00200-

1 LRH-RJJ, 2007 WL 3256576, at *2 (D. Nev. Oct. 31, 2007) ("a plaintiff's institution of a suit
2 tolls or suspends the running of the statute of limitations governing a compulsory
3 counterclaim.").⁸

4 49. BoNYM's counterclaims arise out of the same occurrence—the HOA's
5 foreclosure—as LVDG claims, and they also seek the kind of declaratory relief that
6 *Luckenbach*, cited in *Dredge*, said has no applicable statute of limitations because declaratory
7 relief is not a claim that seeks a judgment for money or to coerce an adversary to take some
8 action, but merely requests a declaration of non-liability—here, non-extinguishment of a lien.
9 312 F.2d at 548. *Cf. Bull v. United States*, 295 U.S. 247, 262, 55 S.Ct. 695, 700–01, 79 L.Ed.
10 142 (1935).

11 50. For this reason, too, LVDG's arguments about BoNYM's counterclaim being
12 time-barred fail.

13 If any of the foregoing Conclusions of Law are more appropriately to be considered
14 Findings of Fact, they shall be so deemed.

15 JUDGMENT

16 For the foregoing reasons, the Court ORDERS, ADJUDGES, AND DECREES:

- 17 1. The March 2, 2011 HOA foreclosure sale did not extinguish the subject deed
18 of trust.
19 2. The deed of trust, recorded as instrument number 20060419-0000609, remains
20 an encumbrance against the property located at 1524 Highfield Court, Las Vegas, Nevada
21 89032, APN 139-09-410-021.
22

23
24
25 ⁸ To determine whether a claim is a compulsory counterclaim, courts look to "(1) whether the
26 issues of fact and law raised by the claim and counterclaim largely are the same; (2) whether
27 *res judicata* would bar a subsequent suit on defendant's claim absent the compulsory
28 counterclaim rule; (3) whether substantially the same evidence will support or refute
plaintiff's claim as well as defendant's counterclaim; and (4) whether there is any logical
relationship between the claim and the counterclaim." *Tank Insulation Int'l, Inc. v.*
Insultherm, Inc., 104 F.3d 83, 85–86 (5th Cir. 1997). There can be no doubt that BoNYM's
counterclaims are simply the mirror of LVDG's similar claims, thus meeting all these factors.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Title is quieted in LVDG's name, but LVDG's title remains subject to the deed of trust.

Dated this 17th day of September, 2020



CB8 052 DB14 DD74
Mark R. Denton
District Court Judge

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Las Vegas Development Group
7 LLC, Plaintiff(s)

CASE NO: A-17-756215-C

8 vs.

DEPT. NO. Department 13

9 Dania Hernandez, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled
15 case as listed below:

Service Date: 9/17/2020

16 Natalie Winslow natalie.winslow@akerman.com

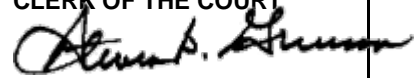
17 Ariel Stern ariel.stern@akerman.com

18 Rex Garner rex.garner@akerman.com

19 Akerman LLP AkermanLAS@akerman.com

20 Roger Croteau croteaulaw@croteaulaw.com

21 Croteau Admin receptionist@croteaulaw.com



VDSM
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 West Charleston Boulevard, #75
Las Vegas, Nevada 89102
(702) 254-7775
(702) 228-7719 (facsimile)
croteaulaw@croteaulaw.com
Attorney for Plaintiff
LAS VEGAS DEVELOPMENT GROUP, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)

Plaintiff,)

vs.)

DANIA V. HERNANDEZ, an individual; THE)
BANK OF NEW YORK MELLON f/k/a THE)
BANK OF NEW YORK, AS TRUSTEE FOR)
THE CERTIFICATEHOLDERS OF CWABS,)
INC., ASSET-BACKED CERTIFICATES,)
SERIES 2006-7, a national banking association;)
DOE individuals I through XX; and ROE)
CORPORATIONS I through XX,)

Defendants.)

THE BANK OF NEW YORK MELLON f/k/a)
THE BANK OF NEW YORK, AS TRUSTEE)
FOR THE CERTIFICATEHOLDERS OF)
CWABS, INC., ASSET-BACKED)
CERTIFICATES, SERIES 2006-7,)

Counterclaimant,)

vs.)

LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)

Counterdefendant.)

Case No. A-17-756215-C
Dept. No. XIII

VOLUNTARY DISMISSAL OF
DEFENDANT DANIA V.
HERNANDEZ

1 **VOLUNTARY DISMISSAL OF DEFENDANT DANIA V. HERNANDEZ**

2 COMES NOW, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, by and through
3 its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby voluntarily dismisses
4 this action as it relates to Defendant, DANIA V. HERNANDEZ, without prejudice. Said
5 Defendant has neither answered nor appeared herein.

6 DATED this 15th day of October, 2020.

7 ROGER P. CROTEAU & ASSOCIATES, LTD.

8
9 /s/ Timothy E. Rhoda
10 ROGER P. CROTEAU, ESQ.
11 Nevada Bar No. 4958
12 TIMOTHY E. RHODA, ESQ.
13 Nevada Bar No. 7878
14 2810 West Charleston Boulevard, #75
15 Las Vegas, Nevada 89102
16 (702) 254-7775
17 ***Attorney for Plaintiff***
18 **LAS VEGAS DEVELOPMENT GROUP, LLC**
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee
3 of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 15th day of October,
4 2020, I caused a true and correct copy of the foregoing document to be served on all parties as
5 follows:

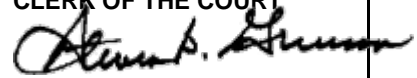
6 X VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-
7 file and serve system.

8 VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with
9 postage thereon fully prepaid, addressed as indicated on service list below in the United
States mail at Las Vegas, Nevada.

10 VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated
on the service list below.

11 VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this
12 date to the addressee(s) at the address(es) set forth on the service list below.

13
14 /s/ Timothy E. Rhoda
15 An employee of ROGER P. CROTEAU &
16 ASSOCIATES, LTD.
17
18
19
20
21
22
23
24
25
26
27
28



1 **NOAS**
2 ROGER P. CROTEAU, ESQ.
3 Nevada Bar No. 4958
4 TIMOTHY E. RHODA, ESQ.
5 Nevada Bar No. 7878
6 ROGER P. CROTEAU & ASSOCIATES, LTD.
7 2810 W. Charleston Blvd., #75
8 Las Vegas, Nevada 89102
9 (702) 254-7775
10 (702) 228-7719 (facsimile)
11 croteaulaw@croteaulaw.com
12 *Attorney for Plaintiff*
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 ***

11 LAS VEGAS DEVELOPMENT GROUP, LLC,)
12 a Nevada limited liability company,)

13 Plaintiff,)

14 vs.)

15 DANIA V. HERNANDEZ, an individual; THE)
16 BANK OF NEW YORK MELLON f/k/a THE)
17 BANK OF NEW YORK, AS TRUSTEE FOR)
18 THE CERTIFICATEHOLDERS OF CWABS,)
19 INC., ASSET-BACKED CERTIFICATES,)
20 SERIES 2006-7, a national banking association;)
21 DOE individuals I through XX; and ROE)
22 CORPORATIONS I through XX,)

23 Defendants.)

24 THE BANK OF NEW YORK MELLON f/k/a)
25 THE BANK OF NEW YORK, AS TRUSTEE)
26 FOR THE CERTIFICATEHOLDERS OF)
27 CWABS, INC., ASSET-BACKED)
28 CERTIFICATES, SERIES 2006-7,)

Counterclaimant,)

vs.)

25 LAS VEGAS DEVELOPMENT GROUP, LLC,)
26 a Nevada limited liability company,)

Counterdefendant.)

Case No. A-17-756215-C
Dept. No. XIII

NOTICE OF APPEAL

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DATED this 15th day of October, 2020.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda
 ROGER P. CROTEAU, ESQ.
 Nevada Bar No. 4958
 TIMOTHY E. RHODA, ESQ.
 Nevada Bar No. 7878
 2810 W. Charleston Blvd., #75
 Las Vegas, Nevada 89102
 (702) 254-7775
Attorney for Plaintiff
LAS VEGAS DEVELOPMENT GROUP, LLC

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 15th day of October, 2020, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

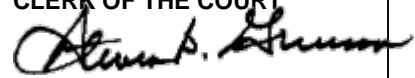
X VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-file and serve system.

____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

____ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

____ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda
An employee of ROGER P. CROTEAU &
ASSOCIATES, LTD



1 **MAFC**
2 ARIEL E. STERN, ESQ.
3 Nevada Bar No. 8276
4 NATALIE L. WINSLOW, ESQ.
5 Nevada Bar No. 12125
6 REX D. GARNER, ESQ.
7 Nevada Bar No. 9401
8 AKERMAN LLP
9 1635 Village Center Circle, Suite 200
10 Las Vegas, Nevada 89134
11 Telephone: (702) 634-5000
12 Facsimile: (702) 380-8572
13 Email: ariel.stern@akerman.com
14 Email: natalie.winslow@akerman.com
15 Email: rex.garner@akerman.com

16 *Attorneys for The Bank of New York Mellon f/k/a*
17 *The Bank of New York, as Trustee for the*
18 *Certificateholders of CWABS, Inc., Asset-Backed*
19 *Certificates, Series 2006-7*

20 **EIGHTH JUDICIAL DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 LAS VEGAS DEVELOPMENT GROUP, LLC, a
23 Nevada limited liability company,

24 Plaintiff,

25 vs.

26 DANIA V. HERNANDEZ, an individual; THE
27 BANK OF NEW YORK MELLON F/K/A THE
28 BANK OF NEW YORK, AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF CWABS,
INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-7, a national banking association;
DOE individuals I through XX; and ROE
CORPORATIONS I through XX,

Defendants.

Case No.: A-17-756215-C

Dept. No.: XIII

**THE BANK OF NEW YORK MELLON
F/K/A THE BANK OF NEW YORK, AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWABS,
INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-7'S MOTION FOR
ATTORNEYS' FEES AND COSTS
PURSUANT TO NRCP 68**

HEARING REQUESTED

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 - FAX: (702) 380-8572

THE BANK OF NEW YORK MELLON F/K/A
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF
CWABS, INC., ASSET-BACKED
CERTIFICATES, SERIES 2006-7,

Counterclaimant,

vs.

LAS VEGAS DEVELOPMENT GROUP, LLC, a
Nevada limited liability company,

Counterdefendant.

The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-7 (**BoNYM**) moves for attorneys' fees pursuant to NRCP 68 based on Las Vegas Development Group, LLC's (**LVDG**) rejection of BoNYM's offer of judgment.

DECLARATION OF REX D. GARNER

I, Rex D. Garner, declare under the penalty of perjury as follows:

1. I am a duly licensed attorney in the state of Nevada and a lawyer with the law firm of Akerman LLP. Akerman LLP is counsel for BoNYM in the above-entitled action.

2. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated on information and belief, and as to those, I believe them to be true.

3. On September 19, 2018, BoNYM served an offer of judgment on LVDG, which is attached as **Exhibit A**.

4. LVDG did not accept this offer of judgment within the deadline to do so, the rule deemed the offer rejected.

5. Akerman has represented BoNYM at all times in this litigation and through trial.

6. After LVDG rejected the offer of judgment, Akerman billed \$19,280.50 for work performed on BoNYM's behalf. **Exhibit B**. All fees included therein were actually and necessarily incurred.

///

///

1 7. The invoices attached as Exhibit B are true and correct copies of redacted billing
2 records from after the September 2018 offer was rejected through the present, reflecting amounts
3 Akerman billed to BoNYM in connection with this litigation.

4 8. The fees charged are customary for attorneys of similar skill and experience in Las
5 Vegas, Nevada. The rates are reasonable, the amount of time spent was appropriate to the tasks, and
6 no contingency fees or results-based fees were used. The amount of attorneys' fees and costs
7 requested is reasonable as compared to the amount in controversy, and the judgment obtained.

8 9. Multiple attorneys worked on the file preparing the case for trial after LVDG rejected
9 the offer, including primarily Tenesa Powell before I took over. Natalie Winslow and others also
10 contributed occasionally. Ms. Powell's rate was \$300–325 over the years she worked on this file. My
11 hourly rate for this case was \$225. Ms. Winslow's rate for this file was \$325 per hour. Akerman
12 paralegals also worked on the file. The paralegal rates are \$100–170 per hour.

13 10. Given the education and experience of the lawyers involved, including their expertise
14 in the NRS 116 arena, where Akerman attorneys have tried approximately 80 HOA-related cases, the
15 rates Akerman charges for its services are reasonable and well within community standards for the
16 Las Vegas legal profession.

17 11. I have been licensed since 2005, Ms. Powell has been licensed since 2011, and Ms.
18 Winslow since 2010.

19 12. BoNYM's costs are set forth in its memorandum of costs filed September 23, 2020.

20 13. I declare under penalty of perjury the foregoing is true and correct to the best of my
21 knowledge and to the best of my calculations.

22 Executed this 15th day of October, 2020 in Las Vegas, Nevada.

23
24 /s/ Rex D. Garner

25 REX D. GARNER, ESQ.

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

This case arises out of an HOA foreclosure sale. The servicer of the loan tendered the HOA's superpriority lien amount before Hidden Canyon Owners Association's (**HOA**) foreclosure sale, preserving the deed of trust by operation of law. As a result, the HOA could only foreclose on the interest that remained—a subpriority lien, and the successful bidder at the HOA's auction, LVDG, bought subject to BoNYM's deed of trust.

Years before trial, BoNYM offered to pay LVDG \$5,000 to accept a judgment that LVDG's title to the property located at 1524 Highfield Court, North Las Vegas, Nevada 89032, APN 139-09-410-021 (**Property**), is encumbered by the deed of trust recorded in the Clark County Recorder's Office on April 19, 2006 as Instrument No. 20060419-0000609. Ex. A. LVDG refused. After trial, the court entered judgment in BoNYM's favor, concluding that title is quieted in LVDG's name, but LVDG's title remains subject to the deed of trust.

II. ARGUMENT**A. BoNYM is entitled to fees and costs.**

"The purpose of . . . NRCP 68 is to save time and money for the court system, the parties and the taxpayers. They reward a party who makes a reasonable offer and punish the party who refuses to accept such offer." *Dillard Dept. Stores, Inc. v. Beckwith*, 115 Nev. 372, 382, 989 P.2d 882, 888 (1999). Under NRCP 68, if a party makes an offer of judgment and that offer is rejected, the offering party is entitled to its post-offer fees if it obtains a result more favorable than the offer:

NRCP 68 (a):

At any time more than 21 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions.

NRCP 68(e):

If the offer is not accepted within 14 days after service, it will be considered rejected by the offeree and deemed withdrawn by the offeror...Any offeree who fails to accept the offer may be subject to the penalties of this rule.

NRCP 68(f):

If the offeree rejects an offer and fails to obtain a more favorable judgment, ... (B) the offeree must pay the offeror's post-offer costs and expenses..., applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney's fees, if any be allowed, actually incurred by the offeror from the time of the offer...

NRCP 68(f)(2):

The penalties in this rule run from the date of service of the earliest rejected offer for which the offeree failed to obtain a more favorable judgment.

BoNYM's offer of judgment was both reasonable in timing and amount, and LVDG's decision to reject the offers and consume judicial resources was unreasonable. BoNYM is entitled to recover its costs and post-offer fees from LVDG under NRCP 68.

B. The court should award attorneys' fees under the *Beattie* factors.

A court can award attorneys' fees under NRCP 68 after it considers the following factors: "(1) whether plaintiff's claim was brought in good faith; (2) whether the defendant's offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offer or are reasonable and justified in amount." *Beattie v. Thomas*, 99 Nev. 579, 588, 688 P.2d 268, 274 (1983). While a court must weigh these factors before awarding fees, the court need not find that each factor weighs in the offering party's favor to do so. *Palace Station Hotel & Casino v. Jones*, 115 Nev. 162, 167, 978 P.2d 323, 326 (1999).

When examining the *Beattie* factors, courts should remember that the purpose of NRCP 68 is to encourage settlement before trial. *Morgan v. Demille*, 106 Nev. 671, 674, 799 P.2d 561, 563 (1990). "[U]nless the trial court's exercise of discretion [in evaluating the *Beattie* factors] is arbitrary or capricious, this court will not disturb the lower court's ruling on appeal." *Schouweiler v. Yancey Co.*, 101 Nev. 827, 833, 712 P.2d 786, 790 (1985). The *Beattie* factors favor an award of reasonable attorneys' fees to BoNYM.

1. LVDG's claim was brought in bad faith and its rejection of the offer was unreasonable.

In May 2017, LVDG filed its complaint asserting claims for quiet title and declaratory relief. While those claims may have been initially been brought in good faith, LVDG learned through the course of discovery the deed of trust holder attempted payment on the HOA's superpriority, which the HOA's agent obstructed and prevented by refusing to provide *any* information, including the superpriority amount. Both the documentary evidence and deposition testimony established these

1 facts well before trial. These facts were argued over and over again in pre-trial motion practice.
2 Indeed, before trial the parties stipulated to the operative tender facts.

3 **2. *BoNYM's offer was reasonable in timing and amount, and LVDG's decision to***
4 ***reject the offer was made in bad faith.***

5 These same facts show BoNYM's offer was "reasonable and in good faith in both its timing
6 and amount[.]" *Beattie*, 99 Nev. at 588, 688 P.2d at 274. BoNYM served its offers of judgment after
7 the tender documents were provided to LVDG. The timing of BoNYM's offer was reasonable.

8 So too was the amount. LVDG purchased the property knowing it was not receiving clear
9 title—the pre-sale notice and the foreclosure deed expressly disclaimed any covenants or warranties
10 about the foreclosure's effect on other encumbrances. Instead of accepting BoNYM's offer of
11 judgment, LVDG chose to roll the dice at trial based on a decision that was not published until just
12 before trial. *Anthony S. Noonan IRA v. U.S. Bank, N.A.*, 466 P. 3d 1276, 136 Nev. Adv. Op. 41 (Nev.
13 July 9, 2020). Because LVDG could not have relied on the 2020 *Noonan* decision in choosing to
14 reject BoNYM's 2018 offer of judgment, the amount and timing of BoNYM's offer were reasonable,
15 and the offer was made in good faith.

16 **3. *BoNYM's fees are reasonable and justified in amount.***

17 BoNYM's fees are reasonable and justified in amount. After serving the first offer of
18 judgment BoNYM incurred \$19,280.50 in attorneys' fees, which encompassed summary judgment
19 motion practice and trial. These fees are reasonable under the factors enumerated in *Brunzell v.*
20 *Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

21 **Qualities of the Advocates:** As set forth in the declaration of counsel, BoNYM's lawyers in
22 this case are very experienced in HOA foreclosure litigation. Akerman has handled roughly 100
23 HOA trials in the past several years.

24 **Character of the work to be done and actually performed:** Although all HOA cases
25 involve some similar issues and characteristics, this case required attention to a seemingly endless
26 evolution of case law related to the tender of HOA superpriority amounts, including the *Noonan*
27 decision that was published earlier in the same month this case was tried.

28 ///

1 The attorney's fees were incurred after LVDG rejected the offer of judgment and involved
2 significant summary judgment briefing and trial preparation. A review of the hours billed and results
3 obtained evidences the efficient manner in which BoNYM's counsel defended this matter.

4 **Results obtained:** BoNYM's counsel secured a judgment that the deed of trust survived
5 the HOA's foreclosure sale and encumbers LVDG's title to the property.

6 **Time and labor required:** The \$19,280.50 in attorneys' fees were incurred after BoNYM
7 served its offer of judgment. A review of the hours billed and results obtained reflects the efficient
8 manner in which BoNYM's counsel defended this matter.

9 **Novelty/Difficulty of Questions Involved; Skill Requisite:** BoNYM's counsel secured a
10 judgment that the deed of trust remains fully secured. BoNYM's attorneys were required to perform
11 research and analysis in the areas of real property law. They prepared a defense that explained why
12 the loan servicer's tender protected the deed of trust from extinguishment, and why LVDG could not
13 have taken title free and clear of the deed of trust. This required in-depth knowledge of NRS 116,
14 NRS 107, and the common law governing lien foreclosures. BoNYM's attorneys had the requisite
15 skill and knowledge to successfully defend against LVDG's claims. All of the described worked was
16 actually performed and led to judgment in BoNYM's favor.

17 **Preclusion of Employment / Time Limitations:** While BoNYM's counsel was not
18 precluded from employment with other clients, the amount of time spent on this case was
19 considerable. This was the first trial of both sides and the judge via Bluejeans videoconferencing
20 software during the COVID19 pandemic, which required unique planning. BoNYM's counsel
21 devoted dozens of hours to this case—hours that could have been spent on other matters.

22 **C. The court should also award BoNYM its costs.**

23 Pursuant to NRCP 68, a court shall award a prevailing party its costs where the offeree to a
24 rejected offer of judgment fails to obtain a judgment more favorable than the offer. NRS 18.020 also
25 entitles BoNYM to an award of costs. As stated above, BoNYM's offer of judgment offered \$5,000
26 to LVDG to accept encumbered title, which LVDG rejected, but the trial result was LVDG's title
27 being encumbered but without the \$5,000 BoNYM had offered to pay. Accordingly, the law entitles
28

BoNYM to an award costs in the amount of \$2,836.78. See BoNYM's memorandum of costs and disbursements, filed Sept. 23, 2020.

II. CONCLUSION

BoNYM made a reasonable offer of judgment to LVDG, which LVDG unreasonably rejected with full knowledge that its case was rife with legal and factual obstacles. Forcing this case to trial while wasting judicial resources and BoNYM's money was not good faith. Accordingly, BoNYM requests an award of its post-offer fees and all costs.

DATED October 15, 2020.

AKERMAN LLP

/s/ Rex D. Garner

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

REX D. GARNER, ESQ.

Nevada Bar No. 9401

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-7

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October, 2020 and pursuant to NRCP 5(b), I served via the Clark County electronic filing system a true and correct copy of the foregoing **THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2006-7'S MOTION FOR ATTORNEYS' FEES AND COSTS PURSUANT TO NRCP 68**, addressed to:

Roger P. Croteau & Associates, Ltd.

Roger P. Croteau croteaulaw@croteaulaw.com

Croteau Admin receptionist@croteaulaw.com

/s/ Patricia Larsen

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

OFFER

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

TENESA POWELL, ESQ.

Nevada Bar No. 12488

AKERMAN LLP

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: ariel.stern@akerman.com

Email: tenesa.powell@akerman.com

*Attorneys for The Bank of New York Mellon f/k/a The
Bank of New York, as Trustee for the
Certificateholders of CWABS, Inc., Asset-Backed
Certificates, Series 2006-7*

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC,
a Nevada limited liability company,

Plaintiff,

vs.

DANIA V. HERNANDEZ, an individual; THE
BANK OF NEW YORK MELLON F/K/A THE
BANK OF NEW YORK, AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF CWABS,
INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-7, a national banking association;
DOE individuals I through XX; and ROE
CORPORATIONS I through XX,

Defendants.

THE BANK OF NEW YORK MELLON F/K/A
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF
CWABS, INC., ASSET-BACKED
CERTIFICATES, SERIES 2006-7,

Counterclaimant,

vs.

LAS VEGAS DEVELOPMENT GROUP, LLC,
a Nevada limited liability company,

Counterdefendant.

Case No.: A-17-756215-C
Dept. No.: XIII

OFFER OF JUDGMENT

OFFER OF JUDGMENT

Pursuant to NRC 68 Defendant/Counterclaimant The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-7 (**BoNYM**) by and through its attorneys at the law firm AKERMAN LLP, hereby offers five thousand dollars (\$5,000.00), inclusive of fees and costs, to Las Vegas Development Group, LLC (**LVDG**) for BoNYM to take judgment against LVDG holding that LVDG's title to the property located at 1524 Highfield Court, North Las Vegas, Nevada 89032, APN 139-09-410-021 (**Property**), is encumbered by the deed of trust recorded in the Clark County Recorder's Office on April 19, 2006 as Instrument No. 20060419-0000609. The judgment would further order the dismissal with prejudice of all claims LVDG asserted or could have asserted against BoNYM in this action, and all claims BoNYM asserted or could have asserted against LVDG in this action, with each party to bear its own fees and costs. If not accepted within ten (10) days of the date of service, this offer shall be deemed rejected and shall be automatically withdrawn.

DATED September 19, 2018

AKERMAN LLP

/s/ Tenesa S. Powell

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

TENESA POWELL, ESQ.

Nevada Bar No. 12488

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-7

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of September, 2018 and pursuant to NRCP 5(b), I served via the Clark County electronic filing system a true and correct copy of the foregoing **OFFER OF JUDGMENT**, addressed to:

Roger P. Croteau & Associates, Ltd.

Roger P. Croteau croteaulaw@croteaulaw.com

Croteau Admin receptionist@croteaulaw.com

*/s/Jill Sallade*_____
An employee of AKERMAN LLP

EXHIBIT B

EXHIBIT B



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date November 20, 2018
Invoice No. 9406590



Client Name: **SHELLPOINT MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ**  **) NV**
Matter Number:  

For professional services rendered through October 31, 2018 as summarized below:

| | |
|--|--|
| Services | \$  |
|  |  |
| TOTAL THIS INVOICE | \$  |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date November 20, 2018
Invoice No. 9406590



Client Name: SHELLPOINT MORTGAGE SERVICING
Matter Name: DANIA HERNANDEZ [REDACTED] NV
Matter Number: [REDACTED]

Claim No: 0578150791

For professional services rendered through October 31, 2018 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$ [REDACTED] |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

DANIA HERNANDEZ NV Invoice Number 9406590

Task Code:

| | | | | |
|------------|--|------------|-------------|-------------|
| 2-Oct-18 | Email correspondence with [REDACTED] regarding offer of judgment | TSP | 0.10 | 30.00 |
| 3-Oct-18 | Finalize written discovery requests to purchaser | TSP | 1.30 | 390.00 |
| [REDACTED] | [REDACTED] | [REDACTED] | <div></div> | <div></div> |
| [REDACTED] | [REDACTED] | [REDACTED] | <div></div> | <div></div> |
| [REDACTED] | [REDACTED] | [REDACTED] | <div></div> | <div></div> |
| | | | | |
| | | | | |

L120

| Year | Country | Population (millions) | Population (millions) | Population (millions) |
|------|--------------|-----------------------|-----------------------|-----------------------|
| 2010 | China | 1,370 | 1,370 | 1,370 |
| 2010 | India | 1,210 | 1,210 | 1,210 |
| 2010 | USA | 310 | 310 | 310 |
| 2010 | Japan | 128 | 128 | 128 |
| 2010 | Germany | 82 | 82 | 82 |
| 2010 | France | 65 | 65 | 65 |
| 2010 | UK | 61 | 61 | 61 |
| 2010 | Italy | 60 | 60 | 60 |
| 2010 | Spain | 45 | 45 | 45 |
| 2010 | Canada | 35 | 35 | 35 |
| 2010 | South Africa | 22 | 22 | 22 |
| 2010 | Brazil | 200 | 200 | 200 |
| 2010 | Russia | 143 | 143 | 143 |
| 2010 | South Korea | 48 | 48 | 48 |
| 2010 | Sweden | 9 | 9 | 9 |
| 2010 | Switzerland | 7 | 7 | 7 |
| 2010 | Australia | 22 | 22 | 22 |
| 2010 | Argentina | 40 | 40 | 40 |
| 2010 | Poland | 38 | 38 | 38 |
| 2010 | Belgium | 10 | 10 | 10 |
| 2010 | Netherlands | 16 | 16 | 16 |
| 2010 | Portugal | 11 | 11 | 11 |
| 2010 | Greece | 11 | 11 | 11 |
| 2010 | Spain | 45 | 45 | 45 |
| 2010 | Italy | 60 | 60 | 60 |
| 2010 | France | 65 | 65 | 65 |
| 2010 | UK | 61 | 61 | 61 |
| 2010 | Germany | 82 | 82 | 82 |
| 2010 | Japan | 128 | 128 | 128 |
| 2010 | USA | 310 | 310 | 310 |
| 2010 | India | 1,210 | 1,210 | 1,210 |
| 2010 | China | 1,370 | 1,370 | 1,370 |

L250

| Year | 2010 | 2011 | 2012 | 2013 | 2014 |
|------|------|------|------|------|------|
| 2010 | 100 | 100 | 100 | 100 | 100 |
| 2011 | 100 | 100 | 100 | 100 | 100 |
| 2012 | 100 | 100 | 100 | 100 | 100 |
| 2013 | 100 | 100 | 100 | 100 | 100 |
| 2014 | 100 | 100 | 100 | 100 | 100 |

██████████ SHELLPOINT MORTGAGE SERVICING

As of October 31, 2018

██████████ DANIA HERNANDEZ ██████████ NV

Invoice Number 9406590

| | | |
|------------|----------------------|------------|
| ██████████ | ██████████ | |
| ██████████ | ████████████████████ | |
| ██████████ | ████████████████████ | |
| ██████████ | ██████████ | |
| ██████████ | ████████████████ | |
| | | ██████████ |

| | |
|------------|------------|
| ██████████ | ██████████ |
| ██████████ | ██████████ |
| ██████████ | ██████████ |
| ██████████ | ██████████ |
| ██████████ | ██████████ |
| ██████████ | ██████████ |
| ██████████ | ██████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date December 28, 2018
Invoice No. 9415853



Client Name: **SHELLPOINT MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] **NV**
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through November 30, 2018 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$ [REDACTED] |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date December 28, 2018
Invoice No. 9415853



Client Name: SHELLPOINT MORTGAGE SERVICING
Matter Name: DANIA HERNANDEZ [REDACTED] NV
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through November 30, 2018 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$ [REDACTED] |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

November 30, 2018

9415853

The diagram illustrates a sequence of 10 steps in a process flow. The steps are represented by rectangular boxes arranged in a grid-like fashion. The boxes are numbered 1 through 10. The layout is as follows:

- Step 1: A single box at the top left.
- Step 2: A single box at the top right.
- Step 3: A single box in the second row, first column.
- Step 4: A single box in the second row, second column.
- Step 5: A single box in the second row, third column.
- Step 6: A single box in the second row, fourth column.
- Step 7: A single box in the second row, fifth column.
- Step 8: A single box in the second row, sixth column.
- Step 9: A single box in the second row, seventh column.
- Step 10: A single box in the second row, eighth column.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

As of

November 30, 2018

Invoice Number

9415853

Figure 1 displays the number of publications in the field of "Economic growth" from 1990 to 2019. The chart is divided into three sections: 1990-1999, 2000-2009, and 2010-2019. Each section shows the number of publications for each year, with a total count for each decade. The total counts are: 1990-1999: 10, 2000-2009: 10, 2010-2019: 10.



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date
Invoice No.

January 29, 2019
9424326

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through December 31, 2018 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$ [REDACTED] |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date January 29, 2019
Invoice No. 9424326

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through December 31, 2018 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$ [REDACTED] |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

Task Code:JA 0529

| | | | |
|------------|--|-------|-------------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | December 31, 2018 |
|------------|--|-------|-------------------|

| | | | |
|------------|-------------------------------|----------------|---------|
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9424326 |
|------------|-------------------------------|----------------|---------|

| | | | |
|------------|----------------------|------------|------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ████████████████████ | ██████████ | ██████████ |
| ██████████ | ████████████████████ | ██████████ | ██████████ |
| ██████████ | ████████████ | ██████████ | ██████████ |
| ██████████ | ████████████████ | ██████████ | ██████████ |
| | | ----- | ----- |
| | ██████████ | ██████████ | ██████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date
Invoice No.

February 25, 2019
9432756



Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED]



For professional services rendered through January 31, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$124.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date February 25, 2019
Invoice No. 9432756

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through January 31, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$124.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

| | | |
|--|----------------|------------------|
| NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | January 31, 2019 |
| DANIA HERNANDEZ NV | Invoice Number | 9432756 |

Task Code:

| | | | | |
|--------------------------|--------------------------------|-----|-------------|---------------|
| 17-Jan-19 | Draft of Notice of Lis Pendens | S H | 0.70 | 94.50 |
| 20-Jan-19 | Finalize notice of lis pendens | TSP | 0.10 | 30.00 |
| Subtotal for Code | | | 0.80 | 124.50 |

Total Fees for Services Rendered.....\$124.50

| | | | |
|--|--|--|--|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

| | | | |
|------------|--|----------------|------------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | January 31, 2019 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9432756 |

| | | | |
|------------|------------|------------|------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ██████████ | ██████████ | ██████████ |
| | | ----- | ----- |
| | | ██████████ | ██████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date
Invoice No.

March 15, 2019
9439941



Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through February 28, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$478.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date
Invoice No.

March 15, 2019
9439941

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ [REDACTED] NV**
Matter Number: [REDACTED]

[REDACTED]

For professional services rendered through February 28, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$478.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

| | | |
|--|----------------|-------------------|
| NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | February 28, 2019 |
| DANIA HERNANDEZ NV | Invoice Number | 9439941 |

Task Code:

| | | | | |
|--------------------------|---|-----|-------------|---------------|
| 14-Feb-19 | Finalize supplemental disclosure of documents and witnesses | TSP | 0.20 | 60.00 |
| 15-Feb-19 | Draft of Fifth Supplement to Initial Disclosures | S H | 0.80 | 108.00 |
| 24-Feb-19 | Draft motion for summary judgment | TSP | 0.90 | 270.00 |
| 25-Feb-19 | Draft of Declaration of Scott Dugan in Support of Appraisal | S H | 0.30 | 40.50 |
| Subtotal for Code | | | 2.20 | 478.50 |

Total Fees for Services Rendered.....\$478.50

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

| | | | |
|------------|--|----------------|-------------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | February 28, 2019 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9439941 |

| | | | |
|------------|------------|------------|------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ██████████ | ██████████ | ██████████ |
| | | ----- | ----- |
| | | ██████████ | ██████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date
Invoice No.

April 24, 2019
9450248



Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED]



For professional services rendered through March 31, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$150.00 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date
Invoice No.

April 24, 2019
9450248

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ [REDACTED] NV**
Matter Number: **[REDACTED]**

[REDACTED]

For professional services rendered through March 31, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$150.00 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

| | | | |
|------------|--|----------------|----------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | March 31, 2019 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9450248 |

Task Code:

| | | | | |
|-----------|---|-----|------|-------|
| 4-Mar-19 | Email correspondence with ██████████ regarding summary judgment motion | TSP | 0.10 | 30.00 |
| 18-Mar-19 | Finalize summary judgment motion and exhibits thereto | TSP | 0.30 | 90.00 |
| 31-Mar-19 | Email correspondence with ██████████ regarding hearing and briefing schedule on summary judgment | TSP | 0.10 | 30.00 |

| | | |
|--------------------------|-------------|---------------|
| Subtotal for Code | 0.50 | 150.00 |
|--------------------------|-------------|---------------|

Total Fees for Services Rendered.....\$150.00

| | | | |
|------------|--|----------------|----------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | March 31, 2019 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9450248 |

| | | | |
|------------|----------------------|----------------------|------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ████████████████████ | ██████████ | ██████████ |
| | ██████████ | ████████████████████ | ██████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date
Invoice No.

May 21, 2019
9458903



Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] **NV**
Matter Number: [REDACTED]



For professional services rendered through April 30, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$720.00 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date
Invoice No.

May 21, 2019
9458903

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through April 30, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$720.00 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

DANIA HERNANDEZ NV Invoice Number 9458903

| | | | | |
|-----------|---|-----|------|--------|
| 2-Apr-19 | Email correspondence with opposing counsel regarding summary judgment briefing and settlement | TSP | 0.20 | 60.00 |
| 4-Apr-19 | Draft pretrial disclosures | TSP | 1.40 | 420.00 |
| 9-Apr-19 | Email correspondence with opposing counsel regarding summary judgment briefing and hearing | TSP | 0.20 | 60.00 |
| 25-Apr-19 | Email correspondence with [REDACTED] regarding amended trial order | TSP | 0.10 | 30.00 |
| 25-Apr-19 | Email correspondence with opposing counsel regarding settlement | TSP | 0.10 | 30.00 |
| 26-Apr-19 | Telephone conference with opposing counsel regarding settlement | TSP | 0.30 | 90.00 |
| 30-Apr-19 | Email correspondence with opposing counsel regarding settlement | TSP | 0.10 | 30.00 |

Total Fees for Services Rendered.....\$720.00

| | | | |
|------------|--|----------------|----------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | April 30, 2019 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9458903 |

| | | | |
|------------|----------------------|------------|------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ████████████████████ | ██████████ | ██████████ |
| | ██████████ | _____ | _____ |
| | | ██████████ | ██████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date
Invoice No.

June 25, 2019
9468442



Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through May 31, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$312.00 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date
Invoice No.

June 25, 2019
9468442





Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through May 31, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$312.00 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

| | | | |
|--|--|----------------|--------------|
|  | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | May 31, 2019 |
|  | DANIA HERNANDEZ  NV | Invoice Number | 9468442 |

Task Code:

| | | | | |
|--------------------------|---|-----|-------------|---------------|
| 2-May-19 | Draft of Stipulation and Order to Extend Briefing and Continue Hearing | S H | 0.60 | 81.00 |
| 3-May-19 | Email correspondence with opposing counsel regarding settlement | TSP | 0.10 | 30.00 |
| 10-May-19 | Email correspondence with  regarding settlement | TSP | 0.30 | 90.00 |
| 21-May-19 | Email correspondence with  regarding settlement | TSP | 0.10 | 30.00 |
| 24-May-19 | Draft of Stipulation and Order to continue motion for summary judgment hearing. | S H | 0.60 | 81.00 |
| Subtotal for Code | | | 1.70 | 312.00 |

Total Fees for Services Rendered.....\$312.00

| | | |
|---|--|---|
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  | |  |
|  | | |

| | | | |
|------------|--|----------------|--------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | May 31, 2019 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9468442 |

| | | | |
|------------|------------|------------|------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ██████████ | ██████████ | ██████████ |
| | | ----- | ----- |
| | ██████████ | ██████████ | ██████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date
Invoice No.

July 24, 2019
9477070



Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ [REDACTED] NV**
Matter Number: **[REDACTED]**



For professional services rendered through June 30, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$750.00 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date
Invoice No.

July 24, 2019
9477070

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ [REDACTED] NV**
Matter Number: **[REDACTED]**




[REDACTED]

For professional services rendered through June 30, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$750.00 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

| | | | |
|--|--|----------------|---------------|
|  | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | June 30, 2019 |
|  | DANIA HERNANDEZ  NV | Invoice Number | 9477070 |

Task Code:

| | | | | |
|--------------------------|---|-----|-------------|---------------|
| 5-Jun-19 | Email correspondence with  regarding settlement | TSP | 0.30 | 90.00 |
| 7-Jun-19 | Begin drafting legal arguments for reply supporting summary judgment | TSP | 1.30 | 390.00 |
| 24-Jun-19 | Review and analyze plaintiff's pretrial disclosures and draft objections to same | TSP | 0.70 | 210.00 |
| 24-Jun-19 | Email correspondence with  regarding settlement | TSP | 0.10 | 30.00 |
| 26-Jun-19 | Email correspondence with  regarding amended trial order | TSP | 0.10 | 30.00 |
| Subtotal for Code | | | 2.50 | 750.00 |

Total Fees for Services Rendered.....\$750.00

| | | | |
|---|--|--|---|
|  |  | |  |
|  |  | |  |
|  |  | |  |
|  |  | |  |
|  |  | |  |
|  | | |  |
|  | | | |

| | | | |
|------------|--|----------------|---------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | June 30, 2019 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9477070 |

| | | | |
|------------|--|----------------|---------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | June 30, 2019 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9477070 |

| | | | |
|------------|----------------------|------------|------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ████████████████████ | ██████████ | ██████████ |
| | ██████████ | _____ | _____ |
| | | ██████████ | ██████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date
Invoice No.

August 26, 2019
9486609

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED]

[REDACTED]

For professional services rendered through July 31, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$1,450.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date
Invoice No.




August 26, 2019
9486609

[REDACTED]




Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through July 31, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$1,450.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

| | | | |
|--|--|----------------|---------------|
|  | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | July 31, 2019 |
|  | DANIA HERNANDEZ  NV | Invoice Number | 9486609 |

Task Code:

| | | | | |
|--------------------------|---|-----|-------------|-----------------|
| 1-Jul-19 | Email correspondence with  regarding settlement | TSP | 0.10 | 30.00 |
| 5-Jul-19 | Compile, review, and edit all documents in support of reply supporting motion for summary judgment. | CJH | 0.30 | 40.50 |
| 5-Jul-19 | Email correspondence with opposing counsel regarding settlement | TSP | 0.10 | 30.00 |
| 5-Jul-19 | Continue drafting reply supporting summary judgment | TSP | 1.00 | 300.00 |
| 8-Jul-19 | Telephone conference with  regarding settlement | TSP | 0.10 | 30.00 |
| 10-Jul-19 | Prepare for hearing on summary judgment motion | TSP | 1.20 | 360.00 |
| 11-Jul-19 | Email correspondence with  regarding hearing on summary judgment and settlement | TSP | 0.10 | 30.00 |
| 11-Jul-19 | Conference with opposing counsel regarding settlement | TSP | 0.20 | 60.00 |
| 11-Jul-19 | Attend summary judgment hearing | TSP | 1.90 | 570.00 |
| Subtotal for Code | | | 5.00 | 1,450.50 |

Total Fees for Services Rendered.....\$1,450.50

| | | | | |
|--|--|--|---|---|
|  |  | | |  |
|  |  | |  | |
|  | | | |  |
|  |  | |  | |
|  | | | |  |

As of

July 31, 2019

Invoice Number

9486609

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

| | | | |
|------------|--|----------------|---------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | July 31, 2019 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9486609 |

| | | | |
|------------|--------------------|------------|--------------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ██████████████████ | ██████████ | ██████████ |
| ██████████ | ██████████████████ | ██████████ | ██████████████████ |
| | ██████████ | ----- | ----- |
| | | ██████████ | ██████████████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date September 14, 2019
Invoice No. 9493737

[REDACTED]

Client Name: NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING
Matter Name: DANIA HERNANDEZ [REDACTED] NV
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through August 31, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$240.00 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date September 14, 2019
Invoice No. 9493737

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ [REDACTED] NV**
Matter Number: [REDACTED]

[REDACTED]

For professional services rendered through August 31, 2019 as summarized below:

| | |
|---------------------------|---------------------|
| Services | \$240.00 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$[REDACTED] |

| | | | |
|------------|--|----------------|-----------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | August 31, 2019 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9493737 |

Task Code:

| | | | | |
|--------------------------|--|-----|-------------|---------------|
| 6-Aug-19 | Email correspondence with ██████████ regarding order denying summary judgment | TSP | 0.10 | 30.00 |
| 6-Aug-19 | Email correspondence with opposing counsel regarding settlement | TSP | 0.10 | 30.00 |
| 8-Aug-19 | Telephone conference with opposing counsel regarding settlement | TSP | 0.40 | 120.00 |
| 9-Aug-19 | Email correspondence with opposing counsel and ██████████ ██████████ regarding settlement | TSP | 0.20 | 60.00 |
| Subtotal for Code | | | 0.80 | 240.00 |

Total Fees for Services Rendered.....\$240.00

| | | | |
|------------|--|----------------|-----------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | August 31, 2019 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9493737 |

| | | | |
|------------|----------------------|------------|------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ████████████████████ | ██████████ | ██████████ |
| | ██████████ | _____ | _____ |
| | | ██████████ | ██████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date November 21, 2019
Invoice No. 9514611



Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through October 31, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$1,357.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date November 21, 2019
Invoice No. 9514611

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ [REDACTED] NV**
Matter Number: **[REDACTED]**

[REDACTED]

For professional services rendered through October 31, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$1,357.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE
SERVICING

As of

October 31, 2019

DANIA HERNANDEZ [REDACTED] NV

Invoice Number

9514611

Task Code:

| | | | | |
|--------------------------|---|-----|--------------|-----------------|
| 27-Sep-19 | Trial Preparation - Work in connection with assisting attorney in preparing for pre-trial conference, including reviewing and identifying relevant disclosures and documents for production to court. | S H | 1.90 | 190.00 |
| 14-Oct-19 | Draft of Trial Subpoena to Jon Jentz | S H | 0.20 | 20.00 |
| 14-Oct-19 | Draft of Trial Subpoena to Yvette Saucedo | S H | 0.20 | 20.00 |
| 14-Oct-19 | Draft of Trial Subpoena to David Alessi | S H | 0.20 | 20.00 |
| 14-Oct-19 | Draft of Trial Subpoena to Jeremy Bergstrom | S H | 0.20 | 20.00 |
| 14-Oct-19 | Draft of Trial Subpoena to Rock Jung | S H | 0.20 | 20.00 |
| 14-Oct-19 | Draft of Trial Subpoena to Diane Deloney | S H | 0.20 | 20.00 |
| 14-Oct-19 | Draft of Trial Subpoena to Shawn Look | S H | 0.20 | 20.00 |
| 14-Oct-19 | Draft of Trial Subpoena to Heather Jary | S H | 0.20 | 20.00 |
| 14-Oct-19 | Draft of Trial Subpoena to Jessica Woodbridge | S H | 0.20 | 20.00 |
| 14-Oct-19 | Draft of Trial Subpoena to Ryan Kerbow | S H | 0.20 | 20.00 |
| 14-Oct-19 | Draft of Trial Subpoena to Scott Dugan | S H | 0.20 | 20.00 |
| 14-Oct-19 | Draft of Trial Subpoena to Sean Anderson | S H | 0.20 | 20.00 |
| 14-Oct-19 | Draft of Trial Subpoena to Richard Vilkin | S H | 0.20 | 20.00 |
| 14-Oct-19 | Draft of Trial Subpoena to Ara Shirinian | S H | 0.20 | 20.00 |
| 16-Oct-19 | Analyze property records to evaluate [REDACTED] [REDACTED] | TSP | 0.20 | 45.00 |
| 17-Oct-19 | Telephone conference with [REDACTED] regarding nonjudicial foreclosure | TSP | 0.10 | 22.50 |
| 22-Oct-19 | Trial Preparation - Work in connection with assisting in preparing for pre-trial conference, including reviewing and identifying relevant disclosures and documents for production to court. | S H | 1.90 | 190.00 |
| 23-Oct-19 | Trial Preparation - Work in connection to the elaboration of exhibit binders to be used for trial | S H | 4.40 | 440.00 |
| 24-Oct-19 | Trial Preparation - Work in connection to assisting in preparation for trial. Production of Trial Binder. | S H | 1.90 | 190.00 |
| Subtotal for Code | | | 13.20 | 1,357.50 |

NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE
SERVICING

As of

October 31, 2019

DANIA HERNANDEZ NV

Invoice Number

9514611

Total Fees for Services Rendered.....\$1,357.50

| | | | |
|------------|--|----------------|------------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | October 31, 2019 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9514611 |

| | | | |
|------------|------------|------------|------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ██████████ | ██████████ | ██████████ |
| | | ----- | ----- |
| | | ██████████ | ██████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date December 27, 2019
Invoice No. 9523607

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] **NV**
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through November 30, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$682.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

T [REDACTED]



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date December 27, 2019
Invoice No. 9523607

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through November 30, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$682.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

Task Code:

Total Fees for Services Rendered.....\$682.50

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

| | | | |
|------------|--|----------------|-------------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | November 30, 2019 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9523607 |

| | | | |
|------------|----------------------|------------|------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ████████████████████ | ██████████ | ██████████ |
| | ██████████ | _____ | _____ |
| | | ██████████ | ██████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date
Invoice No.

January 31, 2020
9532526

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through December 31, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$65.00 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date January 31, 2020
Invoice No. 9532526

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through December 31, 2019 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$65.00 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

| | | | |
|--------|--|----------------|-------------------|
| ██████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | December 31, 2019 |
| ██████ | DANIA HERNANDEZ ██████ NV | Invoice Number | 9532526 |

Task Code:

| | | | | |
|--|---|-----|-------------|----------------|
| 2-Dec-19 | Email correspondence with ██████ regarding amended trial order | TSP | 0.10 | 32.50 |
| 9-Dec-19 | Email correspondence with ██████ regarding trial | TSP | 0.10 | 32.50 |
| Subtotal for Code | | | 0.20 | 65.00 |
| Total Fees for Services Rendered..... | | | | \$65.00 |

| | | | |
|------------|--|----------------|-------------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | December 31, 2019 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9532526 |

| | | | |
|------------|----------------------|------------|------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ████████████████████ | ██████████ | ██████████ |
| | ██████████ | _____ | _____ |
| | | ██████████ | ██████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date
Invoice No.

February 28, 2020
9541554

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through January 31, 2020 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$942.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date February 28, 2020
Invoice No. 9541554

[REDACTED]



Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through January 31, 2020 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$942.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

| | | | |
|--|--|----------------|------------------|
|  | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | January 31, 2020 |
|  | DANIA HERNANDEZ  NV | Invoice Number | 9541554 |

Task Code:

| | | | | |
|--------------------------|---|-----|-------------|---------------|
| 15-Jan-20 | Draft joint pretrial memorandum | TSP | 1.20 | 390.00 |
| 15-Jan-20 | Draft stipulated facts for trial | TSP | 0.60 | 195.00 |
| 22-Jan-20 | Email correspondence with  regarding trial | TSP | 0.10 | 32.50 |
| 24-Jan-20 | Email correspondence with opposing counsel regarding pretrial conference | TSP | 0.10 | 32.50 |
| 27-Jan-20 | Participate in mandatory pretrial 2.67 conference | TSP | 0.60 | 195.00 |
| 28-Jan-20 | Review and analyze answer to counterclaim | TSP | 0.10 | 32.50 |
| 31-Jan-20 | Email correspondence with  and opposing counsel regarding trial | TSP | 0.20 | 65.00 |
| Subtotal for Code | | | 2.90 | 942.50 |

Total Fees for Services Rendered.....\$942.50

| | | | |
|------------|--|----------------|------------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | January 31, 2020 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9541554 |

| | | | |
|------------|----------------------|------------|------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ████████████████████ | ██████████ | ██████████ |
| | ██████████ | — | — |
| | | ██████████ | ██████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date
Invoice No.

March 25, 2020
9550076



Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] **NV**
Matter Number: [REDACTED]



For professional services rendered through February 29, 2020 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$1,742.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date
Invoice No.

March 25, 2020
9550076




[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ [REDACTED] NV**
Matter Number: **[REDACTED]**



[REDACTED]

For professional services rendered through February 29, 2020 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$1,742.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

| | | | |
|--|--|----------------|-------------------|
|  | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | February 29, 2020 |
|  | DANIA HERNANDEZ ) NV | Invoice Number | 9550076 |

Task Code:

| | | | | |
|-----------|---|-----|------|--------|
| 12-Feb-20 | Email correspondence with opposing counsel regarding joint pretrial memorandum and stipulated facts | TSP | 0.10 | 32.50 |
| 14-Feb-20 | Email correspondence with opposing counsel regarding pretrial memorandum | TSP | 0.10 | 32.50 |
| 17-Feb-20 | Email correspondence with  and opposing counsel regarding settlement | TSP | 0.50 | 162.50 |
| 20-Feb-20 | Multiple communications with opposing counsel regarding settlement | TSP | 0.40 | 130.00 |
| 21-Feb-20 | Email correspondence with opposing counsel regarding pretrial memorandum | TSP | 0.10 | 32.50 |
| 24-Feb-20 | Communicate with opposing counsel regarding joint pretrial memorandum | TSP | 0.50 | 162.50 |
| 24-Feb-20 | Finalize pretrial memorandum | TSP | 0.40 | 130.00 |
| 25-Feb-20 | Email correspondence with  regarding trial | TSP | 0.10 | 32.50 |
| 25-Feb-20 | Finalize trial subpoenas | TSP | 0.30 | 97.50 |
| 25-Feb-20 | Begin drafting trial brief | TSP | 1.20 | 390.00 |
| 25-Feb-20 | Telephone conference with opposing counsel regarding pretrial memorandum | TSP | 0.20 | 65.00 |
| 25-Feb-20 | Work in connection with assisting in preparing for trial, including reviewing and identifying relevant disclosures and documents for production to court. | CJH | 1.30 | 130.00 |
| 27-Feb-20 | Finalize stipulated facts and email correspondence with opposing counsel regarding same | TSP | 0.30 | 97.50 |
| 27-Feb-20 | Talk to opposing counsel re draft stipulated facts for trial. | RDG | 0.30 | 67.50 |
| 29-Feb-20 | Analyze pretrial order, pretrial memo, and relevant pleadings for calendar call in court on Monday and start drafting trial plan. | RDG | 0.80 | 180.00 |

Subtotal for Code**6.60 1,742.50****Total Fees for Services Rendered.....\$1,742.50**

| | | |
|--|----------------|-------------------|
| NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | February 29, 2020 |
| DANIA HERNANDEZ NV | Invoice Number | 9550076 |

A black and white photograph of a large, multi-story building with a complex facade, featuring many windows and architectural details. The building is surrounded by trees and greenery. The image is framed by a thick black border.

| | | | |
|------------|--|----------------|-------------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | February 29, 2020 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9550076 |

| | | | |
|------------|------------|------------|------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ██████████ | ██████████ | ██████████ |
| | | ----- | ----- |
| | | ██████████ | ██████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date
Invoice No.

April 20, 2020
9560265



Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] **NV**
Matter Number: [REDACTED]



For professional services rendered through March 31, 2020 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$877.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date
Invoice No.

April 20, 2020
9560265




[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ [REDACTED] NV**
Matter Number: **[REDACTED]**





[REDACTED]

For professional services rendered through March 31, 2020 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$877.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

| | | | |
|--|--|----------------|----------------|
|  | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | March 31, 2020 |
|  | DANIA HERNANDEZ  NV | Invoice Number | 9560265 |



Task Code: L120

| | | | | |
|-------------------------------|--|-----|-------------|---------------|
| 2-Mar-20 | Attend calendar call in court. | RDG | 1.80 | 405.00 |
| 2-Mar-20 | Exchange emails with client  . | RDG | 0.20 | 45.00 |
| 5-Mar-20 | Contact trial attorney for other case scheduled for trial on same day and inquire re its likelihood of settling or continuing. | RDG | 0.30 | 67.50 |
| 5-Mar-20 | Follow up with opposing counsel re trial exhibits and stipulations concerning same. | RDG | 0.30 | 67.50 |
| 16-Mar-20 | Exchange emails with opposing counsel re trial scheduled this month and contact court staff re same. | RDG | 0.30 | 67.50 |
| 16-Mar-20 | Email client  . | RDG | 0.20 | 45.00 |
| 18-Mar-20 | Read order from court re vacating trial and email  . | RDG | 0.30 | 67.50 |
| 23-Mar-20 |  email client re same. | RDG | 0.20 | 45.00 |
| Subtotal for Code L120 | | | 3.60 | 810.00 |

Task Code: L190

| | | | | |
|-------------------------------|--|-----|-------------|--------------|
| 2-Mar-20 | Exchange emails with opposing counsel re trial exhibits and witness order. | RDG | 0.30 | 67.50 |
| Subtotal for Code L190 | | | 0.30 | 67.50 |

Total Fees for Services Rendered.....\$877.50

| | | |
|--|--|---|
|  |  |  |
|  |  |  |
|  | |  |
|  |  |  |
|  | |  |

A black and white photograph of a large, multi-story building with a complex facade, featuring many windows and architectural details. The building is surrounded by trees and greenery. The image is framed by a thick black border.

| | | | |
|------------|--|----------------|----------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | March 31, 2020 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9560265 |

| | | | |
|------------|----------------------|------------|------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ████████████████████ | ██████████ | ██████████ |
| | ██████████ | — | — |
| | | ██████████ | ██████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date
Invoice No.

June 22, 2020
9578666



Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED]



For professional services rendered through May 31, 2020 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$45.00 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date
Invoice No.

June 22, 2020
9578666

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ [REDACTED] NV**
Matter Number: [REDACTED]

[REDACTED]

For professional services rendered through May 31, 2020 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$45.00 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

| | | | |
|------------|--|----------------|--------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | May 31, 2020 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9578666 |

Task Code: L440 OTHER TRIAL PREPARATION AND SUPPORT

| | | | | |
|----------|---|-----|------|-------|
| 1-May-20 | Follow up with opposing counsel re trial exhibits and other trial planning. | RDG | 0.20 | 45.00 |
|----------|---|-----|------|-------|

| | | |
|---|-------------|--------------|
| Subtotal for Code L440 OTHER TRIAL PREPARATION AND SUPPORT | 0.20 | 45.00 |
|---|-------------|--------------|

Total Fees for Services Rendered.....\$45.00

| | | | |
|------------|--|-------|--------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | May 31, 2020 |
|------------|--|-------|--------------|

| | | | |
|------------|-------------------------------|----------------|---------|
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9578666 |
|------------|-------------------------------|----------------|---------|

| | | | |
|------------|----------------------|------------|------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ████████████████████ | ██████████ | ██████████ |
| | ██████████ | _____ | _____ |
| | | ██████████ | ██████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date
Invoice No.

July 16, 2020
9585493



Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through June 30, 2020 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$945.00 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date
Invoice No.

July 16, 2020
9585493




[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ [REDACTED] NV**
Matter Number: **[REDACTED]**


[REDACTED]

For professional services rendered through June 30, 2020 as summarized below:

| | |
|---------------------------|---------------------|
| Services | \$945.00 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$[REDACTED] |

| | | | |
|--|--|----------------|---------------|
|  | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | June 30, 2020 |
|  | DANIA HERNANDEZ  NV | Invoice Number | 9585493 |

Task Code: L230 COURT MANDATED CONFERENCES

| | | | | |
|--|--|-----|-------------|---------------|
| 29-Jun-20 | Review trial setting order and pretrial memo in preparation for calendar call. | RDG | 0.40 | 90.00 |
| 29-Jun-20 | Attend calendar call and discuss trial setting with judge and opposing counsel then email client  . | RDG | 1.20 | 270.00 |
| Subtotal for Code L230 COURT MANDATED CONFERENCES | | | 1.60 | 360.00 |

Task Code: L250 OTHER WRITTEN MOTIONS AND SUBMISSIONS

| | | | | |
|---|--|-----|-------------|---------------|
| 22-Jun-20 | Work on request to permit BANA witness to appear remotely for trial, if necessary. | RDG | 0.50 | 112.50 |
| 23-Jun-20 | Revise notice of intent to have witnesses appear by phone and to present evidence via custodian of records affidavit at trial. | RDG | 1.20 | 270.00 |
| Subtotal for Code L250 OTHER WRITTEN MOTIONS AND SUBMISSIONS | | | 1.70 | 382.50 |

Task Code: L440 OTHER TRIAL PREPARATION AND SUPPORT

| | | | | |
|---|---|-----|-------------|---------------|
| 5-Jun-20 | Exchange emails with opposing counsel re trial witnesses and exhibits and remaining issues. | RDG | 0.40 | 90.00 |
| 22-Jun-20 | Follow up with opposing counsel re trial witnesses and exhibit stipulations. | RDG | 0.20 | 45.00 |
| 24-Jun-20 | Exchange emails with opposing counsel re legal issues for trial and evidentiary agreements. | RDG | 0.30 | 67.50 |
| Subtotal for Code L440 OTHER TRIAL PREPARATION AND SUPPORT | | | 0.90 | 202.50 |

Total Fees for Services Rendered.....\$945.00

| | | | |
|------------|--|----------------|---------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | June 30, 2020 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9585493 |

| | | | |
|------------|----------------------|------------|------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ████████████████████ | ██████████ | ██████████ |
| | ██████████ | _____ | _____ |
| | | ██████████ | ██████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date
Invoice No.

August 21, 2020
9596595



Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED]



For professional services rendered through July 31, 2020 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$5,562.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date
Invoice No.

August 21, 2020
9596595

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ [REDACTED] NV**
Matter Number: **[REDACTED]**

[REDACTED]

For professional services rendered through July 31, 2020 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$5,562.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

| | | | |
|---|---|----------------|---------------|
| <div style="background-color: black; width: 60px; height: 20px;"></div> | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | July 31, 2020 |
| <div style="background-color: black; width: 60px; height: 20px;"></div> | DANIA HERNANDEZ <div style="background-color: black; width: 110px; height: 20px;"></div> NV | Invoice Number | 9596595 |

Task Code: L140 DOCUMENT/FILE MANAGEMENT

| | | | | |
|-----------|---|-----|------|-------|
| 21-Jul-20 | Create spreadsheet of trial exhibits per new instructions from the court. | CJH | 0.40 | 40.00 |
|-----------|---|-----|------|-------|

| | | |
|--|-------------|--------------|
| Subtotal for Code L140 DOCUMENT/FILE MANAGEMENT | 0.40 | 40.00 |
|--|-------------|--------------|

Task Code: L190 OTHER CASE ASSESSMENT, DEVELOPMENT AND ADMINISTRATION

| | | | | |
|-----------|---|-----|------|-------|
| 29-Jul-20 | Send trial summary <div style="background-color: black; width: 180px; height: 20px;"></div> . | RDG | 0.30 | 67.50 |
|-----------|---|-----|------|-------|

| | | |
|---|-------------|--------------|
| Subtotal for Code L190 OTHER CASE ASSESSMENT, DEVELOPMENT AND ADMINISTRATION | 0.30 | 67.50 |
|---|-------------|--------------|

Task Code: L250 OTHER WRITTEN MOTIONS AND SUBMISSIONS

| | | | | |
|-----------|--|-----|------|--------|
| 22-Jul-20 | Work on trial brief argument sections. | RDG | 2.70 | 607.50 |
| 24-Jul-20 | Finish drafting trial brief. | RDG | 1.10 | 247.50 |
| 27-Jul-20 | Add an argument to the trial brief re purchaser's new theory of deed expiration under NRS 106.240. | RDG | 2.20 | 495.00 |

| | | |
|---|-------------|-----------------|
| Subtotal for Code L250 OTHER WRITTEN MOTIONS AND SUBMISSIONS | 6.00 | 1,350.00 |
|---|-------------|-----------------|

Task Code: L430 WRITTEN MOTIONS AND SUBMISSIONS

| | | | | |
|-----------|---|-----|------|--------|
| 28-Jul-20 | Analyze purchaser's trial brief and make additions to bank's trial brief based on same. | RDG | 1.70 | 382.50 |
|-----------|---|-----|------|--------|

| | | |
|---|-------------|---------------|
| Subtotal for Code L430 WRITTEN MOTIONS AND SUBMISSIONS | 1.70 | 382.50 |
|---|-------------|---------------|

Task Code: L440 OTHER TRIAL PREPARATION AND SUPPORT

| | | | | |
|-----------|--|-----|------|-------|
| 8-Jul-20 | Exchange emails with court staff re trial dates and schedule. | RDG | 0.20 | 45.00 |
| 16-Jul-20 | Exchange emails with court staff re exhibits for trial. | RDG | 0.30 | 67.50 |
| 20-Jul-20 | Exchange emails with court staff re trial exhibits and other guidelines. | RDG | 0.30 | 67.50 |
| 21-Jul-20 | Analyze order from court re trial protocols. | RDG | 0.10 | 22.50 |

NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE As of July 31, 2020
SERVICING

DANIA HERNANDEZ NV Invoice Number 9596595

| | | | | |
|-----------|---|-----|------|--------|
| 21-Jul-20 | Talk to opposing counsel re order of witnesses and admission of exhibits. | RDG | 0.40 | 90.00 |
| 21-Jul-20 | Work on trial strategy related to purchaser's statute of limitations argument and revise trial brief re same. | RDG | 1.30 | 292.50 |
| 21-Jul-20 | Exchange emails with court staff re trial exhibits and testing video conference systems. | RDG | 0.40 | 90.00 |
| 22-Jul-20 | Work on cross-examination of plaintiff's trial witness and mark exhibits for use during same. | RDG | 1.20 | 270.00 |
| 22-Jul-20 | Work on opening statement for trial. | RDG | 0.80 | 180.00 |
| 23-Jul-20 | Exchange emails with court staff re trial exhibits. | RDG | 0.30 | 67.50 |
| 24-Jul-20 | Exchange emails with opposing counsel re it proposed trial exhibits. | RDG | 0.30 | 67.50 |
| 24-Jul-20 | Work on trial exhibit issues and exchange emails with court staff re same. | RDG | 0.40 | 90.00 |
| 24-Jul-20 | Work on outline of closing augment. | RDG | 0.70 | 157.50 |
| 24-Jul-20 | Prepare trial exhibits for attorney's use at trial. | CJH | 1.00 | 100.00 |
| 27-Jul-20 | Perform test of systems for remote video trial with court staff and other parties. | RDG | 0.50 | 112.50 |
| 27-Jul-20 | Analyze and mark all of plaintiff's trial exhibits. | RDG | 1.60 | 360.00 |
| 27-Jul-20 | Draft an outline of cross-examination for HOA witness and mark exhibits for use during same. | RDG | 1.10 | 247.50 |

Subtotal for Code L440 OTHER TRIAL PREPARATION AND SUPPORT 10.90 2,327.50

Task Code: L450 TRIAL AND HEARING ATTENDANCE

| | | | | |
|-----------|---|-----|------|--------|
| 28-Jul-20 | Participate in first day of trial, opening statements, cross-examination of witnesses, and evidentiary arguments. | RDG | 3.50 | 787.50 |
| 29-Jul-20 | Finish trial and closing arguments. | RDG | 2.70 | 607.50 |

Subtotal for Code L450 TRIAL AND HEARING ATTENDANCE 6.20 1,395.00

Total Fees for Services Rendered.....\$5,562.50

9596595

[illegible]

| | | | |
|------------|--|----------------|---------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | July 31, 2020 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9596595 |

| | | | |
|------------|--------------------|------------|------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ██████████████████ | ██████████ | ██████████ |
| ██████████ | ██████████████████ | ██████████ | ██████████ |
| | ██████████ | ----- | ----- |
| | | ██████████ | ██████████ |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Remittance Copy

Invoice Date September 13, 2020
Invoice No. 9604971



Client Name: NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING
Matter Name: DANIA HERNANDEZ [REDACTED] NV
Matter Number: [REDACTED]



For professional services rendered through August 31, 2020 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$1,282.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |



Akerman LLP
Post Office Box 4906
Orlando, FL 32802
Tel: 407.254.2305
Fax: 407.254.3408

Invoice Date September 13, 2020
Invoice No. 9604971

[REDACTED]

Client Name: **NEWREZ LLC, D/B/A SHELLPOINT
MORTGAGE SERVICING**
Matter Name: **DANIA HERNANDEZ** [REDACTED] NV
Matter Number: [REDACTED] [REDACTED]

For professional services rendered through August 31, 2020 as summarized below:

| | |
|---------------------------|----------------------|
| Services | \$1,282.50 |
| [REDACTED] | [REDACTED] |
| TOTAL THIS INVOICE | \$ [REDACTED] |

| | | |
|--|----------------|-----------------|
| NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | August 31, 2020 |
| DANIA HERNANDEZ NV | Invoice Number | 9604971 |

Task Code: L160 SETTLEMENT/NON-BINDING ADR

| | | | | |
|--|---|-----|-------------|---------------|
| 14-Aug-20 | Exchange emails with opposing counsel re settlement negotiations. | RDG | 0.30 | 67.50 |
| 14-Aug-20 | Exchange emails with client [REDACTED] [REDACTED]. | RDG | 0.30 | 67.50 |
| Subtotal for Code L160 SETTLEMENT/NON-BINDING ADR | | | 0.60 | 135.00 |

Task Code: L250 OTHER WRITTEN MOTIONS AND SUBMISSIONS

| | | | | |
|-----------|---|-----|------|--------|
| 5-Aug-20 | Finish drafting proposed findings of fact and conclusions of law following trial. | RDG | 1.30 | 292.50 |
| 7-Aug-20 | Email client [REDACTED] [REDACTED]. | RDG | 0.20 | 45.00 |
| 13-Aug-20 | Exchange emails with opposing counsel re transcript from trial, draft findings of fact and conclusions of law, and potential for settlement negotiations. | RDG | 0.40 | 90.00 |
| 14-Aug-20 | Final revisions to proposed findings of fact and conclusions of law before sending same to court staff and filing same. | RDG | 0.40 | 90.00 |
| 17-Aug-20 | Analyze purchaser's proposed findings of fact and conclusions of law submitted to court. | RDG | 0.30 | 67.50 |

| | | | |
|--|--|----------------|-----------------|
|  | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | August 31, 2020 |
|  | DANIA HERNANDEZ  NV | Invoice Number | 9604971 |

| | | |
|---|-------------|---------------|
| Subtotal for Code L250 OTHER WRITTEN MOTIONS AND SUBMISSIONS | 2.60 | 585.00 |
|---|-------------|---------------|

Task Code: L430 WRITTEN MOTIONS AND SUBMISSIONS

| | | | | |
|----------|--|-----|------|--------|
| 4-Aug-20 | Work on drafting the proposed findings of fact and conclusions of law after trial in accordance with request from the judge. | RDG | 1.20 | 270.00 |
|----------|--|-----|------|--------|

| | | |
|---|-------------|---------------|
| Subtotal for Code L430 WRITTEN MOTIONS AND SUBMISSIONS | 1.20 | 270.00 |
|---|-------------|---------------|

Task Code: L440 OTHER TRIAL PREPARATION AND SUPPORT

| | | | | |
|----------|---|-----|------|--------|
| 7-Aug-20 | Work on proposed findings of fact and conclusions of law prior to submission of same to court for review, edit, and execution | NLW | 0.90 | 292.50 |
|----------|---|-----|------|--------|

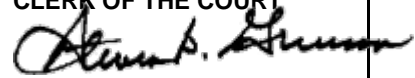
| | | |
|---|-------------|---------------|
| Subtotal for Code L440 OTHER TRIAL PREPARATION AND SUPPORT | 0.90 | 292.50 |
|---|-------------|---------------|

Total Fees for Services Rendered.....\$1,282.50

| | | |
|---|--|---|
|  |  |  |
|  |  |  |
|  | |  |
|  | | |

| | | | |
|------------|--|----------------|-----------------|
| ██████████ | NEWREZ LLC, D/B/A SHELLPOINT MORTGAGE SERVICING | As of | August 31, 2020 |
| ██████████ | DANIA HERNANDEZ ██████████ NV | Invoice Number | 9604971 |

| | | | |
|------------|----------------------|------------|------------|
| ██████████ | ██████████ | ██████████ | ██████████ |
| ██████████ | ████████████████████ | ██████████ | ██████████ |
| ██████████ | ████████████████████ | ██████████ | ██████████ |
| | ██████████ | ----- | ----- |
| | | ██████████ | ██████████ |



OPPS
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 West Charleston Blvd., #75
Las Vegas, Nevada 89102
(702) 254-7775
(702) 228-7719 (facsimile)
croteaulaw@croteaulaw.com
Attorney for Plaintiff
LAS VEGAS DEVELOPMENT GROUP, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)

Plaintiff,)

vs.)

DANIA V. HERNANDEZ, an individual; THE)
BANK OF NEW YORK MELLON f/k/a THE)
BANK OF NEW YORK, AS TRUSTEE FOR)
THE CERTIFICATEHOLDERS OF CWABS,)
INC., ASSET-BACKED CERTIFICATES,)
SERIES 2006-7, a national banking association;)
DOE individuals I through XX; and ROE)
CORPORATIONS I through XX,)

Defendants.)

THE BANK OF NEW YORK MELLON f/k/a)
THE BANK OF NEW YORK, AS TRUSTEE)
FOR THE CERTIFICATEHOLDERS OF)
CWABS, INC., ASSET-BACKED)
CERTIFICATES, SERIES 2006-7,)

Counterclaimant,)

vs.)

LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)

Counterdefendant.)

Case No. A-17-756215-C
Dept. No. XIII

OPPOSITION TO MOTION FOR
ATTORNEYS' FEES AND COSTS
PURSUANT TO NRCP 68

Date of Hearing: November 16, 2020
Time of Hearing: 9:00 a.m.

1 **OPPOSITION TO MOTION FOR ATTORNEYS' FEES**

2 **AND COSTS PURSUANT TO NRCP 68**

3 COMES NOW, Plaintiff/Counter-Defendant, LAS VEGAS DEVELOPMENT GROUP,
4 LLC, by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby
5 presents its Opposition to Defendant/Counterclaimant's Motion for Attorneys' Fees and Costs
6 Pursuant to NRCP 68. This Opposition is made and based upon the attached Memorandum of
7 Points and Authorities; the attached exhibits and declaration of counsel; and all papers and
8 pleadings filed herein.

9 DATED this 29th day of October, 2020.

10 ROGER P. CROTEAU & ASSOCIATES, LTD.

11
12 /s/ Timothy E. Rhoda
13 ROGER P. CROTEAU, ESQ.
14 Nevada Bar No. 4958
15 TIMOTHY E. RHODA, ESQ.
16 Nevada Bar No. 7878
17 2810 West Charleston Blvd., #75
18 Las Vegas, Nevada 89102
19 (702) 254-7775
20 ***Attorney for Plaintiff***
21 **LAS VEGAS DEVELOPMENT GROUP, LLC**

22 **POINTS AND AUTHORITIES**

23 **STATEMENT OF THE FACTS**

24 The facts surrounding this matter have been more or less accurately set forth in the instant
25 Motion. At issue in the case was real property commonly known as 1524 Highfield Court, North
26 Las Vegas, Nevada 89032, Assessor Parcel No. 139-09-410-021 (*the "Property"*).
27 Defendant/Counterclaimant, THE BANK OF NEW YORK MELLON f/k/a THE BANK OF
28 NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC.,
ASSET-BACKED CERTIFICATES, SERIES 2006-7 (*"BONY"*) claimed to own a deed of trust
recorded against the Property in the Official Records of the Clark County Recorder as Instrument
No. 20060419-0000609 (*"First Deed of Trust"*). Counterclaim, ¶10-11.

1 The Property was the subject of a homeowners association lien foreclosure sale dated
2 March 2, 2011 (“*HOA Foreclosure Sale*”), conducted on behalf of Hidden Canyon Owners
3 Association (“*HOA*”). HOA purchased the Property at the HOA Foreclosure Sale. On March 3,
4 2011, a Trustee’s Deed Upon Sale (“*HOA Foreclosure Deed*”) was recorded, vesting title to the
5 Property in the name of HOA. *Id.* On or about March 30, 2011, HOA transferred and sold the
6 Property to the Plaintiff, Las Vegas Development Group, LLC (“*LVDG*”). On March 31, 2011,
7 a Quitclaim Deed was recorded in the Official Records of the Clark County Recorder as
8 Instrument No. 20110331-0003138, transferring all right, title and interest in the Property from
9 HOA to LVDG. Said Quitclaim Deed was re-recorded on April 26, 2012, as Instrument No.
10 20120426–0000422, and on January 28, 2013, as Instrument No. 20130128-0002187.

11 LVDG filed the instant action on May 31, 2017, over 6 years after the HOA Foreclosure
12 Sale took place. LVDG’s Complaint included a single cause of action for Quiet Title/
13 Declaratory Relief. See Complaint. BONY filed its Answer and Counterclaim on June 15,
14 2017, also alleging a claim for Quiet Title/Declaratory Relief. Thereafter, the matter was
15 litigated. The action eventually proceeded to a trial on the merits on July 28 and July 29, 2020,
16 with the Court thereafter entering Findings of Fact, Conclusions of Law and Judgment (“*FFCL*”)
17 in favor of BONY, determining that BONY’s First Deed of Trust survived the HOA Foreclosure
18 Sale.

19 The instant Motion seeks an award of attorneys’ fees and costs in association with an
20 Offer of Judgment in the amount of \$5,000.00 served by BONY on September 19, 2018. See
21 Motion, Exhibit 1. For the reasons set forth below, an award of attorneys’ fees and costs is
22 unwarranted.

23 **LEGAL ARGUMENT**

24 **1. STATEMENT OF THE LAW REGARDING THE AWARDING OF** 25 **ATTORNEYS’ FEES AND COSTS**

26 A court may not award attorney's fees unless authorized by statute, rule or contract.
27 *Nevada Bd. Osteopathic Med. v. Graham*, 98 Nev. 174, 175, 643 P.2d 1222, 1223 (1982); *State*
28 *ex rel. List v. Courtesy Motors*, 95 Nev. 103, 108, 590 P.2d 163, 166 (1979). Costs, on the other

1 hand, must be allowed as a matter of course in certain cases.

2 N.R.S. 18.020 states as follows:

3 Costs must be allowed of course to the prevailing party against any adverse party
4 against whom judgment is rendered, in the following cases:

- 5 1. In an action for the recovery of real property or a possessory right thereto.
- 6 2. In an action to recover the possession of personal property, where the value of
7 the property amounts to more than \$2,500. The value must be determined by the
8 jury, court or master by whom the action is tried.
- 9 3. In an action for the recovery of money or damages, where the plaintiff seeks to
10 recover more than \$2,500.
- 11 4. In a special proceeding, except a special proceeding conducted pursuant to
12 NRS 306.040.
- 13 5. In an action which involves the title or boundaries of real estate, or the legality
14 of any tax, impost, assessment, toll or municipal fine, including the costs accrued
15 in the action if originally commenced in a Justice Court.

16 N.R.S. 18.005 defines “costs,” stating as follows:

17 For the purposes of NRS 18.010 to 18.150, inclusive, the term “costs” means:

- 18 1. Clerks’ fees.
- 19 2. Reporters’ fees for depositions, including a reporter’s fee for one copy of each
20 deposition.
- 21 3. Jurors’ fees and expenses, together with reasonable compensation of an officer
22 appointed to act in accordance with NRS 16.120.
- 23 4. Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless the
24 court finds that the witness was called at the instance of the prevailing party
25 without reason or necessity.
- 26 5. Reasonable fees of not more than five expert witnesses in an amount of not
27 more than \$1,500 for each witness, unless the court allows a larger fee after
28 determining that the circumstances surrounding the expert’s testimony were of
such necessity as to require the larger fee.
6. Reasonable fees of necessary interpreters.
7. The fee of any sheriff or licensed process server for the delivery or service of
any summons or subpoena used in the action, unless the court determines that the
service was not necessary.
8. Compensation for the official reporter or reporter pro tempore.
9. Reasonable costs for any bond or undertaking required as part of the action.
10. Fees of a court bailiff or deputy marshal who was required to work overtime.
11. Reasonable costs for telecopies.
12. Reasonable costs for photocopies.
13. Reasonable costs for long distance telephone calls.
14. Reasonable costs for postage.
15. Reasonable costs for travel and lodging incurred taking depositions and
conducting discovery.
16. Fees charged pursuant to NRS 19.0335.
17. Any other reasonable and necessary expense incurred in connection with the
action, including reasonable and necessary expenses for computerized services for
legal research.

18 Although attorneys’ fees are not recoverable as a matter of course, NRCP 68 provides for
19 the service of an offer of judgment at any time more than 10 days before trial. Pursuant to NRCP
20
21
22
23
24
25
26
27
28

1 68, the penalties for rejecting an offer of judgment and failing to obtain a better verdict at trial are
2 that the Court, in addition to costs and interest, may award “reasonable attorney’s fees, if any be
3 allowed, actually incurred by the offeror from the time of the offer...” NRCP 68(f)(2). The
4 purpose of NRCP 68 “is to save time and money for the court system, the parties and the
5 taxpayers” by promoting reasonable settlement versus litigation to the bitter end at all costs.
6 *Dillard Dep’t Stores, Inc. v. Beckwith*, 115 Nev. 372, 382 (Nev. 1999). The rule will “reward a
7 party who makes a reasonable offer and punish the party who refuses to accept such an offer.” *Id.*
8 citing *Muije v. A North Las Vegas Cab Co.*, 106 Nev. 664, 667 (1990). “It is within the discretion
9 of the trial court judge to allow attorney’s fees pursuant to Rule 68” and such awards will not be
10 overturned unless they are arbitrary or capricious. *Schouweiler v. Yancey Co.*, 101 Nev. 827, 833
11 (1985).

12 When ruling on a motion for attorneys’ fees, the Court must consider several factors.

13 First, under the *Brunzell* case, the Court must consider:

14 (1) the qualities of the advocate: his ability, his training, education, experience,
15 professional standing and skill; (2) the character of the work to be done: its
16 difficulty, its intricacy, its importance, time and skill required, the responsibility
17 imposed and the prominence and character of the parties where they affect the
18 importance of the litigation; (3) the work actually performed by the lawyer: the
19 skill, time and attention given to the work; (4) the result: whether the attorney was
20 successful and what benefits were derived. *Brunzell v. Golden Gate National*
21 *Bank*, 455 P. 2d 31, 33 (Nev. 1969).

22 Second, if the award of fees is made pursuant to an offer of judgment, the Court must consider
23 the following *Beattie* factors as well:

24 In exercising its discretion, the trial court must evaluate the following factors: (1)
25 whether plaintiff’s claim was brought in good faith; (2) whether the offeror’s offer
26 of judgment was brought in good faith; (3) whether the offeree’s decision to reject
27 the offer and proceed to trial was grossly unreasonable or in bad faith; and (4)
28 whether fees sought by the offeror are reasonable and justified in amount.
Uniroyal Goodrich Tire Co. v. Mercer, 890 P. 2d 785, 789 (Nev. 1995), affirming
factors set forth in *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983).

These are commonly known as the *Brunzell* and *Beattie* factors. “Factors which go to
reasonableness include whether the offeree eventually recovered more than the rejected offer and
whether the offeree’s rejection unreasonably delayed the litigation with no hope of greater
recovery.” *Cormier v. Manke*, 108 Nev. 316, 318 (Nev. 1992).

1 **2. ANY AWARD OF COSTS MUST BE LIMITED TO THOSE INCURRED AFTER**
2 **THE OFFER OF JUDGMENT**

3 Although the instant Motion briefly mentions NRS 18.020, it primarily requests an award
4 of costs pursuant to NRCP 68. NRS 18.020 provides that costs shall be awarded to the
5 prevailing party as a matter of course “[i]n an action which involves the title or boundaries of real
6 estate.” In this particular case, the claims at issue did not truly involve title to real estate. On the
7 contrary, there was no dispute that LVDG is the owner of the Property. The only real dispute
8 was whether BONY’s First Deed of Trust continued to encumber the Property after the HOA
9 Foreclosure Sale. As a result, NRS 18.020 does not form a proper basis for an award of costs.

10 To the extent that any award of costs is awarded to BONY, it must be limited to those
11 costs incurred prior to the date of the Offer of Judgment served on September 19, 2018. Pursuant
12 to BONY’s Memorandum of Costs filed on September 23, 2020, BONY incurred costs totaling
13 at least \$438.69 prior to September 19, 2018. If an award of costs is deemed appropriate
14 pursuant to NRCP 68, these costs must be disallowed because they were incurred prior to the
15 Defendant’s Offer of Judgment.

16 **3. AN AWARD OF ATTORNEYS’ FEES IS UNWARRANTED IN THIS CASE**

17 Plaintiff served its offer of judgment in the amount of \$5,000.00 upon LVDG on
18 September 19, 2018. See Motion, Exhibit 1. LVDG admittedly did not accept the offer within
19 10 days. However, an examination of the *Brunzell* and *Beattie* factors indicates that an award of
20 attorneys’ fees is not warranted herein. Each will be addressed in turn.

21 As discussed above, the *Brunzell* factors include (1) the qualities of the advocate: his
22 ability, his training, education, experience, professional standing and skill; (2) the character of
23 the work to be done: its difficulty, its intricacy, its importance, time and skill required, the
24 responsibility imposed and the prominence and character of the parties where they affect the
25 importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and
26 attention given to the work; (4) the result: whether the attorney was successful and what benefits
27 were derived. *Brunzell v. Golden Gate National Bank*, 455 P. 2d 31, 33 (Nev. 1969).

1 a. Qualities of the Advocate

2 LVDG does not dispute the qualities of BONY's counsel. All of BONY's counsel are
3 very well qualified with a high degree of expertise in the subject matter of this case.

4 b. Character of Work

5 As noted by BONY in its Motion, homeowners association lien litigation often involves
6 very similar issues. Most of this case was quite standard. Although the Nevada Supreme Court
7 issued a published decision in the matter of *Anthony S. Noon IRA v. U.S. Bank, N.A.*, 466 P.3d
8 1276 136 Nev. Adv. Op. 41 (Nev. July 9, 2020) shortly before trial that involved factual
9 circumstances substantially identical to this matter, *Noonan* did not result in a significant amount
10 of additional work. Although LVDG believes that Noonan dictated a ruling that BONY's First
11 Deed of Trust was extinguished, the Court disagreed. On the whole, the instant case did not
12 require a great deal of work. While most of the work performed was relatively routine, as
13 discussed below, it is not completely clear what some of the work entailed.

14 c. Work Actually Performed

15 Counsel litigated this entire case through and including a two day trial. However, an
16 examination of the Motion and its exhibits raises questions regarding exactly what work was
17 done and what amounts BONY was charged. First, many of the entries included on counsel's
18 billing statements are completely redacted. It is impossible for either LVDG's counsel or the
19 Court to determine whether these redacted entries represent work that was reasonably and
20 necessarily performed. Second, the billing statements seem to indicate that BONY may have
21 been granted a discount.

22 Counsel's monthly billing statements seem to be generally comprised of 2 substantially
23 identical cover sheets with one being a "Remittance Copy," setting forth the total for the monthly
24 invoice, together with additional pages itemizing the monthly charges. As set forth above, many
25 of these itemized entries are entirely redacted, making it impossible to determine the nature of
26 the work performed. However, separate questions exist based upon the summary pages.

1 Although certain information is redacted, each of the initial summary pages appears to set
2 forth the total amount billed for the month. By way of example, the billing statement dated
3 March 25, 2020, states as follows:

4 *For professional services rendered through February 29, 2020 as summarized*
5 *below:*

| | |
|----------------------|----------------|
| 6 Services | \$1,742.50 |
| 7 XXXXXXXX | <u>XXXXXXX</u> |
| 8 TOTAL THIS INVOICE | XXXXXXX |

9 On each statement, "XXXXXX" represents redacted information. Based upon the information
10 available, it appears that BONY may have been given a discount that reduced its bill and that the
11 total amount of each invoice may not be equal to the amount billed for services rendered.

12 Again, based on the information presented, it is impossible for LVDG's counsel or the
13 Court to determine what amounts BONY was actually billed by its counsel. If it received and
14 paid a discounted rate, it would be patently unfair for LVDG to be charged a higher rate. If any
15 award of attorneys' fees is granted, it cannot be more than that amount that was actually charged
16 to and paid by BONY.

17 d. Result

18 Based upon the Court's FFCL, the result of the case was obviously favorable for BONY.
19 Specifically, BONY's First Deed of Trust has been deemed to continue to encumber the
20 Property.

21 A review of the foregoing *Brunzell* factors do not justify an award of attorneys' fees to
22 BONY. At the very least, questions of fact exist regarding the numerous redactions. In
23 addition, because BONY's request is based upon an offer of judgment, the Court must review the
24 *Beattie* factors: (1) whether plaintiff's claim was brought in good faith; (2) whether the offeror's
25 offer of judgment was brought in good faith; (3) whether the offeree's decision to reject the offer
26 and proceed to trial was grossly unreasonable or in bad faith; and (4) whether fees sought by the
27 offeror are reasonable and justified in amount. *Uniroyal Goodrich Tire Co. v. Mercer*, 890 P. 2d
28 785, 789 (Nev. 1995), affirming factors set forth in *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d

1 268 (1983).

2 a. Whether Plaintiff's Claim was Brought in Good Faith

3 It is without question that the Plaintiff's claims were brought in good faith. LVDG filed
4 its Complaint more than 6 years after the HOA Foreclosure Sale in order to confirm that BONY's
5 First Deed of Trust was extinguished as matter of law. The action was filed long after the
6 seminal *SFR Investments* case was decided by the Nevada Supreme Court. It was an is the belief
7 of LVDG that BONY was required to force and effect of the HOA Foreclosure Sale within not
8 more than 3 or 4 years if it contended that its First Deed of Trust was not extinguished. This issue
9 remains unresolved to this date but is currently the subject of a certified question accepted by the
10 Nevada Supreme Court.

11 The force and effect of letters and payments issued by Miles Bauer Bergstrom & Winters
12 ("*Miles Bauer*") like those at issue in this matter were hotly debated during the time that this
13 litigation was pending. Aside from this fact, because it was undisputed in this case that Miles
14 Bauer failed to pay an amount sufficient to satisfy the superpriority portion of the HOA Lien,
15 LVDG believes that this Court was required to apply the recent *Noonan* decision and to rule in its
16 favor. Alternatively, LVDG believes that it should have prevailed as a result of BONY's
17 admitted failure to take any action for more than 6 years after the HOA Foreclosure Sale. In any
18 event, it is readily apparent that LVDG's claims were brought in good faith.

19 b. Whether the Offer of Judgment was Brought in Good Faith

20 BONY's Offer of Judgment was in the amount of \$5,000.00. According to BONY's
21 expert witness, the Property was worth \$76,000.00 on the date of the HOA Foreclosure Sale.
22 This is compared to today's market value of approximately \$250,000.00. In any event, BONY's
23 offer represented between approximately 2% and 6% of the amount in controversy. Under such
24 circumstances, the Offer of Judgment was not brought in good faith.

25 c. Whether the Rejection of the Offer was Grossly Unreasonable or in Bad Faith

26 As set forth above, BONY offered between 2% and 6% of the value of LVDG's property
27 in order to resolve this matter. Based upon the issues presented, it was not grossly unreasonable
28 or in bad faith for LVDG to reject this offer. Indeed, LVDG continues to believe that it stands a

1 significant chance of prevailing on appeal based upon either the statute of limitations or the
2 *Noonan* decision.

3 d. Whether the Fees Sought are Reasonable and Justified

4 As discussed above, it is impossible for either LVDG or this Court to determine whether
5 the fees sought by BONY are reasonable and justified. A significant portion of the billing
6 records are redacted, making it impossible to guess whether the associated services were
7 reasonable and/or necessary. Moreover, the billing statements appear to indicate that BONY may
8 have been granted a discount by its counsel. Again, significant information is redacted, making it
9 impossible for LVDG's counsel and the Court to make a determination.

10 CONCLUSION

11 For the reasons set forth above, the instant Motion must be denied. If any award of fees
12 and costs is deemed warranted, it must be limited to those reasonable costs and fees incurred
13 after the date of BONY's Offer of Judgment. In order to appropriately determine any such
14 amounts, BONY must provide unredacted billing statements and/or adequately explain what it
15 was charged and what it was paid. If the redacted information is confidential and/or privileged it
16 should at the very least be presented to the Court for its *in camera* inspection. The evidence
17 presented is simply insufficient to warrant an award of fees or costs.

18 DATED this 29th day of October, 2020.

19 ROGER P. CROTEAU & ASSOCIATES, LTD.

20
21 /s/ Timothy E. Rhoda
22 ROGER P. CROTEAU, ESQ.
23 Nevada Bar No. 4958
24 TIMOTHY E. RHODA, ESQ.
25 Nevada Bar No. 7878
26 2810 West Charleston Blvd., #75
27 Las Vegas, Nevada 89102
28 (702) 254-7775
Attorney for Plaintiff
LAS VEGAS DEVELOPMENT GROUP, LLC

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee
3 of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 29th day of October,
4 2020, I caused a true and correct copy of the foregoing document to be served on all parties as
5 follows:

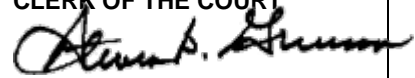
6 X VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-
7 file and serve system.

8 VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with
9 postage thereon fully prepaid, addressed as indicated on service list below in the United
States mail at Las Vegas, Nevada.

10 VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated
on the service list below.

11 VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this
12 date to the addressee(s) at the address(es) set forth on the service list below.

13
14 /s/ Timothy E. Rhoda
15 An employee of ROGER P. CROTEAU &
16 ASSOCIATES, LTD.
17
18
19
20
21
22
23
24
25
26
27
28



RIS

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

REX D. GARNER, ESQ.

Nevada Bar No. 9401

AKERMAN LLP

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: ariel.stern@akerman.com

Email: natalie.winslow@akerman.com

Email: rex.garner@akerman.com

*Attorneys for The Bank of New York Mellon f/k/a
The Bank of New York, as Trustee for the
Certificateholders of CWABS, Inc., Asset-Backed
Certificates, Series 2006-7*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC,
a Nevada limited liability company,

Plaintiff,

vs.

DANIA V. HERNANDEZ, an individual; THE
BANK OF NEW YORK MELLON F/K/A THE
BANK OF NEW YORK, AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF CWABS,
INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-7, a national banking association;
DOE individuals I through XX; and ROE
CORPORATIONS I through XX,

Defendants.

THE BANK OF NEW YORK MELLON F/K/A
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF
CWABS, INC., ASSET-BACKED
CERTIFICATES, SERIES 2006-7,

Counterclaimant,

vs.

LAS VEGAS DEVELOPMENT GROUP, LLC,
a Nevada limited liability company,

Counterdefendant.

Case No.: A-17-756215-C

Dept. No.: XIII

**THE BANK OF NEW YORK MELLON
F/K/A THE BANK OF NEW YORK, AS
TRUSTEE'S REPLY SUPPORTING
MOTION FOR ATTORNEYS' FEES AND
COSTS PURSUANT TO NRCP 68**

Date: November 16, 2020

Time: 9:00 a.m.

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 **I. INTRODUCTION**

2 The parties do not dispute the reality of the offer of judgment and LVDG's failure to do better
3 than the offer at trial. Accordingly, as the prevailing party, BoNYM is entitled to *all* costs under NRS
4 18.020 and to its post-offer fees under Rule 68 and the *Brunzell/Beattie* factors. To clarify, BoNYM
5 does *not* seek fees for any of the invoices where the entry is entirely redacted. Thus, BoNYM
6 requests less than all the fees it incurred post-offer.

7 **II. ARGUMENT**

8 **A. BoNYM is entitled to all costs.**

9 All Rule 68(f) certainly entitles BoNYM to post-offer costs, NRS 18.020 entitles BoNYM, as
10 the prevailing party, to *all* of its costs. NRS 18.020(5) states: "Costs must be allowed of course to the
11 prevailing party against any adverse party against whom judgment is rendered, in the following cases:
12 . . . 5. In an action which involves the title or boundaries of real estate [.]" LVDG's lawsuit to clear
13 its title of BoNYM's deed of trust certainly falls within subcategory 5. Accordingly, BoNYM filed a
14 memorandum of costs pursuant to NRS 18.110. If LVDG had a challenge to any of the costs sought,
15 NRS 18.110(4) required it to file a motion to retax. LVDG did not file any motion to retax. Thus, all
16 costs sought are awardable.

17 **B. The *Beattie* and *Brunzell* factors favor an award.**

18 Not all of the *Beattie* factors need to weigh in BoNYM's favor to justify an award of fees
19 under Rule 68. *Palace Station Hotel & Casino v. Jones*, 115 Nev. 162, 167, 978 P.2d 323, 326
20 (1999). The *Beattie* factors include: "(1) whether plaintiff's claim was brought in good faith; (2)
21 whether the defendant's offer of judgment was reasonable and in good faith in both its timing and
22 amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly
23 unreasonable or in bad faith; and (4) whether the fees sought by the offer or are reasonable and
24 justified in amount." Courts weigh these factors in light of the purpose of NRCP 68, which is to
25 encourage settlement before trial. *Morgan v. Demille*, 106 Nev. 671, 674, 799 P.2d 561, 563 (1990).

26 ///

27 ///

28 ///

1 **1. LVDG's claim was brought/continued in bad faith and its rejection of the offer was**
2 **unreasonable.**

3 By May 2017, when LVDG filed its complaint, the law surrounding tender of an HOA's
4 superpriority had started taking shape, including the 2016 *Stone Hollow* trilogy of unpublished
5 decisions from the Nevada Supreme Court, which portended that the now-well-known Miles Bauer
6 tenders would preserve the deed of trust. Indeed, in 2018 the Nevada Supreme Court issued
7 unpublished decisions saying so, then published the seminal *Diamond Spur* case on tender. *Bank of*
8 *America, N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113, 116 (Nev. 2018) ("We hold that a first deed of
9 trust holder's unconditional tender of the superpriority amount due results in the buyer at foreclosure
10 taking the property subject to the deed of trust. asserting claims for quiet title and declaratory
11 relief.").¹ After 2018, then, it was not reasonable for LVDG to believe it could overcome the clear
12 tender in this case (the facts of which LVDG stipulated to before trial), which rendered LVDG's
13 decision to reject BoNYM's offer unreasonable.

14 **2. BoNYM's offer was reasonable in timing and amount, and LVDG's decision to**
15 **reject the offer was made in bad faith.**

16 BoNYM served its offers of judgment after the tender documents were provided to LVDG
17 and the law was favoring secured lenders who had tendered before the HOA's auction. The timing of
18 BoNYM's offer was thus reasonable.

19 So too was the amount. The property's worth is irrelevant to the amount of BoNYM's offer in
20 light of the law on tender, which would dictate a result that LVDG's title is encumbered by BoNYM's
21 first deed of trust. LVDG could have received \$5,000 and encumbered title to the property. Instead,
22 it rolled the dice at trial, the result of which was encumbered title but no \$5,000.

23 ///

24 ///

25 ///

26 ¹ Years earlier, even the 2014 SFR decision acknowledged a secured lender's ability to pay off the
27 superpriority and preserve its deed's status. *SFR Invs. Pool 1 v. US Bank*, 334 P.3d 408, 413 (Nev.
28 2014) ("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."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of November, 2020 and pursuant to NRCP 5(b), I served via the Clark County electronic filing system a true and correct copy of the foregoing **THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2006-7'S REPLY SUPPORTING MOTION FOR ATTORNEYS' FEES AND COSTS PURSUANT TO NRCP 68**, addressed to:

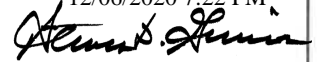
Roger P. Croteau & Associates, Ltd.

Roger P. Croteau croteaulaw@croteaulaw.com

Croteau Admin receptionist@croteaulaw.com

/s/ Patricia Larsen

An employee of AKERMAN LLP


CLERK OF THE COURT

DECN DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC, a)
Nevada limited liability company,)
Plaintiff(s),) CASE NO. A-17-756215-C
vs.) DEPT. NO. XIII
DANIA V. HERNANDEZ, an individual;)
THE BANK OF NEW YORK MELLON F/K/A THE)
BANK OF NEW YORK, AS TRUSTEE FOR THE)
CERTIFICATEHOLDERS OF CWABS, INC.,)
ASSET-BACKED CERTIFICATES, SERIES)
2006-7, a national banking)
association)
Defendant(s).)
AND ALL RELATED CLAIMS.)

DECISION

THIS MATTER having come before the Court on Defendant
"Bank of New York Mellon['s] . . . Motion for Attorneys' Fees and
Costs Pursuant to NRCP 68," deemed submitted and under advisement
as of November 16, 2020 pursuant to the Minute Order of November 10,
2020;

AND, the Court having reviewed the parties' filings
pertaining thereto and being fully advised in the premises;

NOW, THEREFORE, the Court decides the subject Motion as
follows:

The Court analyzes the factors set forth in *Beattie v.*

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

1 *Thomas*, 99 Nev. 579, 668 P.2d 268 (1983) as follows:

2 • Plaintiff's claims against Defendant were brought
3 in good faith.

4 • Defendant's offer of judgment was reasonable and in
5 good faith in both timing and amount.

6 • Plaintiff's decision to reject the offer and proceed
7 with its case against Defendant was not unreasonable given, *inter*
8 *alia*, that Defendant has recognized the "endless evolution of case
9 law" that has developed on the subject, which has been the case both
10 before and after the commencement of this action. (Motion, p. 6,
11 11. 25-26)

12 • The fees sought by the Defendant are reasonable,
13 *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31,
14 33 (1969), for the time and effort applied to litigating this case,
15 but an order that Plaintiffs pay them in their entirety would not
16 be justified.


17
18
19
20
21 BASED UPON the foregoing, and all things considered, the
22 Court GRANTS Defendant's Motion IN PART and awards attorneys' fees
23 in the sum of \$9,500.00, together with costs in the sum of \$2,836.78.
24 (As prevailing party, Defendant is not limited to costs that were
25 incurred post-offer of judgment. NRS 18.020.)

26 Counsel for Defendant is directed to submit a proposed
27

1 order consistent herewith and with supportive briefing after
2 providing the same to opposing counsel for signification of
3 approval/disapproval.
4

5 This Decision sets forth the Court's intended disposition
6 on the subject, but it anticipates further order of the Court to
7 make such disposition effective as an order or judgment.

8 Dated this 6th day of December, 2020

9 
10 _____

11 9B9 656 232D E507
12 Mark R. Denton
13 District Court Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Las Vegas Development Group
LLC, Plaintiff(s)

CASE NO: A-17-756215-C

7 vs.

DEPT. NO. Department 13

8
9 Dania Hernandez, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Decision was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 12/6/2020

15 Natalie Winslow natalie.winslow@akerman.com

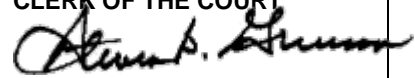
16 Ariel Stern ariel.stern@akerman.com

17 Rex Garner rex.garner@akerman.com

18 Akerman LLP AkermanLAS@akerman.com

19 Roger Croteau croteaulaw@croteaulaw.com

20 Croteau Admin receptionist@croteaulaw.com



ORDR

ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
REX D. GARNER, ESQ.
Nevada Bar No. 9401
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: ariel.stern@akerman.com
Email: natalie.winslow@akerman.com
Email: rex.garner@akerman.com

*Attorneys for The Bank of New York Mellon f/k/a
The Bank of New York, as Trustee for the
Certificateholders of CWABS, Inc., Asset-Backed
Certificates, Series 2006-7*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC,
a Nevada limited liability company,

Plaintiff,

vs.

DANIA V. HERNANDEZ, an individual; THE
BANK OF NEW YORK MELLON F/K/A THE
BANK OF NEW YORK, AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF CWABS,
INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-7, a national banking association;
DOE individuals I through XX; and ROE
CORPORATIONS I through XX,

Defendants.

THE BANK OF NEW YORK MELLON F/K/A
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF
CWABS, INC., ASSET-BACKED
CERTIFICATES, SERIES 2006-7,

Counterclaimant,

vs.

LAS VEGAS DEVELOPMENT GROUP, LLC,
a Nevada limited liability company,

Counterdefendant.

Case No.: A-17-756215-C

Dept. No.: XIII

**ORDER GRANTING IN PART MOTION
FOR ATTORNEYS' FEES AND COSTS
PURSUANT TO NRCP 68**

1 The Bank of New York Mellon fka The Bank of New York, as Trustee for the
2 Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-7 (**BoNYM**) Motion for
3 Attorneys' Fees and Costs pursuant to NRCP 68, came for hearing in chambers. The Court, having
4 read the papers and considered the arguments of counsel hereby finds as follows:

5 1. On September 19, 2018, BoNYM served an offer of judgment on plaintiff Las Vegas
6 Development Group, LLC (**LVDG**), well before trial of this case.

7 2. LVDG did not accept the offer of judgment.

8 3. After trial, judgment was entered entirely in BoNYM's favor, meaning LVDG did not
9 obtain a judgment in its favor more favorable than BoNYM's offer.

10 4. BoNYM made a timely motion for fees under NRCP 68, supported by the *Brunzell*
11 and *Beattie* factors, BoNYM's discussion of which is incorporated herein by reference, and supported
12 by evidence of the costs and fees incurred post-offer of judgment. LVDG disputed the sufficiency of
13 the evidence presented and specifically objected to various redactions which it asserts made it unclear
14 exactly what costs and fees were actually incurred and paid by BoNYM.

15 "The purpose of . . . NRCP 68 is to save time and money for the court system, the parties and
16 the taxpayers. They reward a party who makes a reasonable offer and punish the party who refuses to
17 accept such offer." *Dillard Dept. Stores, Inc. v. Beckwith*, 115 Nev. 372, 382, 989 P.2d 882, 888
18 (1999). Under NRCP 68, if a party makes an offer of judgment and that offer is rejected, the offering
19 party is entitled to its post-offer fees if it obtains a result more favorable than the offer.

20 A court can award attorneys' fees under NRCP 68 after it considers the following factors: "(1)
21 whether plaintiff's claim was brought in good faith; (2) whether the defendant's offer of judgment was
22 reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to
23 reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees
24 sought by the offer or are reasonable and justified in amount." *Beattie v. Thomas*, 99 Nev. 579, 588,
25 688 P.2d 268, 274 (1983). While a court must weigh these factors before awarding fees, the court
26 need not find that each factor weighs in the offering party's favor to do so. *Palace Station Hotel &*
27 *Casino v. Jones*, 115 Nev. 162, 167, 978 P.2d 323, 326 (1999).

28 ///

1 When examining the *Beattie* factors, courts should remember that the purpose of NRCP 68 is
2 to encourage settlement before trial. *Morgan v. Demille*, 106 Nev. 671, 674, 799 P.2d 561, 563
3 (1990). "[U]nless the trial court's exercise of discretion [in evaluating the *Beattie* factors] is arbitrary
4 or capricious, this court will not disturb the lower court's ruling on appeal." *Schouweiler v. Yancey*
5 *Co.*, 101 Nev. 827, 833, 712 P.2d 786, 790 (1985). The *Beattie* factors favor an award of reasonable
6 attorneys' fees to BoNYM.

7 The court's conclusions as to each *Beattie* factor is as follows:

8 1. LVDG's claims against BoNYM were brought in good faith. The force and effect of
9 letters and payments issued by Miles Bauer like those at issue in this case were hotly debated during
10 the time that this litigation was pending.

11 2. Defendant's offer of judgment was reasonable and in good faith in both timing and
12 amount. BoNYM served its offer of judgment after the tender documents were provided to LVDG,
13 and after the decision approving such tenders as a means of protecting senior deeds. *Bank of*
14 *America, N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113, 116 (Nev. 2018) ("We hold that a first deed of
15 trust holder's unconditional tender of the superpriority amount due results in the buyer at foreclosure
16 taking the property subject to the deed of trust. asserting claims for quiet title and declaratory relief.").
17 The timing of BoNYM's offer was reasonable in timing and amount.

18 3. LVDG's decision to reject the offer and proceed with its case against Defendant was
19 not unreasonable given, *inter alia*, that BoNYM has recognized the "endless evolution of case law"
20 that has developed on the subject, which has been the case both before and after the commencement
21 of this action. (Motion, p. 6, 11. 25-26)

22 4. The fees sought by the Defendant are reasonable, *Brunzell v. Golden Gate Nat'l Bank*,
23 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), for the time and effort applied to litigating this case, as set
24 forth in BoNYM's motion, incorporated herein by reference. Given the education and experience of
25 the lawyers involved, including their expertise in the NRS 116 arena, where Akerman attorneys have
26 tried approximately 80 HOA-related cases, the rates Akerman charges for its services are reasonable
27 and well within community standards for the Las Vegas legal profession. But an order that LVDG
28 pay BoNYM's fees in their entirety would not be justified.

1 BASED UPON the foregoing, and all things considered, the Court GRANTS BoNYM's
2 Motion IN PART and awards attorneys' fees in the sum of \$9,500.00, together with costs in the sum
3 of \$2,836.78. (As prevailing party, BoNYM is not limited to costs that were incurred post-offer of
4 judgment. NRS 18.020.)

5 DATED: December 23, 2020.



6
7 _____
8 DISTRICT COURT JUDGE
9

10
11 *Respectfully submitted by:*

12 **AKERMAN LLP**

13 /s/ Rex D. Garner

14 ARIEL E. STERN, ESQ.

15 Nevada Bar No. 8276

16 NATALIE L. WINSLOW, ESQ.

17 Nevada Bar No. 12125

18 REX D. GARNER, ESQ.

19 Nevada Bar No. 9401

20 1635 Village Center Cir., Suite 200

21 Las Vegas, Nevada 89134

22 *Attorneys for the Bank of New York Mellon fka The Bank of New York,*
23 *as Trustee for the Certificateholders of CWABS, Inc.,*
24 *Asset-Backed Certificates, Series 2006-7*

25 *Reviewed by:*

26 **ROGER P. CROTEAU & ASSOCIATES, LTD.**

27 /s/ Timothy E. Rhoda

28 ROGER P. CROTEAU, ESQ.

 Nevada Bar No. 4958

 TIMOTHY E. RHODA, ESQ.

 Nevada Bar No. 7878

 2810 West Charleston Blvd., #75

 Las Vegas, Nevada 89102

Attorneys for LVDG

Larsen, Patricia (LAA-Las)

From: Tim Rhoda <tim@croteaulaw.com>
Sent: Tuesday, December 22, 2020 3:34 PM
To: Garner, Rex (Assoc-Las)
Cc: Larsen, Patricia (LAA-Las)
Subject: RE: LVDG v. Hernandez - A756215 - (1524 Highfield) - order on fees

Follow Up Flag: Follow up
Flag Status: Completed

Rex,

You have my approval to submit the attached document with my e-signature. Thank you.

Tim

From: rex.garner@akerman.com [mailto:rex.garner@akerman.com]
Sent: Tuesday, December 22, 2020 1:04 PM
To: Tim Rhoda
Cc: patricia.larsen@akerman.com
Subject: RE: LVDG v. Hernandez - A756215 - (1524 Highfield) - order on fees

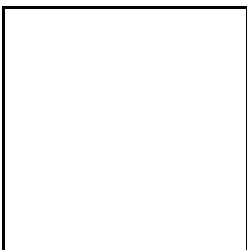
Tim,

Let me know if the attached is approved for submission to court. Thanks.

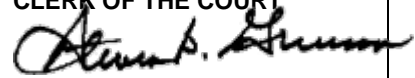
Rex Garner

Associate, Consumer Financial Services Practice Group
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134
D: 702 634 5054 | T: 702 634 5000 | F: 702 380 8572
rex.garner@akerman.com

[vCard](#) | [Profile](#)



CONFIDENTIALITY NOTE: The information contained in this transmission may be privileged and confidential, and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please immediately reply to the sender that you have received this communication in error and then delete it. Thank you.



NEOJ

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

REX D. GARNER, ESQ.

Nevada Bar No. 9401

AKERMAN LLP

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: ariel.stern@akerman.com

Email: natalie.winslow@akerman.com

Email: rex.garner@akerman.com

*Attorneys for The Bank of New York Mellon f/k/a
The Bank of New York, as Trustee for the
Certificateholders of CWABS, Inc., Asset-Backed
Certificates, Series 2006-7*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC, a
Nevada limited liability company,

Plaintiff,

vs.

DANIA V. HERNANDEZ, an individual; THE
BANK OF NEW YORK MELLON F/K/A THE
BANK OF NEW YORK, AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF CWABS,
INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-7, a national banking association;
DOE individuals I through XX; and ROE
CORPORATIONS I through XX,

Defendants.

THE BANK OF NEW YORK MELLON F/K/A
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF
CWABS, INC., ASSET-BACKED
CERTIFICATES, SERIES 2006-7,

Counterclaimant,

vs.

LAS VEGAS DEVELOPMENT GROUP, LLC, a
Nevada limited liability company,

Counterdefendant.

Case No.: A-17-756215-C

Dept. No.: XIII

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART MOTION FOR
ATTORNEYS' FEES AND COSTS
PURSUANT TO NRCP 68**

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 **TO: ALL PARTIES OF RECORD AND THEIR COUNSEL:**

2 PLEASE TAKE NOTICE that an ORDER GRANTING IN PART MOTION FOR
3 ATTORNEYS' FEES AND COSTS PURSUANT TO NRCP 68 has been entered on December 23,
4 2020, a copy of which is attached hereto.

5 DATED December 23, 2020.

6 **AKERMAN LLP**

7 /s/ Rex D. Garner, Esq.

8 ARIEL E. STERN, ESQ.

9 Nevada Bar No. 8276

10 NATALIE L. WINSLOW, ESQ.

11 Nevada Bar No. 12125

12 REX D. GARNER, ESQ.

13 Nevada Bar No. 9401

14 1635 Village Center Circle, Suite 200

15 Las Vegas, Nevada 89134

16 *Attorneys for The Bank of New York Mellon f/k/a The*
17 *Bank of New York, as Trustee for the Certificateholders*
18 *of CWABS, Inc., Asset-Backed Certificates, Series 2006-*
19 *7*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of December, 2020 and pursuant to NRCP 5(b), I served via the Clark County electronic filing system a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART MOTION FOR ATTORNEYS' FEES AND COSTS PURSUANT TO NRCP 68**, addressed to:

Roger P. Croteau & Associates, Ltd.

Roger P. Croteau croteaulaw@croteaulaw.com

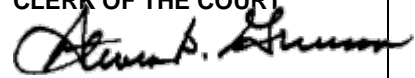
Croteau Admin receptionist@croteaulaw.com

/s/ Patricia Larsen

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A



ORDR

ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
REX D. GARNER, ESQ.
Nevada Bar No. 9401
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: ariel.stern@akerman.com
Email: natalie.winslow@akerman.com
Email: rex.garner@akerman.com

*Attorneys for The Bank of New York Mellon f/k/a
The Bank of New York, as Trustee for the
Certificateholders of CWABS, Inc., Asset-Backed
Certificates, Series 2006-7*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC,
a Nevada limited liability company,

Plaintiff,

vs.

DANIA V. HERNANDEZ, an individual; THE
BANK OF NEW YORK MELLON F/K/A THE
BANK OF NEW YORK, AS TRUSTEE FOR
THE CERTIFICATEHOLDERS OF CWABS,
INC., ASSET-BACKED CERTIFICATES,
SERIES 2006-7, a national banking association;
DOE individuals I through XX; and ROE
CORPORATIONS I through XX,

Defendants.

THE BANK OF NEW YORK MELLON F/K/A
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATEHOLDERS OF
CWABS, INC., ASSET-BACKED
CERTIFICATES, SERIES 2006-7,

Counterclaimant,

vs.

LAS VEGAS DEVELOPMENT GROUP, LLC,
a Nevada limited liability company,

Counterdefendant.

Case No.: A-17-756215-C

Dept. No.: XIII

**ORDER GRANTING IN PART MOTION
FOR ATTORNEYS' FEES AND COSTS
PURSUANT TO NRCP 68**

1 The Bank of New York Mellon fka The Bank of New York, as Trustee for the
2 Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2006-7 (**BoNYM**) Motion for
3 Attorneys' Fees and Costs pursuant to NRCP 68, came for hearing in chambers. The Court, having
4 read the papers and considered the arguments of counsel hereby finds as follows:

5 1. On September 19, 2018, BoNYM served an offer of judgment on plaintiff Las Vegas
6 Development Group, LLC (**LVDG**), well before trial of this case.

7 2. LVDG did not accept the offer of judgment.

8 3. After trial, judgment was entered entirely in BoNYM's favor, meaning LVDG did not
9 obtain a judgment in its favor more favorable than BoNYM's offer.

10 4. BoNYM made a timely motion for fees under NRCP 68, supported by the *Brunzell*
11 and *Beattie* factors, BoNYM's discussion of which is incorporated herein by reference, and supported
12 by evidence of the costs and fees incurred post-offer of judgment. LVDG disputed the sufficiency of
13 the evidence presented and specifically objected to various redactions which it asserts made it unclear
14 exactly what costs and fees were actually incurred and paid by BoNYM.

15 "The purpose of . . . NRCP 68 is to save time and money for the court system, the parties and
16 the taxpayers. They reward a party who makes a reasonable offer and punish the party who refuses to
17 accept such offer." *Dillard Dept. Stores, Inc. v. Beckwith*, 115 Nev. 372, 382, 989 P.2d 882, 888
18 (1999). Under NRCP 68, if a party makes an offer of judgment and that offer is rejected, the offering
19 party is entitled to its post-offer fees if it obtains a result more favorable than the offer.

20 A court can award attorneys' fees under NRCP 68 after it considers the following factors: "(1)
21 whether plaintiff's claim was brought in good faith; (2) whether the defendant's offer of judgment was
22 reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to
23 reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees
24 sought by the offer or are reasonable and justified in amount." *Beattie v. Thomas*, 99 Nev. 579, 588,
25 688 P.2d 268, 274 (1983). While a court must weigh these factors before awarding fees, the court
26 need not find that each factor weighs in the offering party's favor to do so. *Palace Station Hotel &*
27 *Casino v. Jones*, 115 Nev. 162, 167, 978 P.2d 323, 326 (1999).

28 ///

1 When examining the *Beattie* factors, courts should remember that the purpose of NRCP 68 is
2 to encourage settlement before trial. *Morgan v. Demille*, 106 Nev. 671, 674, 799 P.2d 561, 563
3 (1990). "[U]nless the trial court's exercise of discretion [in evaluating the *Beattie* factors] is arbitrary
4 or capricious, this court will not disturb the lower court's ruling on appeal." *Schouweiler v. Yancey*
5 *Co.*, 101 Nev. 827, 833, 712 P.2d 786, 790 (1985). The *Beattie* factors favor an award of reasonable
6 attorneys' fees to BoNYM.

7 The court's conclusions as to each *Beattie* factor is as follows:

8 1. LVDG's claims against BoNYM were brought in good faith. The force and effect of
9 letters and payments issued by Miles Bauer like those at issue in this case were hotly debated during
10 the time that this litigation was pending.

11 2. Defendant's offer of judgment was reasonable and in good faith in both timing and
12 amount. BoNYM served its offer of judgment after the tender documents were provided to LVDG,
13 and after the decision approving such tenders as a means of protecting senior deeds. *Bank of*
14 *America, N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113, 116 (Nev. 2018) ("We hold that a first deed of
15 trust holder's unconditional tender of the superpriority amount due results in the buyer at foreclosure
16 taking the property subject to the deed of trust. asserting claims for quiet title and declaratory relief.")).
17 The timing of BoNYM's offer was reasonable in timing and amount.

18 3. LVDG's decision to reject the offer and proceed with its case against Defendant was
19 not unreasonable given, *inter alia*, that BoNYM has recognized the "endless evolution of case law"
20 that has developed on the subject, which has been the case both before and after the commencement
21 of this action. (Motion, p. 6, 11. 25-26)

22 4. The fees sought by the Defendant are reasonable, *Brunzell v. Golden Gate Nat'l Bank*,
23 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), for the time and effort applied to litigating this case, as set
24 forth in BoNYM's motion, incorporated herein by reference. Given the education and experience of
25 the lawyers involved, including their expertise in the NRS 116 arena, where Akerman attorneys have
26 tried approximately 80 HOA-related cases, the rates Akerman charges for its services are reasonable
27 and well within community standards for the Las Vegas legal profession. But an order that LVDG
28 pay BoNYM's fees in their entirety would not be justified.

1 BASED UPON the foregoing, and all things considered, the Court GRANTS BoNYM's
2 Motion IN PART and awards attorneys' fees in the sum of \$9,500.00, together with costs in the sum
3 of \$2,836.78. (As prevailing party, BoNYM is not limited to costs that were incurred post-offer of
4 judgment. NRS 18.020.)

5 DATED: December 23, 2020.



6
7 _____
8 DISTRICT COURT JUDGE
9

10
11 *Respectfully submitted by:*

12 **AKERMAN LLP**

13 /s/ Rex D. Garner

14 ARIEL E. STERN, ESQ.

15 Nevada Bar No. 8276

16 NATALIE L. WINSLOW, ESQ.

17 Nevada Bar No. 12125

18 REX D. GARNER, ESQ.

19 Nevada Bar No. 9401

20 1635 Village Center Cir., Suite 200

21 Las Vegas, Nevada 89134

22 *Attorneys for the Bank of New York Mellon fka The Bank of New York,*
23 *as Trustee for the Certificateholders of CWABS, Inc.,*
24 *Asset-Backed Certificates, Series 2006-7*

25 *Reviewed by:*

26 **ROGER P. CROTEAU & ASSOCIATES, LTD.**

27 /s/ Timothy E. Rhoda

28 ROGER P. CROTEAU, ESQ.

29 Nevada Bar No. 4958

30 TIMOTHY E. RHODA, ESQ.

31 Nevada Bar No. 7878

32 2810 West Charleston Blvd., #75

33 Las Vegas, Nevada 89102

34 *Attorneys for LVDG*

Larsen, Patricia (LAA-Las)

From: Tim Rhoda <tim@croteaulaw.com>
Sent: Tuesday, December 22, 2020 3:34 PM
To: Garner, Rex (Assoc-Las)
Cc: Larsen, Patricia (LAA-Las)
Subject: RE: LVDG v. Hernandez - A756215 - (1524 Highfield) - order on fees

Follow Up Flag: Follow up
Flag Status: Completed

Rex,

You have my approval to submit the attached document with my e-signature. Thank you.

Tim

From: rex.garner@akerman.com [mailto:rex.garner@akerman.com]
Sent: Tuesday, December 22, 2020 1:04 PM
To: Tim Rhoda
Cc: patricia.larsen@akerman.com
Subject: RE: LVDG v. Hernandez - A756215 - (1524 Highfield) - order on fees

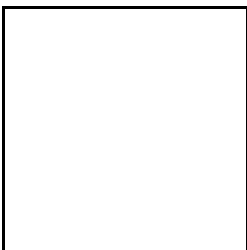
Tim,

Let me know if the attached is approved for submission to court. Thanks.

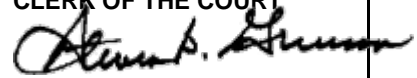
Rex Garner

Associate, Consumer Financial Services Practice Group
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134
D: 702 634 5054 | T: 702 634 5000 | F: 702 380 8572
rex.garner@akerman.com

[vCard](#) | [Profile](#)



CONFIDENTIALITY NOTE: The information contained in this transmission may be privileged and confidential, and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please immediately reply to the sender that you have received this communication in error and then delete it. Thank you.



1 **NOAS**
2 ROGER P. CROTEAU, ESQ.
3 Nevada Bar No. 4958
4 TIMOTHY E. RHODA, ESQ.
5 Nevada Bar No. 7878
6 ROGER P. CROTEAU & ASSOCIATES, LTD.
7 2810 W. Charleston Blvd., #75
8 Las Vegas, Nevada 89102
9 (702) 254-7775
10 (702) 228-7719 (facsimile)
11 croteaulaw@croteaulaw.com
12 *Attorney for Plaintiff*
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 ***

11 LAS VEGAS DEVELOPMENT GROUP, LLC,)
12 a Nevada limited liability company,)

13 Plaintiff,)

14 vs.)

15 DANIA V. HERNANDEZ, an individual; THE)
16 BANK OF NEW YORK MELLON f/k/a THE)
17 BANK OF NEW YORK, AS TRUSTEE FOR)
18 THE CERTIFICATEHOLDERS OF CWABS,)
19 INC., ASSET-BACKED CERTIFICATES,)
20 SERIES 2006-7, a national banking association;)
21 DOE individuals I through XX; and ROE)
22 CORPORATIONS I through XX,)

19 Defendants.)

20 THE BANK OF NEW YORK MELLON f/k/a)
21 THE BANK OF NEW YORK, AS TRUSTEE)
22 FOR THE CERTIFICATEHOLDERS OF)
23 CWABS, INC., ASSET-BACKED)
24 CERTIFICATES, SERIES 2006-7,)

23 Counterclaimant,)

24 vs.)

25 LAS VEGAS DEVELOPMENT GROUP, LLC,)
26 a Nevada limited liability company,)

27 Counterdefendant.)
28

Case No. A-17-756215-C
Dept. No. XIII

NOTICE OF APPEAL

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

DATED this 23rd day of December, 2020.

/s/ Timothy E. Rhoda
 ROGER P. CROTEAU, ESQ.
 Nevada Bar No. 4958
 TIMOTHY E. RHODA, ESQ.
 Nevada Bar No. 7878
 2810 W. Charleston Blvd., #75
 Las Vegas, Nevada 89102
 (702) 254-7775
Attorney for Plaintiff
LAS VEGAS DEVELOPMENT GROUP, LLC

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee
3 of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 23rd day of December
4 2020, I caused a true and correct copy of the foregoing document to be served on all parties as
5 follows:

6 X VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-
7 file and serve system.

8 VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with
9 postage thereon fully prepaid, addressed as indicated on service list below in the United
States mail at Las Vegas, Nevada.

10 VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated
on the service list below.

11 VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this
12 date to the addressee(s) at the address(es) set forth on the service list below.

13
14 */s/ Timothy E. Rhoda*
15 An employee of ROGER P. CROTEAU &
16 ASSOCIATES, LTD.
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

| | | |
|-------------------------------|---|-----------------------------|
| LAS VEGAS DEVELOPMENT |) | |
| GROUP, LLC, A NEVADA LIMITED |) | |
| LIABILITY COMPANY, |) | |
| |) | Supreme Court No. 81961 |
| Appellant, |) | |
| vs. |) | Consolidated with No. 82266 |
| |) | |
| THE BANK OF NEW YORK |) | |
| MELLON, F/K/A THE BANK OF NEW |) | |
| YORK, AS TRUSTEE FOR THE |) | |
| CERTIFICATEHOLDERS OF CWABS, |) | |
| INC., ASSET-BACKED |) | |
| CERTIFICATES, SERIES 2006-7, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

APPEAL

From the Eighth Judicial District Court,
The Honorable Mark R. Denton, District Court Judge
District Court Case No. A-17-756215-C

JOINT APPENDIX - VOLUME 5

Roger P. Croteau, Esq.
Nevada Bar No. 4958
Timothy E. Rhoda, Esq.
Nevada Bar No. 7878
ROGER P. CROTEAU AND ASSOCIATES, LTD
2810 West Charleston Boulevard, Suite 75
Las Vegas, Nevada 89102
Telephone: (702) 254-7775
Facsimile: (702) 228-7719
Attorneys for Plaintiff/Appellant Las Vegas Development Group, LLC

INDEX OF APPENDIX - CHRONOLOGICAL

| DOCUMENT | PAGE |
|--|-------------|
| VOLUME 1 | |
| First Amended Complaint | 0001 - 0010 |
| Acceptance of Service | 0011 - 0012 |
| Answer to Complaint and Counterclaim | 0013 - 0038 |
| LVDG Motion to Dismiss Counterclaim and Motion for Summary Judgment | 0039 - 0063 |
| Opposition to Motion to Dismiss and Motion for Summary Judgment | 0064 - 0072 |
| Reply to Opposition to Motion to Dismiss and Motion for Summary Judgment | 0073 - 0081 |
| Transcript of Hearing 8-10-17 | 0082 - 0101 |
| VOLUME 2 | |
| BONY Motion for Summary Judgment | 0102 - 0231 |
| VOLUME 3 | |
| LVDG Opposition to Motion for Summary Judgment | 0232 - 0334 |
| Reply to Opposition to Motion for Summary Judgment | 0335 - 0367 |
| Order Denying Motion for Summary Judgment | 0368 - 0369 |
| Notice of Entry of Order Denying Motion for Summary Judgment | 0370 - 0373 |
| Answer to Counterclaim | 0374 - 0381 |
| Findings of Fact, Conclusions of Law and Judgment | 0382 - 0399 |
| VOLUME 4 | |
| BONY Memorandum of Costs and Disbursements | 0400 - 0475 |
| Notice of Entry of FFCL | 0476 - 0497 |
| Voluntary Dismissal of Hernandez | 0498 - 0500 |
| Notice of Appeal (Trial Court Judgment) | 0501 - 0503 |
| BONY Motion for Attorneys' Fees and Costs | 0504 - 0610 |
| Opposition to Motion for Attorneys' Fees and Costs | 0611 - 0621 |
| Reply in Support of Motion for Attorneys' Fees and Costs | 0622 - 0626 |

[illegible]

INDEX OF APPENDIX - ALPHABETICAL

| DOCUMENT | VOLUME : PAGE |
|--|----------------------|
| Acceptance of Service | 1:0011 |
| Answer to Complaint and Counterclaim | 1:0013 |
| Answer to Counterclaim | 3:0374 |
| Bench Trial Transcript - Day 1 | 5:0648 |
| Bench Trial Transcript - Day 2 | 5:0741 |
| BONY Memorandum of Costs and Disbursements | 4:0400 |
| BONY Motion for Attorneys' Fees and Costs | 4:0504 |
| BONY Motion for Summary Judgment | 2:0102 |
| Decision | 4:0627 |
| Findings of Fact, Conclusions of Law and Judgment | 3:0382 |
| First Amended Complaint | 1:0001 |
| LVDG Motion to Dismiss Counterclaim and Motion for Summary Judgment | 1:0039 |
| LVDG Opposition to Motion for Summary Judgment | 3:0232 |
| Notice of Appeal (Order Granting Attorney' Fees and Costs) | 4:0645 |
| Notice of Appeal (Trial Court Judgment) | 4:0501 |
| Notice of Entry of FFCL | 4:0476 |
| Notice of Entry of Order Denying Motion for Summary Judgment | 3:0370 |
| Notice of Entry of Order Granting Motion for Attorneys' Fees and Costs in Part | 4:0636 |
| Opposition to Motion for Attorneys' Fees and Costs | 4:0611 |
| Opposition to Motion to Dismiss and Motion for Summary Judgment | 1:0064 |
| Order Denying Motion for Summary Judgment | 3:0368 |
| Order Granting Motion for Attorneys' Fees and Costs in Part | 4:0631 |
| Reply in Support of Motion for Attorneys' Fees and Costs | 4:0622 |
| Reply to Opposition to Motion for Summary Judgment | 3:0335 |

[illegible]



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT
GROUP, LLC,

Plaintiff,

vs.

DANIA HERNANDEZ,

Defendant.

CASE NO. A-17-756215-C

DEPT. XIII

BEFORE THE HONORABLE MARK R. DENTON,
DISTRICT COURT JUDGE

TUESDAY, JULY 28, 2020

**TRANSCRIPT OF HEARING:
NON-JURY TRIAL - DAY 1**

APPEARANCES:

For the Plaintiff:

ROGER P. CROTEAU, ESQ.
Appearing via BlueJeans

For the Defendant
Bank of New York Mellon:

REX D. GARNER, ESQ.
Appearing via BlueJeans

Also Present:

CHARLES SCHMIDT

RECORDED BY: TRISHA GARCIA, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESS INDEX

| <u>PLAINTIFF'S WITNESSES</u> | <u>PAGE</u> |
|---|--------------------|
| CHARLES SCHMIDT | |
| Direct Examination by Mr. Croteau | 15 |
| Cross-Examination by Mr. Garner | 44 |
| Redirect Examination by Mr. Croteau | 60 |
| YVETTE SAUCEDA | |
| Direct Examination by Mr. Croteau | 65 |
| Cross-Examination by Mr. Garner | 70 |
| Redirect Examination by Mr. Croteau | 81 |
| Recross-Examination by Mr. Garner | 86 |
| Further Redirect Examination by Mr. Croteau | 87 |

EXHIBIT INDEX

| <u>PLAINTIFF'S EXHIBITS</u> | <u>DESCRIPTION</u> | <u>PAGE</u> |
|------------------------------------|---------------------------|--------------------|
| 1 - 22 | [By Stipulation] | 6 |
| <u>DEFENSE EXHIBITS</u> | | <u>PAGE</u> |
| 26 - 48 | [By Stipulation] | 6 |
| 49 & 50 | Recissions | 91 |

1 Las Vegas, Nevada, Tuesday, July 28, 2020

2
3 [Case called at 1:32 p.m.]

4 THE COURT: I am now calling now the case of LVDG, LLC
5 Series 137 versus Dania V. Hernandez, et al. This is for non-jury
6 trial. Please state appearances of Counsel, identify parties and
7 party representatives who are present today.

8 MR. CROTEAU: Thank you, Your Honor. It's Roger
9 Croteau representing Las Vegas Development Group, LLC. And
10 Charles Schmidt is on the line under Vegas7, I guess is that
11 moniker, and he is the manager of Las Vegas Development Group.

12 THE COURT: All right. Very well. Good afternoon.

13 MR. GARNER: Good afternoon, Judge. Rex Garner on
14 behalf of the Bank of New York Mellon.

15 THE COURT: Good afternoon. And anybody -- party
16 present -- representative of a party present as well?

17 MR. GARNER: No, just me.

18 THE COURT: Okay, very well.

19 So as I indicated, this is the time scheduled for the non-
20 jury trial. Do Counsel wish to make opening statements? Mr.
21 Croteau, I think you were about to say something; if you have
22 something --

23 MR. CROTEAU: I was, Your Honor.

24 THE COURT: Yes, go ahead.

25 MR. CROTEAU: I was. And for the Court's convenience, I

1 prepared a pretrial brief and --

2 THE COURT: Yes, I've received it.

3 MR. CROTEAU: Oh, you did?

4 THE COURT: Yeah.

5 MR. CROTEAU: Did you get the amended brief or the
6 original brief? I did an amended. I apologize, it was missing
7 something.

8 THE COURT: I got one that says Plaintiff's Trial Brief
9 7/28/2020, 12:06 p.m.

10 MR. CROTEAU: Yeah, I -- well there's one that says
11 Plaintiff's Amended Trial Brief. It would have been filed a few
12 minutes later. It was missing something. And it's -- well -- I'll go
13 through what I'm saying and maybe your law clerk will get it to you
14 in between, but --

15 THE COURT: Well I can -- because if it's been filed, I'll be
16 able to print it out here, but I'm not going --

17 MR. CROTEAU: Okay.

18 THE COURT: -- do that right now. I'll be able to print it
19 out.

20 MR. CROTEAU: That's fine. I think it's extraordinarily
21 relevant though and I think you probably need to see the amended
22 and I do apologize it was missing something.

23 THE COURT: Okay.

24 MR. CROTEAU: I think the testimony and Yvette Saucedo
25 is going to testify for us after Mr. Schmidt. Mr. Schmidt's testimony

1 is going to be relatively short.

2 THE COURT: Okay.

3 MR. CROTEAU: And I don't think Mr. Garner and I pretty
4 much disagree on any of the factual evidence and I think -- Rex, just
5 for clarification's sake, are we stipulating to the admittance of all of
6 the exhibits identified?

7 MR. GARNER: I mean, I'm happy to do that for yours, if
8 you want to do that for mine?

9 MR. CROTEAU: Yeah, I'm willing. It's fine. It is what it is.
10 So if we could deem those exhibits admitted, Your Honor on both
11 sides, stipulated documents.

12 THE COURT: Okay. Now those are all referenced in the
13 Joint -- Amended Joint Pretrial Memorandum; right?

14 MR. CROTEAU: They are, Your Honor.

15 THE COURT: Okay. So Madalyn, do you have any
16 questions about those?

17 THE COURT CLERK: No, I'm good. I have them all.

18 THE COURT: Okay. All items --

19 MR. GARNER: I think both parties actually amended their
20 list since then, Your Honor and we sent to your clerk the final list
21 that we both had on the Excel spreadsheet format that she had sent
22 to us.

23 THE CLERK: Right.

24 MR. CROTEAU: Right. That's correct.

25 THE CLERK: So I have -- for Plaintiffs, I have Plaintiff's 1

1 through 22 and then --

2 MR. CROTEAU: Yep.

3 THE CLERK: And then Defense is 26 through 48.

4 MR. GARNER: Correct.

5 THE CLERK: Okay. And those will be admitted.

6 THE COURT: All those --

7 MR. CROTEAU: Thank you.

8 THE COURT: All those are deemed admitted.

9 **[Plaintiff's Exhibits No. 1 through 22 AND**
10 **Defense Exhibits No. 26 through 48 admitted by stipulation.]**

11 THE COURT: Now, because I am working remotely, I
12 don't have those items in front of me, but I -- at the end of this trial,
13 I will be taking the matter under advisement to review exhibits and I
14 think I'll have a thumb drive that'll have the exhibits on them, and
15 I'll print out the ones that I need printed out.

16 But in any event, during the course of the trial, if you'd
17 show the exhibit, you know, to the camera so that I can see it and
18 show me any portions of it that you want me to pay particular
19 attention to or whatever, that would be helpful, okay?

20 MR. GARNER: Okay.

21 MR. CROTEAU: Yeah.

22 THE COURT: All right. Now --

23 MR. CROTEAU: So --

24 THE COURT: Go ahead.

25 MR. CROTEAU: I wanted to -- I have a little more to add.

1 This case is and has been fashioned as one of two [inaudible; audio
2 distortion], if you will. It is a rejected tender by Alessi and Koenig.
3 Arguably, the payment of \$88.50 was paid to satisfy the
4 superpriority lien amount. The Notice of Delinquent Assessment
5 Lien in this case was filed and recorded on 6/3 of 2009.

6 THE COURT: Could I ask you a question, please? Let me
7 interrupt you, Mr. Croteau. Are you in the midst of making an
8 opening statement now?

9 MR. CROTEAU: Yes, sir.

10 THE COURT: Okay. So let's -- I just want a clean -- so at
11 this point, Plaintiff's Counsel, you may make your opening
12 statement.

13 MR. CROTEAU: Thank you.

14 THE COURT: And Mr. Garner, are you going to make an
15 opening statement after he's finished or are you going to reserve
16 your opening statement until the conclusion of the Plaintiff's case?

17 MR. GARNER: Yes, I'll make a short one after Mr.
18 Croteau's done.

19 THE COURT: Very well. All right, then. Go ahead, Mr.
20 Croteau.

21 MR. CROTEAU: Thank you, Your Honor. I'll restart.

22 **OPENING STATEMENT BY PLAINTIFF**

23 I don't the bank at this particular time, BoNY and LVDG
24 really argue about the facts of this case. I think the facts are, you
25 know, elucidated if you will in the documentary evidence that we've

1 just admitted. I think the issue then becomes two-fold. The first
2 issue -- and it's an issue I presented the Court with on a summary
3 judgment motion some time ago, is in this particular case, it took 6
4 years and 104 days in which to bring action by the bank, BoNY, and
5 allege tender in this case. And it's a rejected tender and I think we
6 agree with that as well.

7 Now, we're alleging, and we have alleged that -- look,
8 even the Ninth Circuit has given *Hera* a six-year statute of
9 limitations for them to bring up issues. It is our contention that
10 once they're dispossessed of the property, the property goes to
11 HOA foreclosure sale, the bank is aware of the HOA foreclosure
12 sale. It is incumbent upon the bank to do something to rebut the
13 conclusive presumptions contained in the statute and -- both under
14 116, under 447, and under 107. And in this particular case, they
15 never did that.

16 Now, we filed a Complaint on 5/31 of 2017, the quiet title.
17 We filed the First Amended Complaint on 6/18 of '17, and Bank of
18 Amer -- BoNY, as assignee of Bank of America filed its answer and
19 counterclaim on 6/15 of '17. In that counterclaim, they both raised,
20 you know -- they deny obviously our allegations in our Complaint,
21 they raise a series of [inaudible] and then they file their own
22 counterclaim and quiet title claim, saying that the tender was
23 rejected and therefore, their First Deed of Trust is not extinguished.

24 It is our position -- and I'm not going to belabor this, Your
25 Honor, but I think we've identified it and clearly annunciated the

1 reasoning for that in our pretrial brief. So I submit to you to take a
2 look at that case. I mean, to take a look at that reasoning.

3 Secondly, the one thing that's of significant importance
4 and I think it frankly dispositive of this case is, I provided -- and I
5 provided it to the Court -- I gave a copy to the Court the opinion
6 attached to my pretrial memorandum is in this percent case, I think
7 the evidence is going to clearly demonstrate that this is a yearly
8 assessment, assessed on the first of the year, every year.

9 In this particular case on 1/1 of '09, they assessed \$100
10 yearly assessment. It's due and payable in one installment. The
11 bank tendered \$88.50 and it was in satisfaction of what they
12 deemed to be the superpriority lien amount.

13 And I would submit to you, based upon the most recent
14 authority that was decided on July 9th, of 2020 and it's *Anthony*
15 *Noonan IRA LLC; Lou Noonan; and James M. Allred IRA LLC* as
16 appellants versus *U.S. National -- Bank National Association and*
17 *Nationstar Mortgage*. It's 136 Adv.-- Nev. Adv. Op. 41. It is 100
18 percent on all fours in this particular case. It is a published opinion,
19 and it is exactly on point.

20 In this particular case, it was a yearly assessment to the
21 HOA. The bank in that case tendered less than the yearly
22 assessment, that -- the yearly assessment in that case was \$216.
23 The bank tendered \$162. They found that that was insufficient to
24 satisfy the superpriority lien amount and therefore U.S. Bank's First
25 Deed of Trust extinguishes the property. That case is 100 percent

1 on point, and I think is entirely dispositive of this case.

2 There is no other evidence, you know, in terms of what's
3 there. My arguments simply -- obviously I have set the predicate.
4 The predicate as to the statute of limitations problem, I'll do that
5 rather quickly and I think the HOA payment -- or I'm sorry, the Bank
6 of America payment is -- I don't -- I'm not disputing that; it is what it
7 is. And we've seen these many, many, many times in your
8 courtroom and I know I've been there many times on these. It was
9 a rejected tender but there was no dispute. The number was
10 \$88.50, not \$118.

11 So with that, that's the real thumbnail of this case, I think
12 that is a highlight of the two points. I don't doubt Mr. Garner is
13 going to be able to present evidence that they presented a tender,
14 I'm not arguing that. I'm not arguing that it was a rejected tender.
15 We're arguing it's an insufficient amount, based on the case law.

16 And we're arguing that the statute of limitations should
17 provide at maximum, five years for them to have filed their own
18 action of quiet title once they've been dispossessed of the property
19 and their lien has presumptively extinguished based upon the
20 presumptions controlling 116, 107, and 47, under NRS.

21 So with that, I'm good.

22 THE COURT: All right.

23 MR. CROTEAU: I conclude.

24 THE COURT: Thank you very much.

25 All right. Mr. Garner.

1 MR. GARNER: Thank you, Your Honor.

2 **OPENING STATEMENT BY DEFENSE**

3 BY MR. GARNER:

4 I agree with Mr. Croteau that most of the facts of this case
5 are stipulated and in fact, I wanted to confirm, Judge, that you had
6 our stipulated facts that were filed on February 27th --

7 THE COURT: Yes.

8 MR. GARNER: -- earlier this year.

9 THE COURT: Yes, they're in the record.

10 MR. GARNER: Very good.

11 BY MR. GARNER:

12 So that's 15 paragraphs of stipulated facts that set forth, I
13 think a good summary of the chronology of this case from the
14 original loan back in 2006, including the timeline of the HOA's
15 foreclosure that began this in 2009 through Alessi and Koenig.
16 After the bank -- it was Bank of America at the time or BAC Home
17 Loan Servicing which was a predecessor to Bank of America or was
18 merged into them.

19 They received the Notice of Default, reached out to Alessi
20 and Koenig, got a ledger, and from that ledger -- the ledger is in
21 evidence, I'll probably show it to you in closings again. The ledger
22 does not identify a superpriority at all, it simply sets forth all of the
23 amounts that are due to the HOA and to Alessi and Koenig.

24 From that ledger, Miles Bauer sends a check for \$88.50,
25 which is rejected. And the reason for its rejection is found in the

1 Alessi file itself, which is both Plaintiff's Exhibit 21 and Defendant's
2 Exhibit 41. And let me see if I can work the sharescreen.

3 There it is, I think on the screen. This is Bates Labeled
4 BONYM-1769 within Defense Exhibit 41 and Plaintiff's Exhibit 21.
5 And this is a letter from Alessi and Koenig firm to the Miles Bauer
6 law firm, setting forth Alessi and Koenig's understanding of what
7 the superpriority was, which was at the time that it included all of
8 their, their being Alessi and Koenig, collection fees and costs. And
9 so that letter is in evidence.

10 So it was not rejected and there will be no evidence that
11 Alessi and Koenig rejected this check because it was not for the full
12 annual \$118 or \$120, whichever one it was; it was rejected because
13 it didn't cover all of Alessi's costs and fees.

14 So after they reject the payment, the foreclosure moves
15 forward, and this is one of those cases where the HOA credit bid at
16 its own foreclosure sale for roughly \$4,300 in a credit bid. And then
17 later that same month, in March of 2011, the HOA quitclaimed the
18 deed of the property to the Plaintiff here, Las Vegas Development
19 Group for a purchase price of a little bit more than the credit bid,
20 which was \$4500.

21 And the evidence will show both in the preforeclosure
22 notices, the actual foreclosure deed, and the deed that went to Las
23 Vegas Development Group, there are no covenants or warranties,
24 no one is assured that its title was free and clear.

25 And the evidence also shows that through the

1 stipulations, the fair market value of the property was \$76,000,
2 meaning that the credit bid that the HOA made, as well as the
3 amount of Las Vegas Development Group paid for this property
4 was less than 6 percent of the property's fair market value.

5 So at the end of the case, Your Honor, the Bank of New
6 York Mellon will ask you to find in its favor on all the claims and
7 counterclaims and whether or not Bank of New York Mellon's
8 counterclaims survive the affirmative defenses are the mirror of its
9 counterclaim and we will set forth in both our trial brief that I hope
10 to file either tonight or sometime tomorrow, depending on the
11 timing of the trial, will show -- we will argue that the affirmative
12 defenses are not subject to any statute of limitations. And so
13 whether the tender is considered as an affirmative defense or as a
14 basis for a counterclaim, the affirmative defense is not subject to a
15 statute of limitations.

16 So on that basis, Your Honor, we're happy to move
17 forward.

18 THE COURT: All right. Thank you very much.

19 All right. Mr. Croteau, you may call your first witness.

20 MR. CROTEAU: Thank you, Your Honor.

21 Your Honor, I'm going to call Mr. Charles Schmidt first. I
22 want to give a little bit to the Court. Mr. Schmidt is a heart patient
23 and has significant heart impaired disabilities and has difficulty
24 breathing. He's running at about 15 percent. I don't want to get too
25 technical. But if he has to get off or if he has to dip out of the Court

1 after this, after his testimony, I just wanted you to be aware of that.
2 It's really because he's having difficulties. I know he looks pretty
3 good in that photo there, but he's not so good.

4 THE COURT: That's fine.

5 MR. CROTEAU: After that, I have one witness and that's
6 going to be Yvette Saucedo. I told her I would text here as soon we
7 get concluded and then she's going to call into BlueJeans, if that's
8 okay with the Court.

9 THE COURT: That's fine.

10 MR. CROTEAU: Okay, good.

11 Then the Plaintiff calls Charles Schmidt, please.

12 THE COURT: And I just want to make clear, the -- is the
13 exclusionary rule in effect?

14 MR. CROTEAU: Well, first all Ms. Saucedo is not here,
15 Your Honor and secondarily, I don't -- Mr. Garner said he has no
16 witnesses, so.

17 THE COURT: That's fine, I just want to make --

18 MR. CROTEAU: It's kind of moot actually.

19 THE COURT: -- [inaudible].

20 MR. CROTEAU: And Mr. Schmidt's the party, so.

21 THE COURT: Okay. All right. Well in any event, the rule
22 will be in effect, so if Ms. Saucedo --

23 MR. CROTEAU: That's fine.

24 THE COURT: -- won't be able to get on until she's called
25 as a witness.

1 MR. CROTEAU: Thank you, Your Honor.

2 THE COURT: All right. Very well, go ahead.

3 THE CLERK: Mr. Schmidt, can you raise your right hand,
4 please?

5 **CHARLES SCHMIDT**

6 [having been called as a witness and being first duly sworn,
7 testified as follows:]

8 THE CLERK: And please state your full name, spelling
9 your first and last name for the record.

10 THE WITNESS: Charles Schmidt. C-H-A-R-L-E-S,
11 S-C-H-M-I-D-T.

12 THE CLERK: Thank you.

13 THE COURT: All right. You may proceed.

14 MR. CROTEAU: Yes, Your Honor.

15 I apologize for the redundancy, Your Honor, but I put a lot
16 of the exhibits in our documents. I know they're repetitive to
17 Defendant's. I just did that because we're on BlueJeans and for the
18 simplicity of running back and forth. So I'm going to walk Mr.
19 Schmidt through the exhibits, if you will, but in a few minutes.

20 **DIRECT EXAMINATION**

21 BY MR. CROTEAU:

22 Q Mr. Schmidt, what is your relationship to Las Vegas
23 Development Group, LLC?

24 A Managing member.

25 Q Okay. And how long have you been involved in Las Vegas

1 Development Group?

2 A Since its inception in approximately 2009 or '11. I don't
3 know the --

4 Q The exact year.

5 A Since its inception.

6 Q All right. Las Vegas Development Group was the
7 purchaser of this particular property from the HOA, Hidden Canyon
8 Owners Association; correct?

9 A Right.

10 Q All right.

11 A Correct.

12 Q So have you been involved in purchasing HOA sales over
13 the past many years here?

14 A Yes.

15 Q All right. When did you approximately begin your work
16 up in this area, before you -- you know, when did you start buying
17 HOA foreclosure sales?

18 A Approximately 2009.

19 Q All right. And how did you come to purchasing HOA
20 foreclosure sales?

21 A We were purchasing First Deed of Trust foreclosure sales
22 and noticed that the HOA sales were there, I guess, for a -- we
23 noticed that they were selling.

24 Q Okay. And when you began this process, did you do any
25 investigation as to how the law had to be interpreted under NRS

1 116?

2 A I did do some investigation and that's what led us to begin
3 to buy them.

4 Q Okay. All right. And did you have -- did you formulate
5 any opinions -- and you're familiar with the various statutes under
6 NRS 116; correct?

7 A I am, uh-huh.

8 Q All right. And we're obviously going to be talking about
9 the pre-2015 statute. Are you familiar with that one as well?

10 A Correct.

11 Q All right.

12 A Most [inaudible].

13 Q What was your understanding of the extinguishment of a
14 First Deed of Trust at an HOA foreclosure sale back in 2010? '10 or
15 '11?

16 A My personal knowledge of reading it and being educated
17 until the tenth grade told me that black and white letters of the law
18 stated that there was a portion of the HOA that was above the First
19 Deed of Trust.

20 Q Okay. And what did that mean to you?

21 A It meant that if the bank didn't pay the portion above the
22 First Deed of Trust that they would be extinguished.

23 Q All right. And when you were purchasing HOA
24 foreclosure sales, did you ever concern yourself as to whether or
25 not anybody had paid any payments before the HOA foreclosure

1 sale?

2 A Very concerned. We asked everybody and anybody if
3 anybody, but the homeowner had made a payment on the account.

4 Q All right. And that was your understanding back in 2011?

5 A That's correct.

6 Q All right. Did you have legal counsel back at that
7 timeframe? I don't want you to talk about what was told to you, but
8 did you seek out legal opinion as to your interpretation of NRS
9 116.3116 at that time?

10 A I did.

11 Q All right. And it's based upon that opinion that you
12 proceeded to buy foreclosure sales at that time?

13 A Yes.

14 Q All right.

15 A I mean -- yes.

16 Q That's fine. All right. So let's go through some of this.
17 Now, you bought the property, I believe it was March 30th, is that
18 right, of 2011, is the deed?

19 A That's correct.

20 Q All right. How did you come to acquire this particular
21 property?

22 A I would have been at the sale -- very likely I would have
23 been at the sale. And if for whatever reason, I didn't purchase it at
24 the sale, there were a lot available then.

25 Q All right. I'll represent to you and I'll show you in the

1 record in a few minutes, the sale on this property was March the
2 2nd, of 2011. Were you at the sales every day at that point in time?

3 A I was at every HOA sale that I knew of back at that time.

4 Q All right. And this particular property went back to Hidden
5 Canyon Owners Association, did it not?

6 A It did.

7 Q Okay. And did you contact Hidden Canyon Owners
8 Association to acquire the property after that?

9 A I would have contacted -- because of Camco's
10 involvement, I would have contacted Absolute Collection and made
11 an offer on the property. If they had any dealings or if they got it
12 back to Camco.

13 Q All right. I believe this was an Alessi and Koenig sale.

14 A It was Alessi and Koenig sale, correct, but the -- if it was a
15 Camco property, it was in the Camco building and Alessi and
16 Koenig at that time didn't understand offers after -- post-sale.

17 Q Okay. Fair enough.

18 An Unable to deliver it.

19 Q All right. Did you do any research on this property prior
20 to the foreclosure sale?

21 A I would have done research on the property, yes; although
22 I don't -- I'm -- I mean, I don't remember the property itself. I
23 didn't -- I don't remember the drive by. I would have done research
24 as far as looking at the County Recorder's office, making sure that
25 there was Notice of Trustee Sale filed, Notice of Default, those kind

1 of things.

2 Q All right. Fair enough.

3 Let me walk you through some of the files and let's go
4 through that.

5 How did you first become aware -- or how would you
6 become aware of an HOA foreclosure sale back in 2011?

7 A The Nevada Legal News.

8 Q Okay. All right. Fair enough.

9 When's the -- when, to the best of your recollection did
10 you first learn that there was any payment or any attempted
11 payments in the file?

12 A It would have been in 2017, when we had this case.

13 Q All right. Well let me walk you through it, okay? I'm
14 going to sharescreen. Hopefully I can do this, folks.

15 I'm going to show you what's -- can you read that clearly
16 or --

17 A Can you zoom in a bit? Press plus on top.

18 Q Press plus?

19 A Just at the top of the screen, maybe blow the document
20 up a touch.

21 Q How much are you seeing? It's my full page.

22 A Okay. I mean, I see -- ask me what you want me to see
23 and I'll let you know if I can see it.

24 Q All right. Can you see the Complaint that's filed on 5/31 of
25 '17?

1 A Yes, I can.

2 Q All right. And this is Las Vegas Development Group, LLC
3 against former owner, Mr. Hernandez, Bank of New York Mellon,
4 and Specialized Loan Servicing. Do you see that?

5 A I do see that.

6 Q All right. Did you direct me to file this on your behalf?

7 A Yes.

8 Q All right. And this was a quiet title action to resolve the
9 First Deed of Trust on the property; correct?

10 A Correct.

11 Q All right.

12 A Are you able -- there's a plus sign right directly above the
13 document. Are you able to push that -- just touch that one time?

14 Q I don't have that. I have a pdf.

15 A Oh, maybe it's for me then.

16 Q Yeah, it might be for you. Okay.

17 A Is that all right?

18 Q No, that's good.

19 This is Exhibit 2. This is a First Amended Complaint filed
20 on 6/8 of '17. Are you aware of that also?

21 A Go back to the title of the document, please?

22 Q Certainly. First Amended Complaint.

23 A Yes.

24 Q A Title to Real Property Dec Relief. Do you see that?

25 A Yes.

1 Q All right. What were you trying to achieve when we filed
2 these?

3 A Really to obtain title insurance.

4 Q Okay. And without a quiet title action you couldn't obtain
5 title insurance at that time; correct?

6 A That's correct.

7 Q All right. Can you even do it as of today?

8 A Not without --

9 Q [Indiscernible].

10 A Not without a quiet title action or a settlement with the
11 First Deed of Trust.

12 Q Okay. I'm going to show you what's Exhibit 3.

13 This is a Bank of New York Mellon as Trustees answer the
14 Plaintiff's Complaint and Counterclaims. And this is dated 6/15 of
15 2017. Do you see that?

16 A I do.

17 Q Okay. And in this particular case, Bank of New York
18 Mellon raised certain defenses, did it not? You can see here?

19 A Affirmative defenses, I see. Uh-huh.

20 Q All right. And you see Number 7, it says a superpriority
21 lien was satisfied prior to the homeowner's association foreclosure
22 under the doctrines of tender, estoppel, laches, or waiver; correct?

23 A If you could just zoom it, so I can see it, please?

24 Q Sure.

25 Oops. Number 7.

1 A That plus is really bothering me because I couldn't -- I --
2 just at the top of your document, you don't see plus, huh?

3 Q I can't --

4 A No, I --

5 Q No, I do see it.

6 A Yeah. I see the pdf, but you're able to -- there's a hand on
7 the pdf. Do you see the hand at all in your screen?

8 Q I see a hand.

9 A Okay. Right -- to go -- go to the hand then and then go
10 two over to the plus. Go to the hand and over to the plus.

11 Q Does that help?

12 A Oh man, does it help. Thank you, sir.

13 Q All right. Let's do this. I'm sorry. It looks quite large to
14 me, so.

15 All right. Number 7, do you see that?

16 A I do see that, yes. I do. It says superpriority --

17 Q Now, does that mean anything -- I'm sorry, sir?

18 A No, go ahead. I was just reading it. Go ahead.

19 Q Did that mean anything to you in this sentence where it
20 says superpriority lien was satisfied prior to the homeowner's
21 association foreclosure on the doctrines of tender, estoppel, laches,
22 or waiver?

23 A Did it mean anything to me when? At the time --

24 Q This would have been in 2017; 6/15 of 2017.

25 A I mean, it claims that the superpriority lien was satisfied.

1 Q Right. And we -- you were understanding what tender
2 meant by 2017; correct?

3 A Correct.

4 Q All right. Now as we scroll down, there's a counterclaim
5 against Plaintiff. Do you see that?

6 A I do.

7 Q All right. And if we scroll down there -- hang on, I
8 apologize. At Number 15, it says these deficiencies
9 notwithstanding on or about October 20th of 2009, in response to
10 the Notice of Default, Bank of America through its outside counsel
11 Miles Bauer Bergstrom and Winters LLP contacted the HOA Trustee
12 to obtain a payoff ledger detailing the statutory superpriority
13 amount claim by the HOA and offered to pay the same. Were you
14 aware of that prior to this document?

15 A No.

16 Q Okay.

17 A We could use two more plusses if you could.

18 Q Yes, sir. I'll do what I can.

19 That's huge to me.

20 On or about December 17th, 2009, the HOA Trustee
21 provided Miles Bauer a full payoff -- hang on, I got to move you
22 over here -- statement which includes all fees and costs, as well as
23 fines. The statement stated that the assessments were assessed on
24 an annual basis of \$118.

25 Did you know about that prior to the filing of this

1 Amended Answer and Counterclaim?

2 A I did not.

3 Q All right. Do you understand -- are you okay? Take your
4 time.

5 A I'm fine. Go ahead.

6 Q Did you understand in 2009, that the assessments on this
7 property were due on an annual basis, one time a year at \$118?

8 A No, I don't believe so.

9 Q Okay. On January 21st, Allegation 17, Miles Bauer
10 tendered payment of nine months of assessments, as outlined in
11 the HOA's Trustees payoff statement, in the amount of \$88.50. Are
12 you aware of that? Or were you aware of that prior to the filing of
13 this counterclaim?

14 A I was not.

15 Q Okay. On February 4th, 2010, it says that the HOA Trustee
16 unjustifiably rejected the tender stating that if it accepted the
17 payment, it would be left with substantial out-of-pocket expenses
18 and fees.

19 Were you aware of that prior to June 15th of 2017?

20 A I was not.

21 Q So this is the first time you became aware that there was
22 any tender issues in this case; is that correct?

23 A That's correct.

24 Q All right. I am now showing you a Notice of Delinquent
25 Assessment Lien that was recorded on 6/3 of 2009. Do you see

1 that?

2 A I do.

3 Q Would this be one of the documents that you would see in
4 your research at the Clark County Recorder's Office?

5 A So this would be a document that I would see the title of
6 in my research at the Clark County Recorder's Office.

7 Q All right. Did you get full copies of the documents that
8 were recorded or not?

9 A I did not.

10 Q All right. What would you look for then when you would
11 look in the Clark County Recorder's Office?

12 A Notice of Delinquent Assessment Lien, the NOD, the
13 Notice of Trustee Sale, any recissions of any of those documents,
14 and pretty much that the HOA sale would be valid.

15 Q What about --

16 A [Indiscernible].

17 Q What about the CC&Rs? Did you care if it had CC&Rs?

18 A Well I cared that it had CC&Rs and that they were
19 recorded but I didn't ever read the CC&Rs prior to the sale.

20 Q All right. But did you know that CC&Rs needed to be
21 recorded prior to the mortgage?

22 A The way that I understood the statute was that the CC&Rs
23 yes, had to be recorded prior to the mortgage and it was that date
24 in which the NRS 116 referred back to in order to get its priority
25 over the First Deed of Trust by reserving an amount based on the

1 CC&Rs that were recorded prior to the -- any mortgages being put
2 on the property.

3 Q All right. And in fact, in the first paragraph, it says: In
4 accordance with Nevada Revised Statutes and the Association's
5 Declaration of Covenants, Conditions and Restrictions; right?

6 A Correct.

7 Q CC&Rs for Hidden Canyon Owners Association; right?

8 A Right.

9 Q All right. Exhibit 5. This is a Notice of Default and
10 Election to Sell recorded on 9/2 of '09. Do you see that?

11 A I do.

12 Q And is this again, another document you would like to see
13 that got filed? I mean, you've already testified to that, but this is --

14 A I would see the title and that it was filed.

15 Q All right. Fair enough.

16 And Exhibit 6. I'm showing you the Trustee sale. Do you
17 see that?

18 A Yes.

19 Q All right. Is this another document that you relied upon?

20 A That's correct. I would have counted the timing of it back
21 then.

22 Q Okay. In what sense?

23 A Some HOAs were doing 60 days, rather than the required
24 90 days prior to filing those Trustee sale based on -- I have no idea
25 why, but we'd make sure that that's not the case.

1 Q You'd want to make sure it was a 90-day sale.

2 A That's correct.

3 Q All right. Fair enough.

4 Now I'm showing you what's marked as Exhibit 7. And
5 this is a Trustee's Deed Upon Sale.

6 A Right.

7 Q Did you look at this document before you purchased the
8 property from Hidden Canyon Owners Association?

9 A I did not.

10 Q All right. But you knew they took the property back from
11 being at the sale; correct?

12 A This is how I knew [indiscernible] required to record a
13 Trustee's Deed Upon Sale and I couldn't get a quitclaim from a
14 Deed Upon Sale that was not filed in the County Recorder's Office.

15 Q All right. Fair enough.

16 Now, did you rely on the documents that were recorded at
17 the Clark County Recorder's in your purchase of the property?

18 A Yes. Or -- yes. Not the documents themselves, not the -- I
19 didn't review the words of each document but the titles of the
20 documents, the timing of the documents, what the documents
21 were, and, you know, that they were actually filed correctly.

22 Q All right. Fair enough.

23 Now this is a document recorded on 1/28 of '13. Now
24 there was a few documents with quitclaim transfers; correct? And
25 I'll go through them here momentarily but this one is dated the 30th

1 day of March of 2011; correct?

2 A Could you go back up to the top? The very top?

3 Q Yep.

4 A Yes, it's dated March 30th, 2011; however, it's not
5 recorded on that day.

6 Q All right. So is it fair to say that you had a few deeds --

7 A I see --

8 Q -- where you had --

9 A I apologize. Can you go down a little bit?

10 It's actually dated the 24th day of January 2013.

11 Q All right. And this particular deed was a corrective deed,
12 and it was to change the grantor's name; is that correct?

13 A It appears to be, yes.

14 Q All right. But you actually purchased this property right
15 after their foreclosure sale; correct?

16 A March 11, 2000 --

17 Q '16

18 Now here we have one --

19 A There we go.

20 Q -- that it's dated -- Quitclaim Deed made as of March 30th
21 of 2011 between Hidden Canyon HOA, care of Absolute Collections
22 and Las Vegas Development Group, LLC; correct?

23 A Correct. And it was filed March 31st, 2011.

24 Q 31st of '11; right?

25 A Correct.

1 Q All right. And that was to correct -- and then there's a
2 corrective deed after that to provide a name of a grantor; right? A
3 corrected name of a grantor?

4 A Yeah. I wasn't familiar with all those correctives deeds
5 until later, so I don't think you'll find my signature on them. I had
6 my one deed that was that one there and --

7 Q All right. But you've held title since the purchase from the
8 HOA; correct?

9 A Correct.

10 Q All right. Okay. And this one was the -- correct -- there's
11 another one here that I guess --

12 A [Indiscernible].

13 Q I'm sorry?

14 A It says it's corrective deed for the legal description.

15 Q Correct. But none of these divested you of title; is that
16 correct?

17 A No. My original deed was still valid. These corrections
18 are -- obviously they're bookkeeping.

19 Q All right.

20 A You know, just housekeeping.

21 Q All right. Okay. Let's go to Exhibit 12, if we could.

22 All right.

23 A One more.

24 Q Is that good?

25 A Yep, perfect.

1 Q All right. Do you remember requesting us to write this
2 letter on your behalf in April of 2016?

3 A Can you scroll down a little bit?

4 Q Can I do what?

5 A Can you scroll down just a bit?

6 Q Oh, my apologies.

7 A Let me see the content of the letter.

8 Q Yeah.

9 A I do, uh-huh.

10 Q All right. And this is where we had us write the letter to
11 Sables, the holder of the First Deed of Trust and the foreclosing
12 agent?

13 A Can you just scroll down?

14 Q Yes.

15 A You're at the title of it and -- so. Okay.

16 Yes, correct, after made -- correct. Somebody had filed a
17 Notice of Default on the extinguished deed.

18 Q Right. And they were trying to foreclose on your property,
19 so you had us write a letter to explain to them that you bought it at
20 an HOA foreclosure sale; is that correct?

21 A That's correct.

22 Q All right. And after they refused to cease and desist, you
23 instructed us to file the Complaint that was Exhibit 1 and the
24 Amended -- First Amended Complaint after that?

25 A What's the date of this letter?

1 Q August 27th of '16.

2 A That's correct.

3 Q Complaint was -- First Complaint was filed May 31st of
4 '17.

5 A Your statement would be correct either way. I was just
6 wondering if they had done some plans of some sort prior to
7 having to file a Complaint at a later time but obviously the dates
8 equal the dates that we asked you to file, so.

9 Q All right. Now, in addition, would you look at and see,
10 you know, when the former owner acquired the property or
11 anything of that nature? I'll represent to you that this is the Grant
12 Bargain Sale Deed --

13 A No.

14 Q -- that we transferred to Dania Hernandez --

15 A No.

16 Q -- on 4/19 of '16. No; right?

17 A No.

18 Q Okay. I'll represent to you that this is the First Deed of
19 Trust on the property securing a \$208,000 First Deed of Trust from
20 Countrywide Home Loans to Ms. Hernandez. Is this something that
21 you would look at in terms of your review for the sale?

22 A No.

23 Q Why not?

24 A Well because it doesn't have anything to do with what I'm
25 doing. What I'm doing has to do with the First Deed of Trust and

1 what they pay, and it also has to do with the recording of the
2 CC&Rs which are where we get our chain of -- where our lien chain
3 comes in.

4 Q You mean priority?

5 A Yeah, the priority status. The lien chain comes in. The
6 priority status created with the CC&Rs. All this and in between is
7 disputes between people. What I care about is whether or not
8 anybody from a bank stepped forward and paid the amount that
9 they're required to pay in order to preserve their lien that is
10 reserved by the CC&Rs, not as [inaudible; audio distortion]?

11 Q And if we go back to March of 2011, did you have any
12 notice whatsoever of any payments at all by anyone for that
13 matter?

14 A No.

15 Q And did you detrimentally rely -- or did you rely on that
16 issue at the time of your purchase from the HOA?

17 A At that time, I was the nut job in the room and that was
18 the only thing I concerned myself with was has anybody paid
19 anything -- anybody other than the homeowner and their regular
20 payments prior to getting behind paid anything on this account,
21 other than the homeowner themselves.

22 Q All right. I'm showing you what's Exhibit 15 and I'll
23 represent to you this is a Second Deed of Trust in the amount of
24 \$52,000. Does the Second Deed of Trust in your understanding
25 ever survive an HOA foreclosure sale?

1 A No, in my understanding it does not.

2 Q All right. So you wouldn't have concerned yourself with a
3 Second Deed of Trust; correct?

4 A Correct.

5 Q All right. Exhibit 16, I'll represent to you was recorded on
6 7/29 of '08 and this was the first NOD done by the bank. Do you see
7 that?

8 A I do.

9 Q All right. And did you have any concerns with this
10 document after the -- at your research?

11 A I haven't had any concerns with it, no.

12 Q All right.

13 A I will tell you in general, right, that we would make sure
14 that that document wasn't coming up for Notice of Trustee Sale in
15 such a manner we were unable to get our notice out to a first lender
16 prior to their completion of a foreclosure against the property again
17 because we didn't have money just like that at that time.

18 Q All right. Fair enough.

19 I am showing you now Exhibit 17. And this is a NOD,
20 Notice of Default filed by Sables, LLC, the holder of the First Deed of
21 Trust on -- recorded on 4/18 of 2016. Do you see that?

22 A I do.

23 Q All right. Is this the Notice of Default that you received
24 that caused you to direct us to write the letter that was Exhibit 12?

25 A It is. It's well within our ownership -- years past

1 ownership and it shouldn't have been filed.

2 Q All right. In fact, it was I believe five years past because
3 you acquired ownership in March of 2011.

4 A Correct.

5 Q And this is 4/18 of '16, correct, so it's more than five years.

6 A Correct.

7 Q All right. And in that NOD, did you have any knowledge
8 of any attempted payments or any alleged tender by anyone related
9 to the bank or -- well, related to the bank?

10 A Roger, I never even thought about it, I just thought about
11 this is an extinguished -- this was an extinguished deed of trust
12 they're trying to close on me, so.

13 Q All right.

14 A [Inaudible].

15 Q All right. Do you see here the Declaration of Covenants,
16 Restrictions for the Cheyenne Ridge Association, Hidden Canyon
17 Homeowners Association? Do you see that?

18 A Yes.

19 Q And do you see the filing date of that, 8/9 of 2005?

20 A I do.

21 Q All right. But that is after the sale to Dania Hernandez;
22 correct? I'm sorry, before the sale to Dania Hernandez; correct?

23 A I do not -- I guess I wasn't paying attention to that. I don't
24 know if it was Dania. I mean, you showed it to me, but I --

25 Q Well, hang on. Let's just do this for --

1 A Oh, you're saying is it -- oh, you're saying is this filed
2 before the sale to Dania Hernandez?

3 Q Yes.

4 A It was filed before somebody dug up ancient dirt on the
5 property so yes, I would represent to you that before the deed of
6 trust was put on there, that CC&Rs was put on the property.

7 Q Again, this is the First Amended Declaration of Covenants
8 and Restrictions for Cheyenne Ridge Association. Again, you would
9 check this but that's your issue; right? And this is dated the 14th
10 Day of August 1998. So --

11 A Right.

12 Q -- that would be significantly before this deed of trust;
13 correct?

14 A And as I understand it, it was done almost hand-in-hand
15 with zoning for the property for whatever they were zoning it for the
16 builder to get ready to build. Right after the zoning was done.

17 Q All right. And one last one here. This Second Amended
18 Declaration was the 2nd Day of November 1992; correct? So again,
19 well before the timeframe of our deed of trust was recorded;
20 correct?

21 A Correct.

22 Q I shouldn't say our deed of trust. I should say the --

23 A No.

24 Q -- one we're contesting; right?

25 A Right.

1 Q Okay. Give me one second if you would, I'm going to try
2 to pare this down a little bit.

3 If we go -- I want to make sure we get this clear. If we go
4 to Exhibit 4 in a moment.

5 This is a Notice of Delinquent Assessment Lien; correct?

6 A Right.

7 Q You see that correctly?

8 A I do.

9 Q All right. And what's the filing date with the Recorder's
10 Office and the Notice of Delinquent Lien Assessment?

11 A Well the filing date of this document is 6/3 of 2009.

12 Q All right. What is your understanding of the superpriority
13 lien amount that is due once a Notice of Delinquent Assessment
14 Lien is filed on the pre-2015 statutes?

15 A Nine months preceding action to enforce -- nine months
16 preceding in action to enforce the lien. I'm rusty on it. Something
17 to that nature.

18 Q All right.

19 A The nine months preceding an action to enforce.

20 Q All right. So it's up to nine months prior of whatever the
21 assessments are prior to a Notice of Delinquent Assessment Lien; is
22 that what your -- maybe your understanding is?

23 A Correct.

24 Q All right. Fair enough. And in this assessment, it is saying
25 that \$571.85 is due and \$320 of that is collection costs and \$55.31 is

1 attorney's fees; correct? Is that what it says?

2 A Just let me read it.

3 Q Well it's the last paragraph, that's all. See it?

4 A Well does it say -- on this total amount \$320 represent
5 collection and/or attorney's fees and --

6 Q 55 and represent collection costs, late fees, and charges,
7 and interest.

8 A Right.

9 Q A whole bunch of stuff.

10 A [Indiscernible].

11 Q All right. Now I want to take you to -- and remember that
12 date, 6/3 of '09. I'm going to take you to Exhibit 21 and I'll represent
13 to you that's the Alessi and Koenig file in this case.

14 I thought it was.

15 Maybe it was 22, my apologies.

16 Hang on one second, please.

17 A Alessi and Koenig's response.

18 Q Nope, hang on. I may be in the wrong one. I'm not sure.

19 Oh, I get -- I apologize. 21. Exhibit 21. This is the Alessi
20 and Koenig file, my apologies. This is the Affidavit of Custodian of
21 Records.

22 To keep this clear, I want to take you to BoNY-1798, which
23 is 20 -- and Exhibit 21, page 98. If you give me a second, I will get
24 us there.

25 And this is in here redundantly, but -- well, while we're

1 here, let's deal with this. Have you ever seen this document
2 before? Or a document like this before?

3 A I have seen a document like that before, yes.

4 Q All right. And I'm showing you what is 21, 070 through
5 073. Do you see that?

6 A I do.

7 Q Okay. And I'll represent to you that 071 is a copy of a
8 check dated 1/14 of '10. Do you see that?

9 A I do.

10 Q From Miles Bauer Bergstrom and Winters Trust Account
11 in the amount of \$88.50. Do you see that?

12 A I do.

13 Q All right. And if we go to the next page, which is 72, it is
14 signed by Rock Jung. Do you see that?

15 A I do.

16 Q And in the second to last paragraph it has a statement. It
17 says: Our client has authorized us to make a payment to you in the
18 amount of \$88.50 to satisfy its obligations to the HOA as a holder to
19 the First Deed of Trust against the property. Thus enclosed you will
20 find a cashier's check made out to Alessi and Koenig, LLC in the
21 sum of \$88.50, which represents the maximum nine months' worth
22 of delinquent assessments recoverable by an HOA.

23 Do you see that?

24 A I do.

25 Q All right. And then it goes on to say: This is a non-

1 negotiable amount. Any endorsements of said cashier's check on
2 your part, whether express or implied, will be strictly construed as
3 an unconditional acceptance on your part of the facts stated herein
4 and express agreement that BAC's financial obligations towards the
5 HOA in regards to the real property located at 1524 Highfield Court
6 have now been paid in full.

7 Do you see that?

8 A I do.

9 Q All right.

10 A It's not sent to the HOA.

11 Q Did I say that? I meant to say the HOA Trustee. My
12 apologies.

13 A Okay. No, I know --

14 Q It was sent to the HOA Trustee; right?

15 A It was the HOA Trustee, I just always wondered why it's
16 not sent to the HOA.

17 Q Oh, all right. So that was their attempted payment;
18 correct?

19 A Correct.

20 Q As far as you know it now?

21 A Yes.

22 Q As far as you know now?

23 A Yeah.

24 Q And -- but my question is prior to 6/15 of '17, when they
25 filed a counterclaim, you had absolutely no knowledge of this

1 attempted payment; correct?

2 A That's correct.

3 Q All right. Okay.

4 Let me take you to 98 here.

5 I think I was moving faster a few minutes ago, but I don't

6 know.

7 Let's go to the one on 98.

8 Be there in a second.

9 A Three more pages.

10 Q Working on it.

11 I'm just trying to use the last one in the series. I

12 apologize.

13 All right. I'm not showing you what is Exhibit 21, page 98.

14 Do you see that?

15 A Yeah.

16 Q All right. Now, do you see assessments -- one's recorded

17 1/1 of 2008 for \$118; correct? And that's his assessment; right?

18 Right?

19 A 1/1, 2008.

20 Q What?

21 A Yeah. 1/1/2007. I got it.

22 Q No, 1/1 -- well -- all right, yeah. There's 1/1 2007, there's

23 1/1 for 2008 for \$118; right?

24 A Okay. Yes.

25 Q 1/1 for 2009 for \$118, you see that?

1 A I do.

2 Q And then there's 1/1 for 2010 for \$118; correct?

3 A Correct.

4 Q All right. And do you see in the memo line, each one of
5 those ones that occur on January 1st are the only ones that are
6 determined to be assessments. Do you see that?

7 A I do.

8 Q The rest, the late fee notice, late fee process, late notice,
9 intent to lien, and so forth. Right?

10 A Right.

11 Q Okay. So the -- this is a yearly assessment, is it not?

12 A It is.

13 Q Apparently, based on its ledger.

14 A Correct.

15 Q Okay. All right. And that yearly assessment number is
16 \$118.

17 A Right.

18 Q Okay. Other than this litigation, did you ever see any of
19 the Miles Bauer letters in this case?

20 A No.

21 Q Okay. Did you have any conversations at all with the
22 former owner, prior to purchasing this property?

23 A No.

24 Q Did you have any conversations with the HOA Trustee in
25 this case prior to the foreclosure?

1 A I would have asked at the sale, which I believe I was at, if
2 anybody had made any payments on the account.

3 Q Okay.

4 A During the sale, prior to the [indiscernible].

5 Q Did you deal directly with the homeowners when you
6 purchased the property or Absolute Collection Services as identified
7 in the deed?

8 A I didn't deal with the association as I purchased the
9 property; no, I only dealt with Absolute Collection Services.

10 Q Okay.

11 A And again, because they are the agent of Camco.

12 Q Do you still own this property as of today?

13 A I do.

14 Q Have you made any improvements and -- to the property
15 over the years?

16 A I have.

17 Q All right. And again, after you purchased it in March of
18 '11, your first notice of anything that would have been resembling
19 any claim based upon a tender payment was 6/15 of 2017; is that
20 correct?

21 A Correct. After the filing of our quiet title.

22 MR. CROTEAU: I think I pass the witness.

23 THE COURT: All right. Cross. Do you want a break
24 before cross?

25 MR. CROTEAU: Maybe five minutes, Your Honor.

1 MR. GARNER: Yeah, that's fine with me.

2 THE COURT: All right. Let's see it's -- let's resume at a
3 quarter to 3:00.

4 MR. CROTEAU: Very good.

5 THE WITNESS: Yes, sir.

6 THE COURT: Thank you.

7 MR. CROTEAU: Thank you, Your Honor.

8 [Court recessed at 2:36 p.m., until 2:44 p.m.]

9 THE COURT: All right. The record will reflect the same
10 appearances and you may proceed with your cross-exam, Mr.
11 Garner.

12 MR. GARNER: Thank you, Your Honor.

13 Roger, would you stop sharing, so that -- if I could --

14 MR. CROTEAU: Oh, I'm sorry. You sure I don't -- I can't
15 squeeze you out of this one?

16 MR. GARNER: [Indiscernible]. Just looking at your
17 e-mails is all.

18 **CROSS-EXAMINATION**

19 BY MR. GARNER:

20 Q Mr. Schmidt, good afternoon.

21 A Good afternoon, sir.

22 Q I believe we've met before in court on a lot of occasions.
23 How are you?

24 A I'm very good.

25 Q All right. If I understand correctly, you have been involved

1 in real estate investing and property management since far back as
2 2001; is that right?

3 A Correct.

4 Q All right. And you were part of -- you were involved in
5 creating the Plaintiff Las Vegas Development Group back in 2009?

6 A Correct.

7 Q And that entity, the Las Vegas Development Group, it has
8 purchased nearly 100 properties at HOA foreclosure sales; is that
9 right?

10 A Approximately.

11 Q Okay. And as part of getting ready to buy these HOA
12 foreclosure sales, was contacting the banks, who had the First Deed
13 of Trust part of your process or your due diligence?

14 A It was not.

15 Q But you said earlier in talking with Mr. Croteau that asking
16 the HOA or the HOA Trustee was part of your process; is that right?

17 A That's correct.

18 Q Who did you ask -- I'm sorry?

19 A Asked if anybody else paid on the account, correct.

20 Q And who did you ask that question to for this property?

21 A Well, it was an Alessi and Koenig sale so I would have -- I
22 believe I was -- ask -- would have reverted -- would have asked
23 them. And I would have also asked Absolute in the process of
24 making the offer to Camco.

25 Q Do you remember who it was at Alessi and Koenig that

1 you would have asked?

2 A You know, Alessi did his own sales or a partner at some
3 point in their conference room. Back then I believe that it would
4 have been a contractor, Matt Mitchell or the Crier at the sale
5 Nevada Legal News, which was some gal; I could identify them by
6 face, but I certainly couldn't by name.

7 Q Okay. And would whoever it was for Alessi give you that
8 information?

9 A Yeah. I mean, yes, they'd give that information if they had
10 it.

11 Q Okay. So do you recall what this -- what the person at
12 Alessi that you asked, what was their response in this case?

13 A Their response would have been no.

14 Q That no one had said to make a payment; is that right?

15 A That's correct.

16 Q Okay. And would you --

17 A I --

18 Q I'm sorry?

19 A You said tried to make a payment; no one had made a
20 payment.

21 Q My question was --

22 A That he made a payment. I didn't ask if anybody had tried
23 to make a payment back then.

24 Q Okay. And no one at Alessi volunteered that information,
25 did they?

1 A They would have said no, nobody had made a payment
2 on the account.

3 Q Okay. And you did not ask if anybody had tried but that
4 payment had been rejected; is that right?

5 A That's correct.

6 Q Okay. Did you ever -- besides the folks at the sale or
7 Alessi and Koenig, did you ask anybody else? The HOA?

8 A No, I never had direct contact with many HOAs.

9 Q Okay. And then you said you dealt with Absolute when
10 you bought it from the HOA; is that right?

11 A That's correct.

12 Q Did you ask Absolute the same question, if anybody had
13 made a payment on the account?

14 A I didn't need.

15 Q I'm sorry?

16 A I didn't need, yes; correct.

17 Q And who was that person?

18 A That person would have been Kelly Mitchell [phonetic] or
19 Richard Kaye [phonetic].

20 Q Okay. And did either of those people give you
21 information about that?

22 A Well, someone told me that no one had made a payment
23 on the account, other than the homeowner.

24 Q And then same question. You did not ask them if
25 anybody had tried but been rejected; correct?

1 A No, that's correct. Anybody had tried was not part of --
2 back then that was a very old thing, there was no such thing as
3 tried. There was either did or didn't. We didn't know about tried.

4 Q Okay. And you are familiar with NRS 116; right?

5 A I am. Mostly prior to 2015.

6 Q Okay. You've read that statute a lot yourself, haven't you?

7 A Uh-huh.

8 Q Do you know what part of NRS 116 says that mortgage
9 holders should pay the superpriority to protect themselves?

10 A It doesn't say that. It says -- it doesn't say that specifically.
11 It says the lien is above the first mortgage -- oh. It says a lien is also
12 prior to a first mortgage recorded on a property, I don't know the
13 exact language, but it doesn't say what -- it doesn't say the wording
14 that you have just said. It says a lien is also prior to a first
15 mortgage.

16 Q All right. Where did you get your understanding that
17 banks could pay this nine-month to protect themselves?

18 A Well because the statute says that it's a limited priority by
19 would they not be able to pay to protect themselves. In other
20 words, it was their responsibility -- bank's responsibility in the way
21 that the statute reads.

22 Q You understood that just from reading the statute?

23 A Right.

24 Q All right.

25 A Well from the lien.

1 Q Okay.

2 A How the lien works; right?

3 Q And did you believe that the HOA agents, like Alessi had
4 to tell you if the banks had in fact paid that nine-month?

5 A Sure. I'm asking the question, so I did believe that
6 somebody had to tell me, or somebody had to file something
7 saying it was paid.

8 Q Where did that belief come from?

9 A Again, a lien law. I mean, it says a lien is also prior to and
10 to the extent of and those -- that extent should be satisfied by the
11 banks. In fact, the way I read it back then -- and again, I'm not
12 educated person, it seemed to me like only the bank could pay that
13 amount and they had the responsibility to do so; otherwise, a sale
14 that went to sale, foreclose that person out because they're setting
15 aside the law.

16 Q Okay. Anything other than your read of the statute and
17 your understanding that led you to believe that the HOA or its agent
18 would have to tell you the bank paid the superpriority?

19 A Well just the fact I'm asking the question, and you
20 wouldn't believe that you could lie to someone who is, you know, a
21 buyer at sale asking a question about the sale itself.

22 Q And in your reading of NRS 116, is it your understanding
23 that that statute, at least before 2015, always said nine months was
24 the superpriority?

25 A No, there's other language in there, nine months unless it

1 was a federal, in which case it could be six months. There was also
2 some language in there for abatement and other charges that
3 would be prior to the First Deed of Trust as well.

4 Q Okay. Did you ever read any version of the statute that
5 limited the superpriority to six months, irrespective of Fannie or
6 Freddie?

7 A Yeah, that's what I'm referring to. So nine months unless
8 it was Fannie or Freddie and then it would be six months.

9 Q All right. But my question is are you familiar with any
10 version of the statute that set the -- a limit at six months,
11 irrespective of the Fannie or Freddie?

12 A I'm not.

13 Q Okay. Now, you testified earlier that you knew you
14 wouldn't be able to get title insurance without some sort of
15 litigation on these HOA properties; correct?

16 A That's correct.

17 Q Now did the cost of that litigation factor in to how much
18 you were willing to pay the HOA for this property?

19 A Sure.

20 Q And your experience, I call them a -- you talked earlier
21 about bank foreclosures, sometimes those are called 107, under the
22 NRS 107. And these HOAs are 116 sales. Do you understand that
23 distinction?

24 A I do, uh-huh.

25 Q And generally speaking, the 116 sale prices are less than

1 the 107 auction prices?

2 A In what respect?

3 Q Well just generally speaking, the average price that you
4 would pay for a home under a 107 sale is a lot higher than what you
5 usually paid for 116 sales; is that accurate?

6 A That's accurate, but at the time 107 sales would have a
7 total balance on a First Deed of Trust of let's say \$400,000 with an
8 opening bid of 160 and up to 180. So if you're talking about value-
9 wise, very similar but if you're talking about actual dollar for dollar,
10 you know, a dollar I would pay versus a dollar the next guy would
11 pay for a 107 sale, considerably lower, yes, an HOA sale would be.

12 Q And that was as a consequence of the opening bids were
13 usually much higher at 107 sales than 116 sales?

14 A Well, 116 sales were full debt opening bids. 107 sales
15 were normally reduced bids. So I would say it would be the
16 understanding of the law and who understood the law and, you
17 know, different factors that go into it.

18 Q Okay. Now, did you ever have a conversation with HOAs
19 about their beliefs concerning the effect of their sales on a deed of
20 trust?

21 A No.

22 Q All right. So you didn't ask Alessi and Koenig about the
23 quality of title that you would get at its sales, did you?

24 A I basically started this research because I had a house in
25 foreclosure for \$800,000 that was worth \$600,000 and the HOA sent

1 me a foreclosure notice and I thought it was quite laughable which
2 is what sent me upon this course.

3 Q All right. But my question is did you ever ask Alessi and
4 Koenig what kind of title they were going to be delivering at this
5 foreclosure sale? Or any other foreclosure sale for that matter?

6 A No, all foreclosure sales do the same title, the Trustees
7 Deed Upon Sale. We're going to need that.

8 Q Now, with whom did you negotiate concerning the
9 purchase of this property after the HOA had bought it at their
10 auction?

11 A Probably Kelly Mitchell or Richard Kaye at Absolute
12 Collections.

13 Q Okay. And how would that have started? Would you
14 have called them or e-mailed them?

15 A I probably would have -- either or, it depends. It's
16 depends on the time of the sale. If they had a sale the next day, I
17 would have walked in the office and made the offer prior to the next
18 sale they were having.

19 Q Okay. And was that offer -- or the eventual deal that led to
20 Las Vegas Development buying this property, was there any sort of
21 purchase or sale agreement or writings that would have covered
22 the negotiations?

23 A No, there was no -- no.

24 Q Now how did you arrive at the \$4500 purchase price?

25 A The \$4500 purchase price, I probably would have offered,

1 to be honest, a little less. They would -- the process would be -- it
2 would take probably a day while they contacted the HOA and got
3 permission to sell it, if they wanted to sell it, if they gave it up,
4 whatever the number is. And the HOA would typically come back
5 and say we need all of our money, you know, plus whatever the
6 dues were that would be going forward or, you know, sometimes
7 they'd accept the lower offer because there was a great deal of HOA
8 properties at that time.

9 Q Okay. And I believe during your discussion with Mr.
10 Croteau, the two of you looked at a couple of versions of the
11 same -- essentially the same Quitclaim Deed. Do you recall that?

12 A Yes.

13 Q Now did you draft that, or would that have been
14 somebody at Absolute?

15 A That would have been somebody at Absolute.

16 Q Okay. And let me see if I can pull it up here.

17 All right. Here is the Quitclaim Deed. This is Defense
18 Exhibit 31 and I believe it is also Plaintiff's Exhibit 9 for the record.

19 Can you see that first page okay, Mr. Schmidt?

20 A I can.

21 Q Okay. And in the second paragraph here, [indiscernible] it
22 says: The consideration is \$4500.

23 Do you see that?

24 A \$4,500; correct.

25 Q Yeah. And then it goes on to say: Hidden Canyon HOA

1 does hereby release, remise, and forever quitclaim unto Las Vegas
2 Development Group, LLC all of his interest, if any in that certain real
3 property commonly known as and then we have the address there.

4 Do you see that?

5 A I do.

6 Q Okay. Now, what information -- did that language cause
7 you any concern; that the HOA was quitclaiming its interest in the
8 property, if any, to Las Vegas Development Group?

9 A No, Rex, that's what a Quitclaim Deed is. Quitclaim's
10 anything they have or don't have -- all their interest in the property.
11 It's not --

12 Q Okay.

13 A -- Grant Deed.

14 Q And what is your understanding of the difference then --
15 you just mentioned a Grant Deed. What is your understanding of
16 the difference between that type of deed and this type of Quitclaim
17 Deed?

18 A Grant Deed would be some sort of warranty with it or
19 some sort of outline of exactly what they did have or didn't have.
20 Whereas a Quitclaim Deed gives everything they do have and if
21 they don't have it, they don't have it. It's pretty similar to anything
22 else. If you got the ability to give, you've given it all and if you
23 don't have the ability to give, you didn't give it.

24 Q Okay. You had a right to it?

25 A Now -- I have the right to it. If I don't have the right, you

1 didn't assign me the right to it.

2 Q Okay. And remind me, I think you said before purchasing
3 here before this Quitclaim Deed, did you review the deed -- the
4 Trustee's Deed that had gone to the HOA or no?

5 A No, I did not.

6 Q Okay. Now before you -- before Las Vegas Development
7 accepted this Quitclaim Deed, did you pull any sort of comps or do
8 any research about the value of this property at the time?

9 A I did not.

10 Q What about did you do any sort of research or thinking
11 about what you could rent this property for?

12 A Perhaps.

13 Q I'm sorry?

14 A Perhaps. I would have thought about it, yeah.

15 Q Okay. Would you have done any sort of research on
16 Google or anywhere else?

17 A Probably would have looked at Zillow.

18 Q Okay. Anything else?

19 A No.

20 Q And how would that -- how would the information you got
21 from Zillow affect the amount that you were willing to pay?

22 A I don't know if affects the amount I'm willing to pay. I had
23 made an offer, I have a property coming, I would be doing research
24 about what was going to happen with the property, what I'm going
25 to do with it if they accept the offer and produce the Quitclaim

1 Deed.

2 Q Okay. Now, on the last page of this Quitclaim Deed, it has
3 what's called a State of Nevada Declaration of Value Form. Are you
4 familiar with that form?

5 A I'm very familiar with that form.

6 Q Okay. And in paragraph 5 of this same exhibit, Plaintiff's
7 9, Defense, it's 31, it has a signature of the member, grantee. Is that
8 your signature there?

9 A That is my signature.

10 Q Okay. And up in paragraph 3 of this Declaration of Value
11 Form, it says the total value/sales price of the property, \$4,500. Do
12 you see that?

13 A I do.

14 Q And then Section 3(c) has the transfer tax value of
15 \$88,560. Do you see that?

16 A I do.

17 Q Do you know whose handwriting that is in paragraph 3?

18 A I would assume it's whoever prepared the document. I
19 only signed the document because the document can be signed by
20 both parties. At the time that \$88,000 was some very great big fight
21 with the County Assessor's Office over what number was allowed
22 to be put there, whether it was the purchase price itself or the
23 transfer tax value.

24 And so that the Trustee didn't get hammered by
25 themselves getting this number when they didn't get the right

1 numbers through and had to pay the difference, they asked us to
2 sign it as well. Well, it didn't get countersigned as you can see
3 there but that eventually got straightened out, but this was a new
4 thing, and this was a big battle down at the Recorder's Office.

5 Q Okay. And at the time this was recorded, did Las Vegas
6 Development Group have any conversations with the people at the
7 County about what number it should be using for the transfer tax?

8 A We had some but the County Recorder, which collects
9 the fee and the County Assessor, which doesn't, who tries not to
10 get involved, they have a supervisor back there that comes out
11 there and he's the boss. Whatever she says, she says and she --
12 they go back and forth and one day it would be 4500 I'd pay that
13 transfer tax fee and the next it'd be whatever the transfer tax value
14 was based on what they had the property appraised of at the
15 taxable value at the County. So that would have been the taxable
16 value that on the day that you -- you know, the amount you pay
17 your taxes on.

18 Q Okay.

19 A [Indiscernible].

20 Q And since March of 2011, when Las Vegas Development
21 Group got this property, has it gotten regular assessor tax bills?

22 A Sure.

23 Q And have those tax bills been set according to the
24 assessed value, as opposed to the \$4500 Las Vegas Development
25 Group paid?

1 A They have.

2 Q And has there been any discussion between Las Vegas
3 Development Group and the County about that use of the assessed
4 value as opposed to the purchase price?

5 A No, Rex, those are two different things. The assessed
6 value is the assessed value at the Assessor's. This is in regards to
7 the transfer tax value. So the hiccup here is what amount do you
8 charge when you transfer the property when you've sold it; right?
9 It's supposed to be the sales price. The sales price was \$4500. That
10 would have nothing to do with the assessed value that they send
11 the very next day, which would be \$88,000. It's two completely
12 different taxes.

13 Q Okay.

14 A Two completely different arguments and we wouldn't
15 argue that.

16 Q All right. And was this -- did Las Vegas Development
17 Group buy this property for rental or for resale?

18 A For rental.

19 Q Okay. And has this property been rented to anyone
20 during the time that Las Vegas Development Group has owned it?

21 A It has.

22 Q And has Las Vegas Development Group made back the
23 \$4500 purchase price by now?

24 A I would hope so.

25 MR. CROTEAU: Objection, relevance.

1 THE COURT: Overruled.

2 ///

3 BY MR. GARNER:

4 Q Do you know how much in rental income Las Vegas
5 Development Group has made since March of 2011?

6 A I do not.

7 MR. CROTEAU: Again, objection to relevance, Your
8 Honor.

9 THE COURT: Overruled.

10 BY MR. GARNER:

11 Q And the answer I think was you don't know; correct?

12 A That's correct.

13 Q All right. And before you testified that you have made
14 some improvements to the property; correct?

15 A Correct.

16 Q And do you have a dollar value for that?

17 A I don't have a dollar value for it, it's just my recollection
18 that -- somehow that house got flooded and we replaced some
19 carpet and some other things of that nature; stuff we wouldn't have
20 records for back then because we had a real estate agent who
21 basically stole our records and --

22 Q You --

23 A -- money.

24 Q Okay. So you don't have records about that, do you?

25 A Do not. No, I don't.

1 Q I think that's all the questions I have. Thank you, Mr.
2 Schmidt.

3 A Thank you.

4 THE COURT: All right. Redirect, Mr. Croteau.

5 MR. CROTEAU: Oh, very brief, Your Honor.

6 **REDIRECT EXAMINATION**

7 BY MR. CROTEAU:

8 Q Mr. Schmidt, Counsel asked you did you contact the banks
9 to inquire possibly regarding whether or not they made any tender
10 payments or payments on the property. Do you remember that
11 questioning?

12 A I do.

13 Q All right. Did you attempt to inquire with banks initially on
14 that issue, some time, a long, long time ago?

15 A Well we originally called banks, yes, and tried to talk to
16 banks about a number of things. That -- and that being the primary
17 one. But we --

18 Q All right.

19 A We were unable to do that.

20 Q All right. And what was the bank's response to your
21 [inaudible]?

22 A Their response was what's your social sec -- what's the
23 social security number of the borrower.

24 Q When you told them you were not the borrower, what'd
25 they tell you?

1 A You can't call here. We can't talk to you.

2 Q All right. And again, for [inaudible; audio distortion] sake,
3 in the 2000 -- and let's do a generic question. You've been involved
4 in the space, I think Mr. Garner has that, that you've been involved
5 in a multitude of cases over the years in the HOA area and sphere;
6 correct?

7 A That's correct.

8 Q All right. When to the best of your recollection did the
9 term tender, meaning that the payment wasn't actually made and
10 collected but there's some equitable remedy called tender that says
11 gee whiz they tried but someone didn't accept it? Was it before the
12 *SFR* decision in 2014 or after?

13 A Way after.

14 Q Way after the September 2014 *SFR* decision?

15 A Yes.

16 Q All right. Were you familiar with any Miles Bauer letters
17 going out before 2014, in 2014?

18 A I wasn't --

19 Q Or --

20 A -- familiar with the Miles Bauer letters until after the *SFR*
21 decision. It was not that great of a time but.

22 Q Fair enough.

23 MR. CROTEAU: I have no further questions.

24 THE COURT: Any recross?

25 MR. GARNER: None, Your Honor. Thank you.

1 THE COURT: Okay. The witness may stand down so to
2 speak.

3 THE WITNESS: Thank you very much.

4 MR. CROTEAU: He's obviously my party too, Your Honor,
5 so he can stay on, I assume; correct?

6 THE COURT: Yes.

7 MR. CROTEAU: If Your Honor would allow me a couple of
8 minutes of latitude. I've been texting Ms. Saucedo, I'm doing it
9 now, to ask her to get on.

10 THE COURT: Okay. And I just wanted everyone to be
11 aware of the fact we can't go past about 10 to 5:00 today.

12 MR. CROTEAU: Okay. Your Honor, I'll be literally 10
13 minutes with Ms. Saucedo. I don't know how long Counsel will
14 have.

15 THE COURT: Okay.

16 MR. CROTEAU: Counsel's informed me he has no
17 witnesses, so we might even be able to wrap it up.

18 THE COURT: Okay. Well because of the BlueJeans
19 situation, remote trial situation, I'm told that we can't go past 10 to
20 5:00. I just wanted you to be aware of that. And of course, we've
21 also allotted tomorrow for the trial as well, so.

22 MR. CROTEAU: Perfect.

23 THE COURT: Now I do have -- while we're waiting here, I
24 do have a motion tomorrow at 9:00 that I'll hear.

25 [Colloquy between the Court and the Clerk]

1 MR. CROTEAU: I'm texting Ms. Saucedo now, Your
2 Honor. Can we take five minutes while --

3 THE COURT: Yeah, absolutely. I just wanted to make it
4 clear what we were going to do. If we're going into session
5 tomorrow, I was just going to say we'd resume at 9:15 instead of
6 9:00.

7 Does that work Madalyn?

8 THE CLERK: Yeah, that works.

9 THE COURT: Yeah, okay. I just wanted -- I didn't want
10 you to have to sit through and listen to the motion.

11 MR. GARNER: Or would you rather go to 9:30.

12 THE COURT: What's that?

13 MR. GARNER: Would you rather go to 9:30 if you have a
14 lengthy hearing or no?

15 THE COURT: Well I don't think the motion's going to be
16 that long. I think 9:15 would work.

17 MR. GARNER: Okay. Perfect.

18 THE COURT: Thanks.

19 MR. CROTEAU: All right. Perfect.

20 THE COURT: We'll be in recess -- what should we do just
21 to anticipate about 11 minutes or so or?

22 MR. CROTEAU: I think so, maximum. She said she was
23 going to get on and she's been responsive. So I'd give her a few
24 minutes to get --

25 THE COURT: We'll resume at 25 after 3:00.

1 MR. CROTEAU: Perfect. Thank you, Your Honor.

2 THE COURT: Thanks.

3 [Court recessed at 3:14 p.m., until 3:22 p.m.]

4 THE COURT: All right. I'm back. Do you have the witness
5 ready?

6 MR. CROTEAU: We do. Ms. Saucedo is present, Your
7 Honor.

8 THE COURT: Are you ready to go or [inaudible]?

9 MR. CROTEAU: Yes, sir. Ready to go.

10 THE COURT: Okay. Go ahead, Mr. Croteau, your next
11 witness.

12 MR. CROTEAU: Plaintiff calls Yvette Saucedo.

13 **YVETTE SAUCEDA**

14 [having been called as a witness and being first duly sworn,
15 testified as follows:]

16 THE CLERK: And please state your full name, spelling
17 your first and last name --

18 THE WITNESS: Yvette --

19 THE CLERK: -- for the record.

20 THE WITNESS: Yvette Saucedo. Y-V-E-T-T-E; last name is
21 S-A-U-C-E-D-A.

22 THE CLERK: Thank you.

23 THE COURT: All right. Before we go further and since I
24 convened a couple minutes earlier than 3:25 according to my clock,
25 I want to make sure the recorder is here.

1 THE COURT RECORDER: Yes, Judge. I'm sorry. I said
2 yes --

3 THE COURT: Okay.

4 THE COURT RECORDER: -- but you probably couldn't
5 hear me earlier. Yes --

6 THE COURT: All right. Very well.

7 THE COURT RECORDER: -- we were on the record and
8 everything's fine.

9 THE COURT: Okay. Very well.

10 Go ahead.

11 MR. CROTEAU: Thank you, Your Honor.

12 **DIRECT EXAMINATION**

13 BY MR. CROTEAU:

14 Q Ms. Saucedo, I won't keep you long today. You've
15 testified for Rex and I many times; correct?

16 A I have.

17 Q All right. Ms. Saucedo, could you tell us what your
18 current employment is?

19 A I am the accounting director for Complete Association
20 Management Company, also known as Camco. And I have worked
21 there for nine years.

22 Q All right. And generally is it your practice and procedure
23 that in many of the HOAs where Camco is the community manager,
24 you are designated as the person to testify on behalf of the
25 community, the HOA?

1 A I am, yes, for cases that involve anything with
2 delinquencies and accounting issues.

3 Q All right. Fair enough.

4 And in this particular case, are you the designated person
5 for Hidden Canyon Owners Association?

6 A Yes.

7 Q All right. I sent you earlier your original disclosure to us
8 and I'm going to show you that now.

9 And did you get a copy of this compendium of documents
10 that begins with 22-001 and goes through -- hang on. And it goes
11 through 22-191. Does that sound right?

12 A Yes.

13 Q All right. And are you the one that signed the Affidavit of
14 Custodian of Records that I'm showing you as 22-001?

15 A It looks like I notarized it and Dawn Alexander [phonetic]
16 signed it.

17 Q All right. That's fine. But did you prepare the records?

18 A I believe Dawn prepared the records, but I am familiar
19 with the records.

20 Q Fair enough. And are you familiar with the workings with
21 Hidden Canyon Owners Association as of 2009, based upon your
22 review of records and so forth?

23 A Yes.

24 Q All right. I'm going to make this easy for you. If you'll go
25 to -- or I'm going to take you there in a second -- 22 through 029.

1 Give me a second, I'll get you there.

2 Do you see page 22-029?

3 A Yes.

4 Q All right. What is your understanding in 2009 --

5 A Well, it's -- I'm sorry, is that what you're on, the affidavit?

6 Q I was. I changed. Can you see my screen I'm sharing?

7 A Yeah, I can but it was still on the affidavit, now it's --

8 Q Oh, okay.

9 A Now it isn't.

10 Q It's moving for you right now?

11 A Yeah.

12 Q That's weird. A significant delay.

13 A Okay.

14 Q I'm at 20-029, do you see that? It's the transaction ledger.

15 A Okay. There it goes. Yeah, I see it now.

16 Q All right, perfect.

17 Now, in 2009, what was your understanding as to how
18 this Association charged its assessment?

19 A This association at the time was an annual assessment
20 and it was billed at \$118 per year due on the 1st of January.

21 Q All right. And in fact, it was an annual assessment for
22 purposes of our analysis, if I look at this ledger. And do you know
23 who created this ledger, by any chance? The resident transaction
24 ledger?

25 A Camco creates and maintains the ledger for the

1 Association.

2 Q All right. So if this is a Camco prepared document then;
3 correct?

4 A Correct.

5 Q All right. And if we look here on 1/7 -- 1/1 of '7, the annual
6 assessment was \$118, correct, on the top line?

7 A Correct.

8 Q On 1/2 of '08, it was \$118 also; right?

9 A Correct.

10 Q On 1/1 of '09, it was \$118 a year, annual assessment;
11 correct?

12 A Correct.

13 Q On 1/1 of '10, it was \$118 annual assessment; correct?

14 A Correct.

15 Q In 2011, on 1/1 of '11, it was \$118 annual assessment;
16 correct?

17 A Correct.

18 Q All right. Fine.

19 So the billing on 1/1 of '09, that was due on this account
20 was \$118; is that correct?

21 A Yes.

22 Q All right. Do you know when the Notice of Delinquent
23 Assessment Lien was filed?

24 A I don't.

25 Q All right. Let's see if I can find it. It might be here.

1 There it is. Do you see that up in the righthand corner?
2 6/3 of '09 was the filing of the Notice of Delinquent Assessment
3 Lien?

4 A Sorry, it's lagging again.

5 Yes, I see it.

6 Q All right. Very well then.

7 So they were delinquent six months from the yearly
8 assessment that was assessed on the 1st of 2009; is that correct?

9 A Correct.

10 Q And did you notice any payments at all, at least on 22-029,
11 other than the final sale of the property on 3/3 of '11? Do you see
12 that?

13 A No, there were no payments made before that.

14 Q All right. Bear with me one second.

15 In the HOA file, do you have any records of a payment or
16 an attempted payment by Miles Bauer Bergstrom in this file?

17 A No, we do not.

18 Q All right. One second.

19 Is it Camco's practice and procedure to prepare deeds --
20 Trustee Deeds upon sale?

21 A No.

22 Q Okay. Almost there.

23 All right. I'm showing you what is 21-110. It says Hidden
24 Canyon Owners Association Camco and it looks to -- appears to be
25 some sort of communication log. Is this a log prepared by Camco,

1 the Association, or Alessi and Koenig, to the best of your
2 knowledge?

3 A That was prepared by the collection agency.

4 Q All right. In this case that was Alessi and Koenig; correct?

5 A Correct.

6 Q Okay. All right. Give me one sec.

7 Okay. Give me one second.

8 Just for the record, again, in your files you do not contain
9 this check dated 1/14/2010, made payable to Alessi and Koenig, LLC
10 in the amount of \$88.50?

11 A No, we do not.

12 Q All right. And I'll represent to the record here, that's
13 Exhibit 21, page 71.

14 And likewise, you have any -- do you have a copy of this
15 letter dated January 21st, 2010, to Alessi and Koenig that is pages
16 21-071 and 72 in the HOA records?

17 A No, we do not.

18 MR. CROTEAU: I have no further questions.

19 THE COURT: All right. Cross-examination.

20 MR. GARNER: Thank you, Judge.

21 Roger, if you would.

22 MR. CROTEAU: Oh, I'm sorry.

23 MR. GARNER: No worries.

24 MR. CROTEAU: I keep forgetting, I apologize. There you
25 go.

1 MR. GARNER: Thank you.

2 **CROSS-EXAMINATION**

3 BY MR. GARNER:

4 Q Now, Ms. Saucedo, good afternoon. How are you?

5 A I'm good. How are you?

6 Q Just fine. You testified a minute ago when asked about
7 the assessments, you said at the time this HOA billed assessments
8 annually. Does it still?

9 A No. They currently bill quarterly.

10 Q When did that change?

11 A I'm not sure exactly, but I think like around maybe four or
12 five years it's been quarterly.

13 Q What led to that change?

14 A I'm not sure.

15 MR. CROTEAU: Objection, lack of foundation.

16 MR. GARNER: Okay.

17 THE COURT: Lay a foundation --

18 MR. CROTEAU: Okay.

19 THE COURT: -- that she'd be aware.

20 BY MR. GARNER:

21 Q Oh, do you know what led to that change, Ms. Saucedo?

22 A I do not.

23 Q Okay.

24 A Sorry.

25 Q No worries.

1 Personally, how many HOAs does Camco do management
2 work for?

3 A About 300.

4 Q Okay. And do they all charge assessments annually or
5 no?

6 A No. Very few charge annually.

7 Q Okay. How do most charge?

8 A Most are monthly.

9 Q Okay. And some do it quarterly?

10 A Some do quarterly, yes.

11 Q Some do twice a year?

12 A Yes.

13 Q And do you know why HOAs bill in different increments?

14 A I'm not 100 percent sure. Some it might be in the
15 documents that they have to bill that way, and some are just such a
16 small amount, if you were to bill it monthly, it would just make
17 more sense to do it quarterly or annually.

18 Q Okay. In your experience, are all assessments, whether
19 they're billed monthly, quarterly, or annually, are they set by an
20 annual budget that the HOA has to do?

21 A Yes, they are.

22 Q Okay. And does this HOA Hidden Canyon have governing
23 documents, including CC&Rs?

24 A Yes.

25 Q How important are CC&Rs in the work that Camco does

1 for HOAs?

2 A They're very important, I would say.

3 Q Does Camco consider itself bound by the CC&Rs when it
4 does work for an HOA?

5 MR. CROTEAU: Objection, calls for --

6 THE WITNESS: Yes.

7 MR. CROTEAU: -- legal conclusion.

8 THE COURT: She can state her understanding.

9 BY MR. GARNER:

10 Q Okay. Your answer was yes, Ms. Saucedo?

11 A Yes.

12 Q Okay. And did Hidden Canyon's CC&Rs require
13 homeowners to pay assessments?

14 A Yes.

15 Q Do homeowners ever stop paying assessments?

16 MR. CROTEAU: Improper [inaudible].

17 THE WITNESS: Sometimes, but they're not supposed to.

18 BY MR. GARNER:

19 Q Is the nonpayment of assessments considered a breach of
20 the CC&Rs?

21 A Yes.

22 Q Back in 2009, was Camco the management company for
23 Hidden Canyon?

24 A Yes.

25 Q Okay. And what point in the delinquency would Camco

1 turn a delinquent homeowners account over to the collection
2 agent?

3 MR. CROTEAU: Objection --

4 THE WITNESS: So --

5 MR. CROTEAU: -- vague and ambiguous.

6 THE COURT: Beg your pardon?

7 MR. CROTEAU: I said --

8 THE COURT: Yeah, rephrase.

9 MR. CROTEAU: -- vague and ambiguous.

10 THE COURT: All right. Rephrase the question, please.

11 BY MR. GARNER:

12 Q Back in 2009, did Hidden Canyon ever have delinquent
13 accounts on homeowners? Did homeowners ever have delinquent
14 accounts?

15 A Yes.

16 Q All right. And what was the general process for dealing
17 with that back then?

18 A So the Association would send out a late notice, kind of
19 like a courtesy reminder after 30 days, which would be in February
20 in this case, just letting the homeowner know they hadn't paid their
21 annual assessment. And if we still didn't have payment have 60
22 days, which would not be in March, then we would send out an
23 Intent to Lien Notice and that would go out via certified and first-
24 class mail to every address that we had on file, as well as the
25 property address.

1 And that would basically let them know that they needed
2 to bring their account current or contact our office to make payment
3 arrangements or their account would be turned to collections. And
4 if we didn't hear from them, I believe it was 20 or 30 days after that
5 Intent Notice was sent out, then the account would be referred to
6 collections.

7 Q Okay. And who was the collection agent back then?

8 A Alessi and Koenig.

9 Q Okay. And what kind of instructions, if any, did Hidden
10 Canyon give to Alessi and Koenig in 2009, about how to handle the
11 collection process?

12 A We did not give them any instructions really. We would
13 just send them the account history and expect that they would
14 abide by whatever policies they needed to throughout the process.

15 Q Okay. Did Hidden Canyon or Camco give Alessi and
16 Koenig a copy of the CC&Rs?

17 A Yes, they would have been provided with the CC&Rs upon
18 the first turnover of an account from that Association.

19 Q Okay. Did the HOA expect Alessi and Koenig to follow
20 any provisions in the CC&Rs related to collections?

21 A Yes.

22 Q Okay. And based on your review of the file, did Hidden
23 Canyon refer the property or the account that brings us here today
24 to Alessi and Koenig for collections in 2009?

25 A Yes.

1 Q Once that happened back in 2009, once an account was
2 placed with Alessi and Koenig for collection, if anyone had called
3 Camco about that account, did Camco have a standard process or
4 policy for responding to such inquiries?

5 A Yes. We would refer them to the collection agency.

6 Q Okay. So if a potential bidder at the upcoming auction
7 had contacted the HOA and asked about the account, would the
8 HOA have referred that potential bidder to Alessi?

9 A I'm not sure that we would give them that information as
10 far as what collection agency it was with.

11 Q What would you have told them, if anything?

12 A Probably that we use different collection agencies and
13 information on any upcoming sales that they have could be found
14 on their website or by contacting them.

15 Q Okay. And back in let's say 2009/2010, did Camco or
16 Hidden Canyon have any policy or procedure that would have
17 prevented them from accepting a partial payment on the account?

18 A No.

19 Q All right. Let's look at the Trustee's Deed. Let me see if I
20 can pull that up.

21 All right. This is part of Defense Exhibit 30, page 1.

22 Do you see that on your screen?

23 A I do.

24 Q Okay. And do you know who prepared this Trustee's
25 Deed Upon Sale?

1 A That would have been prepared by Alessi and Koenig.

2 Q Okay. And according to this, it appears that Hidden
3 Canyon was the grantee based on its own foreclosure sale. Do you
4 see that?

5 A Yes.

6 Q All right. Do you have other experience during your time
7 with Camco where the HOA was the winning bidder?

8 A Yes.

9 Q And in all those instances did the HOA present essentially
10 a credit bid of what was owed on the account?

11 A Yes.

12 Q Okay. So then when it says the amount paid by the
13 grantee at the Trustee Sale near the top of \$4,310.82, was that a
14 credit bid then?

15 A Yes.

16 Q Okay. So did any cash or check or any other form of
17 money actually change hands on the day of the auction or shortly
18 thereafter?

19 A The HOA did pay Alessi and Koenig, I believe for the
20 collection costs that they were due.

21 Q Okay. Now on to look at the Quitclaim Deed from the
22 HOA to Las Vegas Development Group, which is Defense Exhibit 31
23 and Plaintiff's Exhibit 9.

24 Can you see that on your screen?

25 A Yes.

1 Q All right. Do you know who prepared this Quitclaim
2 Deed?

3 A From my review of the file, I believe it was turned over to
4 Absolute Collection Services for post-foreclosure work and they
5 would have prepared this deed.

6 Q Okay. And do you know what led up to this deed --
7 essentially what I'm asking is how did it come about that the HOA
8 sold this property to Las Vegas Development Group?

9 A I don't know. I couldn't find anything in the file relating to
10 the subsequent sale.

11 Q Okay. So you don't know who reached out to whom that
12 would have led to this?

13 A No, I don't.

14 Q Okay. Do you know how the purchase price was
15 negotiated, this \$4,500 number?

16 A No, I do not.

17 Q Okay. Do you know who negotiated on behalf of the HOA
18 for this sale?

19 A I believe it would have been Absolute Collection Services.

20 Q Okay. And do you know who at Absolute would have
21 been in charge of that?

22 A No, I don't.

23 Q Okay. Before this Quitclaim Deed was approved and
24 signed and recorded, would the HOA or the Board have to have had
25 to approve this?

1 A I believe so, yes.

2 Q And would they have done that by vote or how?

3 A Yes, it would --

4 MR. CROTEAU: Objection --

5 THE WITNESS: -- have been --

6 MR. CROTEAU: Objection --

7 THE WITNESS: -- upon --

8 MR. CROTEAU: -- lack -- objection, lack of foundation.

9 Calls for speculation on the part of the witness.

10 THE COURT: I'll do the -- I'll sustain the foundation
11 objection.

12 MR. GARNER: Okay.

13 BY MR. GARNER:

14 Q Ms. Saucedo, do you have experience with post-auction
15 sales like the one we're looking at today?

16 A A little bit, yeah.

17 Q And do you have knowledge as to how HOAs approve or
18 disapprove of those sales?

19 MR. CROTEAU: Counsel, objection --

20 THE WITNESS: A little bit.

21 MR. CROTEAU: --back in 2000 -- objection. Back in 2009
22 or for the last ten years?

23 BY MR. GARNER:

24 Q Well this one's in 2011. Let's start there, Ms. Saucedo.

25 A Yes, I do.

1 Q And how is that done?

2 A So one Board member can't make a decision for the Board
3 as a whole, so depending on what is written in their documents, it's
4 usually a majority vote and sometimes that's done via e-mail and
5 then ratified at a Board meeting or it's done in a Board meeting.

6 Q Okay. And do you know how it was done in this particular
7 instance?

8 A I do not.

9 Q Okay. And once the Quitclaim Deed was recorded, did the
10 HOA get that \$4500 for the purchase price?

11 A Yes.

12 Q And what did the HOA do with it?

13 A It was applied to the account to bring it current.

14 Q Okay. So this homeowner's account was not brought
15 current as a consequence of the foreclosure sale but from the sale
16 to Las Vegas Development Group several weeks later; is that
17 accurate?

18 MR. CROTEAU: Objection, calls for legal conclusion.

19 THE COURT: She can say her under --

20 MR. CROTEAU: The operation -- I'm sorry, sir.

21 THE COURT: She can state her understanding of how it
22 affected the account.

23 MR. CROTEAU: All right.

24 BY MR. GARNER:

25 A Yes, that's correct.

1 Q Okay. Back in 2011, did the HOA take a position as to the
2 effect of its foreclosure sale on a First Deed of Trust?

3 MR. CROTEAU: Objection, calls for --

4 THE WITNESS: No.

5 MR. CROTEAU: -- legal conclusion.

6 THE COURT: That's a question -- he's asking whether a
7 position was taken or not. I'll allow it.

8 BY MR. GARNER:

9 Q Go ahead, Ms. Saucedo.

10 A No, they did not.

11 Q Thank you for your time. That's all the questions I have
12 for you.

13 A Thank you.

14 MR. CROTEAU: I do have a couple --

15 THE COURT: Redirect?

16 MR. CROTEAU: Yeah, please, Your Honor. Thank you.

17 **REDIRECT EXAMINATION**

18 BY MR. CROTEAU:

19 Q You say the homeowner's account was not brought
20 current. The foreclosure sale wiped out the former owner; correct,
21 Yvette?

22 A Correct.

23 Q All right. So the former owner's account didn't exist
24 anymore; fair statement? And the HOA in fact owned the property?

25 A The HOA did own the property, yes.

1 Q All right. So if they owned the property, they owned the
2 property for I assume the amount of money that was owed the
3 HOA; correct? That's how they bought it --

4 A I'm sorry, can you repeat that?

5 Q Sure. If it went through an HOA foreclosure sale such as
6 this case did in March of 2011, and the HOA basically credit bid its
7 claim, right, for its outstanding costs and fees and assessments, it
8 bought the property for that sum of money; is that accurate?

9 A I'm not sure how that really works, but yes.

10 Q All right. Is there any indication that -- anywhere, at any
11 review of any kind that this was not an approved sale by the
12 Association to Las Vegas Development Group?

13 A No.

14 Q All right. I'm going to have you look at Exhibit 18, if you'll
15 give me a minute here.

16 And Counsel has asked you in previous questioning if you
17 follow the CC&Rs; correct?

18 A Correct.

19 Q So would you say -- and what I'm showing you here is
20 recorded on 8/9 of 2005, it's a Declaration of Covenants, Conditions,
21 and Restrictions to the Cheyenne Ridge Association/Hidden Canyon
22 Owners Association. Do you see that?

23 A Yes.

24 Q All right. And if we scroll through a little bit, it's actually a
25 completely restated Declaration of Covenants, Conditions, and

1 Restrictions. Do you see that?

2 A I do.

3 Q All right. And if we go down to 18, page 17, I know it's
4 going to take me a minute, I apologize.

5 Would you agree with me that this is the section on
6 assessments, I'll bring you up to the top here, where it talks about
7 the purpose of assessments and so forth. Covenant for
8 Maintenance Assessments to Association.

9 Do you see that, Ms. Saucedo?

10 A Hold on, I think it's lagging. Hold on. Sorry.

11 Q No, take your -- it's okay.

12 A [Inaudible].

13 Q The technology has some issues.

14 A I told me kids to get off the Wi-Fi, but I don't know if they
15 listened.

16 Q I won't keep you much longer.

17 Are you at 18 of 16 yet?

18 A Almost.

19 Q Exhibit 18, page 16.

20 A Okay.

21 Q All right. You there?

22 A Yes.

23 Q All right. Article VII, Covenant for Maintenance
24 Assessments to Association. Right? Do you see that?

25 A Yes.

1 Q All right. That's the regular assessment section, is it not?

2 A Yes.

3 Q All right. And then it talks about in Section II,

4 Assessments Levied by the Association shall be exclusively to
5 promote the recreation, health, safety and welfare of all residents
6 with the entire project; right?

7 And then it goes on to talk about regular assessments. Do
8 you see that?

9 A Yes.

10 Q All right. Do you see here the Board may fix the annual
11 regular assessment and amount not to excess of the minimum;
12 right?

13 A Yes.

14 Q All right. So it's an annual assessment; correct?

15 A Correct.

16 Q All right. Now, are you aware if they enacted a collection
17 policy in this Association?

18 A Yes, they did have a collection policy.

19 Q All right. We're going to go find that. I'm going to take
20 you to Exhibit 22. And it's going to take a minute also. It's 22, page
21 142. So let's see where we end up here. I think it's going to be a
22 ways down. Let's try.

23 Wow, not bad. I was able to come up with it. Okay.

24 Is this the collection policy that was in effect during the
25 course of this foreclosure?

1 A Yes.

2 Q All right. Now this says the regular assessment is payable
3 on the first day of each year. That's in paragraph 1. Do you see
4 that?

5 A Yes.

6 Q Is there any doubt that this is an annual assessment that
7 was contemplated as being annual in all cases, both in the CC&Rs
8 and the collection policy?

9 A Yes, it was.

10 Q All right. And then under Number 6, it says: If payment
11 for all sums that are then delinquent, including the delinquent
12 assessment, late charges, costs, and reasonable attorney's fees
13 have not been made, the collection company shall be entitled to
14 costs to be recorded with the Clark County Recorder's Office, Notice
15 of Delinquent Assessment and Claim of Lien for all sums that are
16 then delinquent. A recorded Notice of Delinquent Assessment
17 creates a lien on delinquent owner's unit that is to submit the
18 foreclosure; right? The Association has the option of pursuing
19 judicial or nonjudicial foreclosure; correct?

20 A Correct.

21 Q All right. And then it says -- up to paragraph 1 again on
22 22-142, it says: Regular and special assessments shall be
23 delinquent if not paid within 29 days after they become due.

24 When you have an annual assessment, are they due
25 within 30 days after the assessment is made for the year?

1 A Yes, that's when the late fee applies.

2 Q Thank you very much.

3 Is there anything to indicate on what I've just shown you
4 that somehow this Association or Alessi and Koenig didn't comply
5 with the CC&Rs or the collection policy?

6 A Not that I'm aware of.

7 MR. CROTEAU: I have no further questions. Thank you.

8 THE COURT: Any recross?

9 MR. GARNER: Yes. Thank you, Your Honor.

10 **RECROSS-EXAMINATION**

11 BY MR. GARNER:

12 Q Ms. Saucedo, is -- back in 2011, was an account that was
13 attached to a property, was it attached to the property or to the
14 homeowner?

15 A Well --

16 MR. CROTEAU: Objection, calls for legal conclusion.

17 THE COURT: I think there's a foundation needed for her
18 understanding of the concept.

19 BY MR. GARNER:

20 Q Let me see if I can ask it a different way, Ms. Saucedo.
21 After the HOA bought this property, in March of 2009, and Dania
22 Hernandez, the former homeowner was foreclosed upon, was there
23 a balance remaining after the foreclosure sale on that account?

24 A Yes, there was.

25 Q Okay. So when the HOA took title to this property in

1 March of 2011, did it wipe out the balance and start with zero or
2 was there still a balance?

3 A The balance --

4 MR. CROTEAU: Again, objection.

5 THE WITNESS: -- was still --

6 MR. CROTEAU: Calls for a legal conclusion.

7 THE COURT: Well, she can state her understanding of it.

8 MR. CROTEAU: All right.

9 BY MR. GARNER:

10 A The balance was still on the account.

11 Q Okay. That's all I want to know. Thank you, Ms. Saucedo.

12 THE COURT: Anything else, Mr. Croteau?

13 MR. CROTEAU: Yes, actually there is one thing.

14 **FURTHER REDIRECT EXAMINATION**

15 BY MR. GARNER:

16 Q Is it -- Ms. Saucedo, do you have any legal training at all?

17 A No.

18 Q All right. And who decides how to book certain things on
19 the Camco books and records as it relates to Hidden Valley -- as to
20 the HOA in this case?

21 A The policies that are in place at Camco, I guess they would
22 be made by the executive team and myself.

23 Q Okay. So the legal effect of the HOA foreclosure, I think
24 you have agreed with me made the HOA the owner of the property?
25 Did you not agree with me on that?

1 A Yes.

2 Q I mean, by the very nature of the fact that they could
3 provide a Quitclaim Deed and transfer ownership from the
4 Association to Las Vegas Development Group would indicate that
5 they in fact own the property; correct?

6 A Correct.

7 Q All right. So when you say it still had an open account
8 next to it, does that many any sense? They owned the property.

9 MR. GARNER: Objection, argumentative.

10 THE COURT: I'll allow it.

11 MR. CROTEAU: Thank you. Go ahead.

12 BY MR. CROTEAU:

13 A The balance paid on the account, even though the
14 ownership changed, which happens from time to time.

15 Q All right. So it doesn't happen all the time, it just happens
16 sometimes.

17 A Correct.

18 Q All right. Was it there to show what the basis is or what
19 the money the Association was into that property for, maybe?

20 A Yeah. Yes.

21 Q All right.

22 MR. CROTEAU: I have no further questions anymore.
23 Thank you.

24 THE COURT: Mr. Garner?

25 MR. GARNER: Nothing further.

1 THE COURT: All right. The witness may stand down so to
2 speak and --

3 THE WITNESS: Thank you.

4 THE COURT: Thank you.

5 Mr. Croteau, any other --

6 MR. CROTEAU: Your Honor, I think I'm wrapped up, sir.

7 THE COURT: Okay. The Plaintiff has rested.

8 Mr. Garner?

9 MR. GARNER: Yes, Judge. I think -- I don't plan to call
10 any witnesses, but I may want to ask to admit two additional
11 exhibits that I'm happy to discuss now or we can discuss in the
12 morning. And then I plan to rest and unless Mr. Croteau has any
13 further evidence, I think we should do closings tomorrow.

14 THE COURT: Okay.

15 MR. CROTEAU: Wait a minute, Rex, what you go -- what
16 you dropping on me?

17 MR. GARNER: It's just the rescissions of the two Notices
18 of Default that are -- they are your Exhibit 16 and 17. One is a 2008
19 Notice of Default under the deed of trust; the other's from 2016.
20 Both of those Notices of Default were later rescinded, and I would
21 just like to add the rescissions to the exhibits to complete the
22 recorded documents.

23 MR. CROTEAU: I'm not sure it's relevant, but we'll let the
24 Judge decide. I don't care.

25 THE COURT: What are --

1 MR. CROTEAU: I'll let Your Honor decide.

2 THE COURT: What's their designation?

3 MR. CROTEAU: Well, Your Honor, we've already agreed
4 that if it's public document, it could be done but --

5 THE COURT: I'm sorry, I just need for my notes, I need to
6 know which one's you're referencing there. What are the numbers?

7 MR. GARNER: They're not currently listed, Your Honor.
8 They would probably be Proposed Exhibits, depending on the
9 numbering, 49 and 50 for the Defense.

10 THE COURT: Is that correct, Madalyn? Is that the
11 numerical order?

12 THE CLERK: Yes, that's correct. The next in line would be
13 49.

14 THE COURT: Okay. And there are two that are being
15 offered. So what's 49 described as?

16 MR. GARNER: 49 would be the Rescission of the 2008
17 Notice of Default. And 50 would be the Rescission of the 2016 Notice
18 of Default.

19 THE COURT: Okay.

20 MR. GARNER: And I don't have them handy, but I can
21 e-mail them to all the parties and the Clerk this evening.

22 THE COURT: All right. Mr. Croteau, did you want to say
23 anything about those again? Anything further, I mean?

24 MR. CROTEAU: I don't think they are relevant to the
25 allegations in this case. I mean, the allegations in this case are

1 about tender, the statute of limitations and that's really all that's
2 being raised. The only thing that came up in this case regarding the
3 NODs was the 2016 NOD actually prompted this litigation because
4 we were forced to file to stop a foreclosure sale in this case and
5 that's really all that's relevant.

6 THE COURT: What's the relevance --

7 MR. CROTEAU: I don't --

8 THE COURT: -- from your standpoint, Mr. Garner?

9 MR. GARNER: The -- it's just relevant to show that
10 whatever prompted -- as Mr. Croteau said, whatever prompted this
11 litigation was thereafter rescinded. And also just to complete the
12 HOA and that all of these HOA cases, as you know, Your Honor, are
13 appealed and so if we have the Defaults in the record, I would like
14 to have their Recissions in the record as well since I don't know
15 what arguments may or may not be made after today.

16 THE COURT: Okay. I'll admit them

17 **[DEFENSE EXHIBITS 49 AND 50 ADMITTED]**

18 THE COURT: That being so, as I understand it, you're
19 resting, Mr. Garner? You have no witnesses; right?

20 MR. GARNER: That's right, I do not plan to call any
21 witnesses, Your Honor. So I think at this point, the Defense also
22 rests.

23 THE COURT: Okay. Thank you. Defense has rested. So
24 Mr. Croteau, based upon the admission of those items, are the only
25 items of evidence adduced by the Defense in the Defense Case in

1 Chief, do you have any rebuttal to those items?

2 MR. CROTEAU: May I answer that question in the
3 morning?

4 THE COURT: Yes, okay. That's fair.

5 So why don't we do this, we'll adjourn for the day. The
6 Defense has rested. We'll determine first thing whether or not
7 there's any rebuttal to be proffered by the Plaintiff and then if so,
8 sobeit that will occur.

9 Once that concludes, then I guess there'll be a question
10 that we're going to argument; right?

11 MR. GARNER: Sounds good.

12 MR. CROTEAU: Yes, Your Honor.

13 THE COURT: All right. So let's resume tomorrow
14 morning at 9:15.

15 MR. CROTEAU: Yes, Your Honor.

16 THE COURT: [Indiscernible].

17 Madalyn, do you have anything to say about how that's to
18 be done?

19 MR. CROTEAU: I assume we'll get new phone numbers --
20 call-in numbers.

21 THE CLERK: The call-in number will actually be the same
22 tomorrow. So you can use the same info again.

23 MR. CROTEAU: Oh, okay, excellent. Thank you.

24 THE CLERK: Yeah.

25 THE COURT: All right. Stay safe. Have a nice night. I'll

1 see you tomorrow. See and hear from you tomorrow.

2 MR. CROTEAU: Thank you very much, Your Honor.

3 THE COURT: Thank you.

4 MR. CROTEAU: See you guys. Take care, folks. Bye-bye.

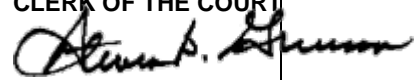
5 [Evening recess at 4:08 p.m.]

6 * * * * *

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21 ATTEST: I do hereby certify that I have truly and correctly
22 transcribed the audio/video proceedings in the above-entitled case
23 to the best of my ability.

24 

25 Brittany Mangelson
Independent Transcriber



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS DEVELOPMENT
GROUP, LLC,

Plaintiff,

vs.

DANIA HERNANDEZ,

Defendant.

CASE NO. A-17-756215-C

DEPT. XIII

BEFORE THE HONORABLE MARK R. DENTON,
DISTRICT COURT JUDGE

WEDNESDAY, JULY 29, 2020

**TRANSCRIPT OF HEARING:
NON-JURY TRIAL - DAY 2**

APPEARANCES:

For the Plaintiff:

ROGER P. CROTEAU, ESQ.
Appearing via BlueJeans

For the Defendant:

REX D. GARNER, ESQ.
Appearing via BlueJeans

Also Present:

CHARLES SCHMIDT

RECORDED BY: ANGIE CALVILLO, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Las Vegas, Nevada, Wednesday, July 29, 2020

[Case called at 9:12 a.m.]

THE COURT: Las Vegas Development Group, LLC versus Dania Hernandez, et al. Please state appearances, identify parties and party representatives who are present.

MR. CROTEAU: Good morning, Your Honor. Roger Croteau for Las Vegas Development Group LLC. Mr. Schmidt is supposed to be joining us. I talked to him a few minutes ago, so he should be online in a minute, but.

THE COURT: Good morning.

MR. GARNER: Good morning, Judge. Rex Garner on behalf of the Bank of New York Mellon.

THE COURT: Good morning. All right. The evidence is concluded and it's time for argument; correct?

MR. CROTEAU: I believe so, Your Honor. Would the Court give me five minutes, I'd like to have my client on the call?

THE COURT: Oh sure, yeah. Just --

MR. CROTEAU: I just talked to him. Let me run over and give him another call. Is that okay?

THE COURT: Yes.

MR. CROTEAU: Thank you.

THE COURT: That's fine.

[Pause in Proceedings]

MR. SCHMIDT: Hello.

1 THE CLERK: Hello, good morning.
2 MR. SCHMIDT: Good morning.
3 THE COURT: All right. Mr. Croteau?
4 MR. SCHMIDT: I apologize, I was trying to find a way to
5 go on here.
6 THE CLERK: And are you --
7 THE COURT: That's Mr. Schmidt --
8 THE CLERK: -- Mr. Schmidt?
9 THE COURT: -- correct?
10 MR. SCHMIDT: That's correct.
11 Now we're just waiting for, looks like Roger, I guess.
12 THE COURT: He went to call you.
13 MR. SCHMIDT: Yeah, he just called and said get on, so he
14 should be -- you would think we could get on.
15 MR. CROTEAU: Mr. Schmidt, are you there?
16 He said he was on.
17 THE COURT: Yeah, he was a minute ago.
18 MR. CROTEAU: Ah, there he is.
19 MR. SCHMIDT: I'm here.
20 MR. CROTEAU: There he is.
21 THE COURT: All right. Closing argument, Mr. Croteau,
22 you may proceed.
23 MR. CROTEAU: Thank you, Your Honor.
24 ///
25 ///

1 **CLOSING ARGUMENT BY PLAINTIFF**

2 BY MR. CROTEAU:

3 Your Honor, we filed our brief yesterday, as the Court's
4 aware, and in that brief -- hang on a second -- we outlined our
5 position and our issues with the case and hopefully a -- I'm sorry,
6 Your Honor.

7 THE COURT: It's the Amended Trial Brief; correct?

8 MR. CROTEAU: It is, Your Honor.

9 THE COURT: And that supersedes the original; right?

10 MR. CROTEAU: It does, Your Honor.

11 It would if I could argue from it.

12 Okay, I got it now, thank you.

13 BY MR. CROTEAU:

14 All right. Your Honor, this case focuses on two issues.
15 Now the first issue is very simply. Mr. Garner's claims and the
16 bank's claims obviously, are they tendered? I don't think there's
17 any real doubt about that. I think that I'm going to be disingenuous
18 if I was to sit here and tell you -- I'm going to sit here and argue the
19 *Diamond Spur* issues and whether or not it was a cashier's check
20 and whether or not they had reasonable belief in rejecting and so
21 on. I think those have been dispensed with primarily by the Nevada
22 Supreme Court for the most part. Obviously, I'd still like to make all
23 the arguments, but I do understand at least as to the state of the
24 law at this current time, this case going to trial.

25 However, the things that do need to be addressed and the

1 things that I think are absolutely defensible is the most recent case
2 that just came down, I think it's on all fours with our case. And I
3 made the evidence yesterday, I went through it I thought in
4 summaries and detail. The HOA assessments were \$118 annually.
5 They were assessed on the first of the year, each and every year
6 that we had calendar on. They didn't change until after the
7 foreclosure sale.

8 If you look at the ledger that we went through yesterday
9 that was contained in Exhibit 22 and Exhibit 21, it is obvious that for
10 '7, '8, '9, '10, and '11 and this sale occurred in '11, all of the sales
11 and so forth were accomplished in the year 2011, and so all of those
12 apply.

13 If we look to that -- and this is really dispositive of the
14 case. If we look to the *Noonan* case, *Noonan versus U.S. Bank*, 136
15 Nev. Adv. Op. 41, which I've provided to the Court. This is a
16 published opinion. The factual allegations of that case are, the HOA
17 in this case charged yearly assessments of \$216, which became due
18 every January.

19 That's exactly our case.

20 When the homeowner did not pay the 2011 assessment,
21 the HOA recorded a Notice of Lien for the Delinquent Assessment in
22 April of 2011.

23 We had June -- our Notice of Delinquent Assessment was
24 June 3rd of '09.

25 U.S. Bank, the beneficiary of the First Deed of Trust on the

1 property, requested the superpriority amount from the foreclosure
2 agent.

3 And I'm reading right from the facts of this case.

4 After receiving a ledger of assessments and payments
5 from the foreclosure agent, the U.S. Bank tendered \$162 to the
6 foreclosure agent in August of 2011, representing nine months out
7 of twelve months of assessments based on the \$260 yearly
8 assessment amount. The HOA continued with the foreclosure sale
9 despite this payment and in 2015, Appellants filed this case.

10 Now that is the case that we are discussing that I cited in
11 my papers.

12 District Court found title to the property was subject to
13 U.S. Bank's Deed of Trust based upon the payment of nine months.

14 In the discussion section, it goes through substantial
15 detail and there's no point in me reading the case to you, Your
16 Honor, but essentially what they said is that the statute's language
17 is plain and unambiguous. We will apply the statute's plain
18 language. That's on page 4. When the statute is subject to more
19 than one reasonable interpretation, it is ambiguous, we look to
20 legislative history and apply rules of statutory interpretation and
21 determine the statute's meaning.

22 It goes on: Statutory interpretation should not render any
23 part of a statute meaningless to the statute's language.

24 Page 5. First paragraph on page 5: We conclude that the
25 statute's plain language allows for the entire amount of a yearly

1 assessment to be included in the superpriority piece of the HOA's
2 lien.

3 It says: NRS 116.3116, subsection 2 specifically provides
4 that the amount subject to superpriority status are those that would
5 have become due in the absence of acceleration during the nine
6 months immediately preceding institution of an action to enforce
7 the lien. In this case the parties agree that the HOA imposed a
8 yearly rather than monthly assessment and that yearly assessment
9 became due in the nine months preceding the Notice of Delinquent
10 Assessment which is the act that institutes the enforcement of the
11 lien.

12 In our particular case, the statute changed in October of
13 2009 to make it nine months, prior to that it was six months; that
14 doesn't change the outcome of this case at all. It still had to pay
15 according to this case, the \$118, not the \$88.50, though it may meet
16 the minimums. The case here was \$216 and they paid \$162. By
17 analogy, it is entirely similar.

18 The -- there's nothing in NRS Chapter 116 prohibits an
19 HOA making its assessments payable annually rather than monthly.
20 Indeed, the assessments must be made at least annually based
21 upon the budget adopted. And I demonstrated to the Court through
22 Ms. Saucedo as well, the CC&Rs provided for yearly assessments;
23 the collection policy provided for yearly assessments. There is no
24 doubt that it's a yearly assessment program.

25 It goes through -- the case goes through a significant

1 amount of evaluation; however, the timing of the Court is U.S. Bank
2 does not dispute that it did not tender the entire yearly assessment
3 amount which I don't believe that they could sit there and dispute
4 that. You know, the facts are what the facts are. But because the
5 yearly assessment became due in the nine months preceding, if I
6 was to read this with our facts, the yearly assessment became due
7 within the six months preceding.

8 The HOA's Notice of Delinquent Assessments and
9 because a yearly assessment does not constitute an acceleration,
10 the entire amount is entitled to superpriority status under NRS
11 116.31162. That U.S. Bank did not tender the entire superpriority
12 amount is fatal to its claim. And this is on page 7 -- is fatal to its
13 claim that its tender cured the superpriority default. And there
14 being no other basis for the District Court Summary Judgment in
15 favor of U.S. Bank we necessarily reverse the District Court Order
16 and remand for further proceedings consistent with this decision.

17 The bottom line is, this case could be dispositive of our
18 case. There is no fact in this case that is not 100 percent similar to
19 our case. It is exactly our case. The bank chose to tender less than
20 the yearly assessment. According to this case, they didn't have that
21 opportunity and maintained a superpriority lien amount. So I think
22 it's that clear.

23 And this has binding precedence on the Court. Not that
24 Your Honor can't do something else, but it is binding precedence
25 on the Court at this point. It is a Supreme Court decision and it's

1 published.

2 Our second line of discussion relates to common sense.
3 The common sense in what we've argued and what's contained in
4 the brief is that -- and I don't think there's any dispute, I think I've
5 already gone through this, from the time the bank filed -- BoNY filed
6 its counterclaim and answer, 6 years and 104 days had elapsed
7 since the foreclosure sale. 6 years and 104 days. There is no
8 statute of limitation that provides for more than six years. And
9 typically speaking, a lot of these have been -- in terms of quiet title
10 actions, have been deemed to be a five-year statute of limitations,
11 as the Court is aware.

12 I could sit here and argue that it's three years because it's
13 based on statute. I could argue that it's -- they were never seized of
14 the property so it's a four-year statute. But quiet title we know is
15 five. We know contract is six, even if we could find a contract
16 because there is no privity of parties. 6 years and 104 days
17 effectively estops any defense or any assertion by the bank of its
18 purported tender. Though I believe the tender fails and for the
19 reasons stated previously, I don't think we even get here.

20 But if the Court finds that possibly it gets here, I would ask
21 the Court to review the briefing. I could sit here and argue all about
22 it but if we talk about a statute of limitations, a statute of limitations
23 is intended to do a number of things and one of the major things
24 it's intended to do is put some finality to litigation. In this particular
25 case, Counsel's going to argue that -- well we had it in our defenses

1 and if Your Honor recalls the Defense was a hodgepodge of tender,
2 laches, under I believe Number 7 of the Answer and Counterclaim
3 and to be precise let me be on that.

4 It was Affirmative Defense Number 7. It says the
5 superpriority lien amount, the lien was satisfied prior to the
6 homeowner's association foreclosure under the documents of
7 tender, estoppel, laches, or waiver. Then they proceed to bring a
8 claim for quiet title asserting that the tender was made. There is
9 case law that says you cannot use the open defense, if you will --
10 having an open opportunity to defend and use it as a sword at the
11 same time because in this particular case, they use it both as a
12 shield and a sword because they bring their case for quiet title in
13 this action; not just as a defense, but they bring it for a claim and
14 asking for relief from the court. You can't do both, you need to
15 choose one. They chose --

16 THE COURT: If I could just ask you a question.

17 MR. CROTEAU: Yes, sir.

18 THE COURT: You say one of the primary purposes of
19 statute of limitations is to put an end to litigation --

20 MR. CROTEAU: Yes, sir.

21 THE COURT: -- but if you're sued and there's -- and the
22 subject of the action involves what would be a compulsory
23 counterclaim, how is that putting an end to litigation if you're sued?
24 Are you saying that a party sued can't assert a counterclaim?

25 MR. CROTEAU: No, I'm not saying that. I'm saying it

1 wasn't timely.

2 BY MR. CROTEAU:

3 I mean, let's put it this way. They were divested of the
4 property March 2nd of 2011. March 2nd of 2011, they were on
5 notice, they were on notice of the foreclosure sale before it
6 happened. They were on notice, they tendered a check. Beyond
7 that they did nothing. They go 6 years and a 104 days before the
8 file anything. The only reason they filed something is because we
9 had to try and quiet title to get some title insurance on the property
10 because of the state of the law. Your Honor's aware of that. And
11 Your Honor's aware of the state of this litigation that's gone on
12 since effectively 2010.

13 So we filed in this particular case for the sole purpose of
14 quieting title to get title insurance for the property. At that point in
15 time, they assert their counterclaim and say hey, you can't default
16 us because we get to bring our counterclaim and we get to bring a
17 defense. The real question is how long, Your Honor? What's a
18 good number?

19 Let's say that we didn't file and let's say they didn't file,
20 meaning the bank, and -- are they allowed to sit there for 10 years?
21 How about 15? How about 25? So when's enough, enough. We
22 know we have the statute of repose in 106.240 that says it's been
23 exonerated and there's no payments. It's ten years. We know that
24 a quiet title action, maximum's five years, we know that; we have
25 case law on that.

1 We even have case law on *Harrah*. Now *Harrah*, as Your
2 Honor's aware and they do this by analogy. *Harrah* basically says
3 I'm a government loan, you cannot wipe me out; can't do it.

4 However, the Ninth Circuit has come out and said they have six
5 years in which to bring that claim. What position is better, the
6 federal government saying we have a statute that says we are not
7 extinguishable yet the federal government in the Ninth Circuit has
8 said that six years is the maximum time for it to bring an action to
9 wrestle back, if you will the property from a putative foreclosure
10 sale, even though the mortgage has never been released.

11 So I think that that is extreme evidence of the fact that
12 everything needs to have a sunset. It is illogical to have an
13 unseasoned, and unsunsetting defense of something that's no
14 known to anyone. In this case and again, I'm preaching to the choir
15 so to speak, I know you've sat through so many of these, all right
16 but in these cases when tender is made, it involves the bank and
17 the HOA Trustee, generally speaking. We imputed information to
18 the HOA because of the agency relationship but that's about it.

19 So there's absolutely no way for my client or anybody
20 else in the foreclosure sale process to even know about it. And let's
21 discuss this a little bit more in detail. I can't even go look at the
22 ledger and see if it's been paid, right because the rejected tender is
23 not recorded in the payments. So it's not like I can get notice
24 anywhere. So why should the bank be able to effectively provide a
25 tender? And obviously the Court's aware also, tender's an

1 equitable remedy. If it was paid and the money was accepted, it
2 would just be a payment; right? It would be a payment of the
3 superpriority.

4 The only reason we call it tender is because it's an
5 equitable remedy that says we -- you know, they unlawfully or
6 improperly rejected the payment. But that's not known to anyone.
7 When is it incumbent upon a bank to rebut the presumptions that
8 are rebuttable in a deed? In my deed it says I have title. In the deed
9 it says all notices were sent. In the deed it says it transfers that
10 ownership interest. And there is nothing in any place that anyone
11 can look other than by subpoenaing the records maybe of the HOA
12 Trustee with the bank that would dictate that there was a rejected
13 tender.

14 It puts too much onus upon a litigating party who's a bona
15 fide purchaser for value. Counsel may want to argue that the
16 purchase price is not appropriate; however, he has failed to show
17 that there's any fraud or oppression in anything that occurred in the
18 sale or otherwise, so price is a non-issue in this case. My client is a
19 bandages purchaser for value without knowledge. And they have --
20 the bank has -- I think all banks have an obligation to bring their
21 case to demonstrate their tender within a certain period of time.

22 And Your Honor can decide whatever statute you want to
23 apply. I recommend that -- we're kind of festered with the five-year
24 at the max, probably more like four years. But in any event, it
25 doesn't matter because we don't get there. It's 6 years and 104

1 days and their Answer was really timely, even if we look into our
2 original Complaint. Our original Complaint was filed on 5/31 of '17;
3 their Answer was 6/15 of '17. So even if you took it from the
4 Original Complaint date, it doesn't change the analysis.

5 I assert that our case and the *Noonan* case that I cited to
6 you is dispositive of this entire case, you don't even need to reach
7 this argument; however, from a practical point of view, tender has
8 to be raised within some reasonable statute. And in this particular
9 case, it never was.

10 In this particular case, if you look at the absurdity of what
11 could happen, the law that you'd be creating by allowing a
12 counterclaim if you will -- a compulsory counterclaim, using your
13 own terminology, to occur say nine years down the road, ten years
14 down the road, it makes no logical sense. The property could have
15 been sold multiple times, there's no notice to anybody. There is -- if
16 the bank took no action, a title company might even consider
17 bonding around it. It is not appropriate, it exceeds any possible
18 statute of limitations that the state of Nevada has exercised in its
19 contracts, torts, or other matters.

20 And again, we brief it I think in substantial detail but it's
21 really a public policy argument as well. I mean, the public policy is
22 we need some finality. The bank has to be charged, if you will, with
23 an obligation to move its case forward if it believes that it was not
24 extinguished. And I don't doubt that they're doing it in this case. I
25 think we've proved that they are extinguished now based upon the

1 *Noonan* decision I just cited; however, in the absence of the Court
2 following that decision, I think it's dispensed with, with the statute
3 of limitations argument and I think that's in detail.

4 So I'll leave it at that, and I don't want to belabor it
5 because I know you're going to read the briefing and you probably
6 already have so I'll leave it the Court.

7 THE COURT: Okay. Does that conclude your summation?

8 MR. CROTEAU: It does, Your Honor.

9 THE COURT: Okay. Very well.

10 All right. Mr. Garner?

11 MR. GARNER: Good morning, Judge.

12 **CLOSING ARGUMENT BY DEFENSE**

13 BY MR. GARNER:

14 Thank you. I want to thank Mr. Croteau. He has been the
15 most terse I have ever seen him, and I appreciate it. And I'm glad
16 we were able to streamline this trial I think through the admission
17 of our exhibits and a lot of the stipulated facts to save time.

18 And I want to say too, I think this has been my first
19 experience with the BlueJeans trial, I think the same is true of Mr.
20 Croteau and it sounds like, Your Honor, you said it as well, this is
21 better than expected and I think I want to thank your staff and Mr.
22 Croteau and all the witnesses for making it a pretty good
23 experience and I hope we only get better at it.

24 THE COURT: [Inaudible].

25 MR. GARNER: And I agree -- oh, go ahead.

1 THE COURT: If I could interpret for just one second. The
2 video on this is -- Mr. Croteau, there was a -- during your
3 summation, you in effect froze -- it was a frozen picture of you on
4 the screen. I'm wondering if you need to do something that will
5 allow Mr. Warner to come on to the -- he's frozen as well.

6 Madalyn, can -- do you have any idea what's going on
7 with that.

8 MR. CROTEAU: Your Honor --

9 THE CLERK: Yeah.

10 MR. CROTEAU: -- you freeze up once in a while as well.
11 That's unfortunately what we live with here.

12 THE CLERK: I think it could be your internet connection,
13 Judge, because no one froze for me.

14 THE COURT RECORDER: No one froze for me either.

15 THE CLERK: So I know everyone has a different view. I
16 don't know if it froze for the courtroom or not.

17 THE COURT: You're saying Mr. Croteau he was moving
18 and so was Mr. Warner now?

19 THE CLERK: Yeah,

20 THE COURT RECORDER: Yeah, you're --

21 THE CLERK: -- I can see everyone just fine and I can see
22 you just fine. Everyone's moving.

23 THE COURT: Okay. That's fine. I can certainly hear
24 everybody, and I see you, it's just I don't see you --

25 MR. CROTEAU: Well --

1 THE COURT: Okay.

2 MR. CROTEAU: You know, it's interesting because
3 yesterday, if you remember when we were taking Ms. Saucedá's
4 testimony --

5 THE COURT: Yes.

6 MR. CROTEAU: I mean, I'm looking at my screen and
7 seeing exactly what I want to see. She's getting something that's
8 scrolling to her literally like a minute later, which is kind of
9 interesting. So that's an aside and this is my first BlueJeans case,
10 but I found that kind of disturbing.

11 THE COURT: Okay.

12 MR. GARNER: Well I wanted to ask her during my cross-
13 examination if she --

14 THE COURT: Oh I apologize, I said Mr. Warner, I meant
15 Mr. Garner, okay?

16 MR. GARNER: Oh.

17 THE COURT: Go ahead.

18 MR. GARNER: Yeah, if we're all on Cox internet, at least
19 we have it on the record that they're the reason that everything's
20 freezing up.

21 THE COURT: Okay.

22 BY MR. GARNER:

23 So I agree with Mr. Croteau that the big issues here are
24 tender and the statute of limitations. I think we should start with
25 *Noonan*, this new case that is actually being handled on the bank

1 side by my firm and I know this season of baseball it's a little bit
2 different, but it has begun and in the words of Yogi Bear, *Noonan*
3 ain't over until it's over. This was a panel decision; I have a lot to
4 say about it. It was a two-to-one panel decision with Justice
5 Stiglich giving a written dissent and Justice Gibbons and Justice
6 Silver on the two-to-one side.

7 And interestingly, Justice Gibbons was also on a panel
8 mentioned within *Noonan* during the -- it's called the *Sage Realty*
9 *Case* from a year and a half ago. It was an unpublished decision in
10 December 2018, where that panel, where Justice Gibbons was on it
11 held the opposite. They said an annual assessment could not be an
12 entire superpriority. And we have until the middle of next month to
13 petition for rehearing and we plan to petition for rehearing *en banc*,
14 if necessary.

15 But there's a handful of problems with *Noonan* and I want
16 to make sure, Judge -- we did file our Trial Brief this morning --

17 THE COURT: Yeah, I saw that.

18 MR. GARNER: Okay. So I just want to highlight a couple
19 things. I know you plan to take this case under advisement. My
20 discussion of *Noonan* begins on page 9 of our Trial Brief. And I
21 want to walk through just a handful of the problems with *Noonan*
22 and why it's both procedurally and substantively still subject to
23 challenge, although it is a published decision, two-to-one.

24 First, *Noonan* runs against earlier rulings of *en banc*
25 published decisions, including the *SFR* decision, the *Ikon Holdings*

1 decisions and all of those decisions that the Nevada Supreme Court
2 says the superpriority is limited to nine months of assessments.
3 That's the most number of assessments you can have in the
4 superpriority. So I don't know how you reconcile *Noonan* with
5 those *en banc* published decisions.

6 Second, as I said earlier, this *Noonan* decision conflicts
7 with the *Sage Realty* decision from December of 2018, when they
8 rejected this argument that a -- the superpriority can be all 12
9 months of an annual, depending on how an HOA bills its
10 homeowners.

11 Third, the interpretation of *Noonan* can lead to some
12 absurd results. So the problem here is both in *Noonan* and in our
13 case, if you begin the foreclosure, sometimes it's a -- to make the
14 math easy, January 1st is when the annual assessment becomes
15 due and so if you begin foreclosure at any time within nine months
16 after that period, you get the full year because as *Noonan* says, the
17 full year became due in the nine months before you began
18 foreclosure.

19 But if the HOA begins foreclosure in October, what has
20 become due in the nine months before October? The answer to
21 that is zero dollars because January 1st is more than nine months
22 before October 1st or November 1st or December 1st. In that case,
23 if the HOA begins foreclosure in October, November, or December,
24 their superpriority is effectively zero. That is the result of *Noonan*
25 and that can't be what was intended by NRS 116, as we've seen

1 from a host of discussions from the Nevada Supreme Court which
2 says they cannot contract away their superpriority, they can't give it
3 up voluntarily. It is their superpriority.

4 In addition, say the HOA begins in Year 2 to charge
5 annually, but the year before, in Year 1, we had charged monthly.
6 You heard from Ms. Saucedo, occasionally HOAs change the way
7 they bill. So let's say a homeowner is delinquent for eight months
8 at the end of December in Year 1. Year 2, January 1st, they start
9 charging annually. So now 12 months is due on January 1st. That
10 potentially gives an HOA 20 months of a superpriority. That result
11 also cannot have been what was intended by NRS 116, as Justice
12 Stiglich says in her dissent.

13 She cites to the uniform, common interest ownership act.
14 That's the act under which NRS 116 was based. Comment 1 says
15 that the nine-month -- and she's quoting the Uniform Acts
16 comments here. And it says that: Nine months priority for the
17 assessment lien strikes an equitable balance between the need to
18 enforce collection of unpaid assessments and the obvious necessity
19 for protecting the priority of the security interest of lenders.

20 The creators of this uniform act upon which NRS 116 was
21 based picked nine months and there's nothing in act itself or the
22 comments that creates a different rule if the HOA happens to bill
23 annually.

24 Fourth -- well, fourth and fifth are things that *Noonan*
25 didn't address. Number 1 being *Perla*. I'm sure Your Honor is

1 familiar with the *Perla* decision by now. That was a published
2 decision involving tenders to NAS. And in that decision, the
3 Nevada Supreme Court said that banks don't have to even send a
4 check to effectuate a tender if the HOA Trustee had a known policy
5 of rejecting them.

6 In fact, let me read directly from the *Perla* decision. This is
7 on page 7 of our Trial Brief: Formal tender is excused when the
8 evidence shows that the party entitled to payment -- being the HOA,
9 the HOA Trustee here -- had a known policy of rejecting
10 superpriority payments.

11 They cite a whole host of law that says creditors like HOAs
12 can waive actual payment and they can do this by words, and they
13 can do this by conduct. What is the evidence that you have about
14 Alessi? Well we take it from its own file. Let's look first at Trial
15 Exhibit 41 on page 69. This is the Alessi file.

16 Oh, I think I have to close it out and bring it back up.

17 All right. This is page 69 of Exhibit 41. And this is a letter
18 from Alessi and Koenig to Miles Bauer found within their file for
19 this case. And it says that there is a disagreement between Alessi
20 and Koenig about what is the superpriority. And they say that they
21 cannot accept the checks from Miles Bauer because they are
22 considered partial payments, as opposed to full payments.

23 There is another letter here, let me pull that one up, it's
24 Exhibit 39. No, that's not the one.

25 Can you see this letter? Exhibit 39 is another letter from

1 Alessi and Koenig to Miles Bauer explaining that based on their
2 understanding of the statute, they can collect costs and fees as part
3 of the superpriority. And they finished that letter by saying that the
4 nine-month superpriority is not triggered until the beneficiary under
5 the First Deed of Trust forecloses. Therefore, Alessi and Koenig
6 have the same policy and practice that NAS did with respect to
7 Miles Bauer tenders; by both word and by conduct they were
8 rejecting payments.

9 Under such circumstances -- oh, and also recently
10 district -- Federal District Court Judge Andy Gordon -- we cite to one
11 of his decisions here -- held that Alessi's policy and practice was
12 nearly identical to NAS's, therefore under *Perla*, the bank didn't
13 have to tender a payment at all.

14 So here what does the evidence show? The evidence
15 does not show that Alessi and Koenig rejected Miles Bauer's check
16 for nine months because it wasn't 12 months. They didn't say
17 anything about that at all. They rejected a nine-month payment
18 because it was only nine months and Alessi and Koenig, Number 1,
19 believed that all of their costs and fees were entitled to the
20 superpriority status; and 2, they didn't believe that a superpriority
21 even existed yet until the bank foreclosed. And *Noonan* doesn't say
22 anything about that.

23 So under *Perla* if a bank can win without sending a check
24 at all, how can the bank lose by sending a check for a nine-month
25 superpriority? *Noonan* cannot be reconciled with *Perla*.

1 And finally, Your Honor, I want to highlight an additional
2 doctrine which is on page 10 and 11 of our Trial Brief, which is the
3 substantial compliance doctrine. The substantial compliance
4 doctrine was created to avoid harsh, unfair, and absurd
5 consequences. The Nevada Supreme Court has applied substantial
6 compliance to various sections of NRS 116 and we cite to them on
7 page 11. For example, the Nevada Supreme Court applied
8 substantial compliance to a homeowners' exercise of its
9 redemption right.

10 In addition, the Nevada Supreme Court has applied
11 substantial compliance to the HOA's notice requirements. Black's
12 Law Dictionary is cited in those cases and the substantial
13 compliance doctrine relates to the Latin phrase *de minimis non*
14 *curat lex*, meaning the law does not concern itself with trifles.

15 Now if homeowners and HOAs are going to get the
16 benefit of substantial compliance, banks and secured lenders
17 should as well. There is no question that banks have the right to
18 pay the superpriority under NRS 116. Folded within the right to pay
19 it is the right to know what it is. We got a ledger from Alessi. It did
20 not identify a superpriority number at all which left Miles Bauer to
21 guess. They did their best; they did nine months and they sent it.

22 Did Alessi and Koenig respond and say wait a minute,
23 we'll accept your check if you send us a full year? We'll accept your
24 check if you send us some other number that we believe is the
25 superpriority? The answer is no. The only check that Alessi, by

1 their own words and conduct would have accepted would have
2 been the full amount owed to them and to the HOA. Both
3 homeowners and HOAs are entitled to substantial compliance in
4 the NRS 116 arena, so are the banks and Miles Bauer; otherwise,
5 the result is exactly what the doctrine was intended to avoid, a
6 harsh, unfair, and absurd result.

7 Here the difference between nine months and a full year,
8 12 months, is \$29.50. That amount should not under the substantial
9 compliance doctrine eliminate a deed of trust securing a repayment
10 of a loan in the original amount of \$208,000. That is over 7,000
11 times greater than the \$29.50 alleged to be short here.

12 *Noonan* says nothing about substantial compliance. Nor
13 does *Noonan* address *Shadow Canyon* analysis; what used to be
14 called commercial reasonableness but really under *Shadow Canyon*
15 is just called the equitable balancing. And as we know there are
16 two prongs; Number 1, an inadequate price; and 2, some element
17 of fraud, unfairness, or oppression. Here the evidence on price only
18 goes one way.

19 Whether you look at what the credit bid was at the HOA
20 sale or what the price paid by Las Vegas Development Group was,
21 both of those prices were less than six percent of the fair market
22 value. And we know from the case law that the lower the price
23 goes, the less you need to show in fraud, unfairness, and
24 oppression. This is -- these are pages 11 through 15 of our Trial
25 Brief.

1 So what is the evidence of fraud, unfairness, or
2 oppression? Well first of all in *Shadow Canyon*, the Supreme Court
3 explained that whether a lender tried to tender payment is
4 significant to this analysis. We have that evidence here. It's a
5 stipulated fact that we tried to tender the superpriority. First of all,
6 we were not told what it was. When we got the ledger and did our
7 best to estimate it, it was rejected, and we were never offered a
8 different number of the superpriority. That is unfair. That is
9 inequitable.

10 The credit bid and the lack of distribution to the bank also
11 smacks of unfairness. And here we cite to the *Village Walk Trust*
12 decision that was an unpublished decision in 2018, we attach it as
13 Exhibit B to our Trial brief. As well as the Joint Editorial Board
14 Report, the JEB Report, as it is often called. We attached that as
15 Exhibit C, or at least Example 2.

16 The Nevada Supreme Court has cited to the JEB Report in
17 interpreting NRS 116. And in that Example 2 and in the *Village*
18 *Walk* case, it is explained that if the HOA is going to credit bid the
19 entire amount of what it is owed and it's going to distribute any
20 amount of money after the sale, only part of its lead, is superior to
21 the bank. So if it is -- and it's only the nine-month or under *Noonan*
22 which is still subject to challenge, 12 months. Only that portion is
23 what it is entitled to receive before the bank has to get paid and
24 then all the subpriority portions of the HOA's lien are paid to it
25 afterwards. That's what *Village Walk Trust* says and that's what

1 Example 2 in the JEB Report says.

2 Also, it's interesting in this case, if no money was actually
3 paid as a consequence of the HOA foreclosure sale, and the balance
4 remained on the HOA's ledger, as Ms. Saucedo said it did, no one
5 satisfied the superpriority as a consequence of the HOA's sale.
6 How can there have been a superpriority sale in this case when all
7 the amounts, the assessments that could have comprised the
8 superpriority remain unpaid after the auction. It wasn't until weeks
9 later when Las Vegas Development Group purchased this that those
10 assessments actually got paid and were wiped off of the ledger.

11 All of those, Your Honor, are sufficient examples of the
12 fraud, unfairness, or oppression under the *Shadow Canyon* analysis
13 sufficient for you to exercise your equitable powers and say this
14 sale did not extinguish the deed of trust. And *Noonan* says nothing
15 about the equitable balancing under *Shadow Canyon*.

16 The bona fide purchaser argument, Your Honor, as you
17 know from *Diamond Spur*, the bona fide purchaser status becomes
18 irrelevant if there is a legal tender. Plus, the presale foreclosure
19 notices and the deeds, disclaimers leave no room for bona fide
20 purchaser status in this case. Mr. Schmidt knew he was not buying
21 title free and clear. He knew he had to sue in order to get title
22 insurance. He voluntarily assumed that risk and that reality when
23 he purchased this property for \$4500.

24 Now to the statute of limitations, Your Honor. We have
25 given to you another decision as Exhibit D to our Trial Brief, which

1 is the *Renfroe* decision.

2 THE COURT: Is that --

3 MR. GARNER: I'm sorry?

4 THE COURT: -- Exhibit D?

5 MR. GARNER: Correct. Exhibit D, as in David, to our Trial
6 Brief.

7 BY MR. GARNER:

8 So the *Renfroe* decision says a handful of things relevant
9 to the statute of limitations argument. Number 1, on page 4 of
10 *Renfroe*, this goes to the argument that the bank had to sue after it
11 tendered in order to confirm the effect of its tender. The Nevada
12 Supreme Court in *Renfroe* said that's not true.

13 On the bottom of page 4, *Renfroe*, they say: Moreover,
14 we clarify that Carrington -- that was the record beneficiary in that
15 case, equivalent to Bank of New York Mellon here -- Carrington had
16 no obligation to prevail in a judicial action as a condition precedent
17 to enforcing its deed of trust that had already survived the HOA's
18 foreclosure sale pursuant to its tender.

19 Therefore, skipping to page 5, it was proper for Carrington
20 to respond to *Renfroe's* suit by explaining that its deed of trust was
21 preserved upon tender and it was not time-barred from doing so.

22 As we know in this case, it wasn't the bank who sued, it
23 was Las Vegas Development Group who sued. And we are entitled
24 in response to that suit to defend it; whether by affirmative
25 defenses or by counterclaims just as the Nevada Supreme Court

1 has said.

2 And we cite in our Trial Brief on page 16 and 17, to the
3 *Dredge Corp versus Wells Fargo* decision from 1964. That decision
4 as also cited in *Renfroe* because *Renfroe*, the party who purchased
5 the HOA sale made the same argument that Las Vegas
6 Development Group is making here. It argued that the bank was
7 time-barred from asserting that its tender preserved that deed of
8 trust and the Nevada Supreme Court said no, statute of limitations
9 do not run against defenses. And they cited to the *Dredge Corp*
10 decision which concluded that statute of limitations do not apply to
11 defenses.

12 And they concluded Carrington, as a Defendant may
13 assert its affirmative defense notwithstanding any statute of
14 limitations. And they also cited to in *Renfroe*, as well as *Dredge* to
15 a Ninth Circuit decision, the *City of Saint Paul versus Evans*, which
16 explained that the interplay between statutes of limitations and
17 defenses are that you cannot apply a statute of limitations to a
18 defense otherwise. Potential -- and this -- I'm quoting from the *City*
19 *of St. Paul*: Potential plaintiffs could simply wait until all available
20 defenses are time-barred and then pounce on a helpless defendant.

21 That's what Las Vegas Development Group is arguing
22 here. If it waits more than five years to bring suit, then effectively,
23 the Bank of New York Mellon's hands are tied behind its back. They
24 cannot raise any shield to their lawsuit and that is why the Nevada
25 Supreme Court in *Dredge Corp* and the Ninth Circuit say statute of

1 limitations do not apply to defenses.

2 And in addition, Your Honor, we made the argument that
3 you alluded to about compulsory counterclaims on pages 17 and 18
4 of our Brief. And for that reason as well, if Las Vegas Development
5 Group's claims are timely, so must be our counterclaims. But in the
6 end, you could -- and it would make no difference to the outcome of
7 this case -- dismiss the counterclaims on statute of limitations but
8 still apply the tender and other defenses that we have raised to Las
9 Vegas Development Group and the outcome would be the same
10 because the claims brought by Las Vegas Development Group and
11 the counterclaims here are mirror images of each other.

12 They both -- both parties want quiet title and declaratory
13 relief. And if Las Vegas Development Group is not entitled to it
14 because of the defense of tender or the defense of an inequitable
15 sale, the final judgment remains the same. And that --

16 THE COURT: How --

17 MR. GARNER: I'm sorry?

18 THE COURT: If I could ask you, what would the final
19 judgment be? In other words the Plaintiff is seeking the quiet title;
20 right?

21 MR. GARNER: Right.

22 THE COURT: And if the counterclaims couldn't proceed --
23 in other words, what you're saying is the Plaintiff could not obtain
24 quieting of title and if the counterclaims couldn't proceed neither
25 could the Defendant, okay? So there'd be like an impasse; right? It

1 would be like a standoff.

2 MR. GARNER: Well not really, Your Honor, because the
3 result of the judgment, if Plaintiff is coming here saying we would
4 like you to declare that the Deed of Trust was extinguished and you
5 say based on the tender or the equitable analysis or *Perla* or any of
6 the other bases that we've raised, essentially your judgment is no, it
7 wasn't. That is the effect of a judgment against Plaintiff is that for
8 whatever reason, whether it's tender or excused tender under *Perla*
9 or the equities, the bank's Deed of Trust was not extinguished by
10 the sale. So effectively saying no to Plaintiff means the deed
11 survived.

12 I don't know if that answers your question --

13 THE COURT: [Inaudible].

14 MR. GARNER: [Inaudible].

15 THE COURT: Conceptually it does.

16 BY MR. GARNER:

17 So really, Your Honor, the judgment we're asking for is
18 both judgment against the Plaintiff on its counterclaims -- or on its
19 counterclaim and judgment for us on our counterclaims. But even
20 a judgment against Plaintiff on its claims alone results in a
21 declaratory judgment that the deed of trust survived and that's
22 what we're requesting.

23 Thank you, Your Honor.

24 THE COURT: All right. Thank you. Hold on just a
25 moment here.

1 MR. CROTEAU: Your Honor, would it be okay if we took
2 five or ten minutes right now? I do have some rebuttal I want to
3 provide, but I'm looking for a case.

4 THE COURT: Sure. Is -- how about 7 minutes. I have like
5 10:13. Is that -- do you want to resume at 10:20 or do you need
6 more time?

7 MR. CROTEAU: A couple of minutes maybe? 10:20 might
8 be fine, I just need to go get it.

9 THE COURT: Yeah, I'll see you at 10:20, okay?

10 MR. CROTEAU: Okay. Thanks, Your Honor.

11 [Court recessed at 10:13 a.m., until 10:25 a.m.]

12 THE CLERK: Judge, you need to unmute yourself.

13 THE COURT: Here we go. I'm sorry.

14 I said you may proceed with your rebuttal, but I guess I
15 was muted. So go ahead.

16 MR. CROTEAU: Thank you, Your Honor.

17 **REBUTTAL CLOSING ARGUMENT BY PLAINTIFF**

18 BY MR. CROTEAU:

19 So much to talk about. Counsel raised many, many,
20 many, many issues. Interestingly enough, Counsel's firm argued
21 *Noonan*. I assume and I don't have the record on *Noonan* that Mr.
22 Garner made all the same arguments that were made in the
23 *Noonan* case that did not prevail. Presumptively speaking and
24 ironically actually, *Renfroe* is a decision that is up for full panel
25 review potentially. We filed an amicus brief in that case as well.

1 But counsel cleverly says well, you've got to -- you're
2 stuck with *Renfro*, Your Honor, that's the state of the law. And
3 *Renfro* says X. Well that's fine, but aren't you stuck with the state
4 of the law of *Noonan* because Garner -- Mr. Garner says that well,
5 don't be fooled by *Noonan*, *Noonan's* going to be overturned.
6 We're going to do something about that. Currently before this
7 Court, the state of law is *Noonan*.

8 Just like the state of the law was in *Jessup I*. *Jessup II*,
9 there was some modifications of that. *Noonan* is the state of the
10 law and *Noonan* is and cannot be -- implausibly can't be any close
11 to this case at all. It's a \$54 difference in the *Noonan* decision and
12 as Counsel points out, it's 88.50 to \$118 in our case. I submit to you
13 for the lack of substantiality, it's the same.

14 He goes on to say that well, wait a minute, we shouldn't
15 even have had to submit a check and the first letter case, which is
16 the *Jessup* cases and the *Perla Del Mar*, in the first letter cases
17 where they didn't send the second check -- or they didn't send the
18 second letter with a check, well is their performance excused?

19 What this record lacks has a dearth of, there is no
20 testimony from the NAS, there is no testimony and NAS is not even
21 a party to this case. But there is no testimony regarding Alessi and
22 Koenig. There is no determination regarding Alessi and Koenig in
23 any Supreme Court case to be followed by this Court that suggests
24 they had a practice and procedure of rejecting all checks. The
25 deposition was never taken, you don't have the evidence. You

1 cannot make the ruling.

2 *Jessup II*, basically -- and that's oh, [indiscernible] Nevada
3 unpublished Lexis 471 speaks to the fact that Miles Bauer did not
4 make such a tender. In that case we perceived no clear error of this
5 Court's findings that the appellants did not demonstrate that ACS
6 had a known policy of rejecting superpriority lien tenders, such that
7 Miles Bauer's failure to formally tender should be excused. In this
8 particular case, there has to be evidence. There is none.

9 Counsel cites you to Exhibit 39. Exhibit 39 is a letter from
10 Alessi and Koenig to Miles Bauer after the date of this foreclosure
11 sale and it's dated 2/27 of '12, wherein they discuss the Common-
12 Interest Communities Advisory Opinion Number 2010-01 and say
13 for those reasons, we have problems relating to 3254 Gold Run
14 Street. A different case. You have no one's testimony in this case
15 other than this document and a document that's dated March 23rd
16 of 2010, that is not contained in the file in this case by either Alessi
17 and Koenig or the HOA Trustee and Exhibit 40. And that letter is to
18 inform them that they won't accept partial payments.

19 It doesn't matter if they won't accept the partial payment,
20 they sent the check anyway. What Counsel is not -- and I think we
21 need to get this squared away. The excused performances don't
22 come from a second letter case. They don't come from a case
23 where there's a been a tender. It's sort of like a cauldron effect, all
24 right? The Defense, they're not sending the check in the second
25 letter is the course of dealings and the understanding of the parties.

1 And that's adduced through testimony of Mr. Jung, that would be
2 adduced through testimony of Alessi and Koenig; none of which is
3 before this Court.

4 And Your Honor, I would submit to you that it is clear
5 error to start deciding that a practice decided by the Nevada
6 Supreme Court regarding NAs somehow relates to Alessi and
7 Koenig in this particular case and they're not even in the same
8 timeframe.

9 What we also know if NAS started accepting checks. We
10 know Absolute Collection Services accepted checks. So we can
11 bring out all that extraneous evidence, but it's not in our case. And
12 the fact they actually sent a tender belies the argument that they
13 didn't need to send the tender. So it really lacks all tenet of
14 reliability and any basis by which even to apply that.

15 In 7510 Perla Del Mar Avenue Trust, the Court goes
16 through great lengths of going through the testimony adduced and
17 that's at 458 P.3d 348, 2020; Nev. Lexis 5 and 136 Nevada Advanced
18 Report of 6. And what they talk about is the -- that this Court had a
19 two-day bench trial, they went through Miles Bauer practice with
20 NAS. And in that analysis, you know, they determined that the
21 clerk at the front desk, the secretary was rejecting checks. Well --
22 and that was a known practice to them and that's why they didn't
23 send a check.

24 In this particular case, they obviously thought that they
25 could send a check. They obviously thought that that was part of

1 the process. They obviously did send the check. So now we're not
2 in the analysis of whether or not a tender could be excused because
3 they didn't send the right amount, the issue now is they didn't send
4 the right amount. And presumptively they argued this in *Noonan*
5 as well, but it got no play in terms of the written decision.

6 So I find this to be very difficult to try and argue from
7 different levels or steps. We have a generation of case law in the
8 state of Nevada regarding these things and we've had that now for
9 almost ten years and the sentinel decision being in September of
10 '14 and there's been modifications for the last six years -- or five
11 and a half at this point; five and change.

12 The corollary argument is -- you know, and counsel's
13 correct on the *Renfroe* issue. *Renfroe* is a case in this area. *Renfroe*
14 is a case that we believe will be overturned because it makes no
15 logical sense. However, and I continue to make the arguments
16 obviously because I believe that they need to be -- that that case
17 needs to be amended at the very least and the public policy be
18 evaluated. Again, we filed an amicus brief in that case, but I'm still
19 stuck with that *Renfroe* case and arguing around it, just as counsel
20 should be stuck with the *Noonan* decision that can't be more
21 appropriate and more on point in this case.

22 I disagree with Mr. Garner's analysis that, you know, it's
23 the nine months immediately preceding. What it is, is the amount
24 of sums due nine months immediately preceding which is the
25 unpaid \$118. And one could argue that that's not the case, but I do

1 believe that is and I believe that's how that would turn out.

2 Counsel suggests that you should maybe dismiss their
3 counterclaim as untimely but deny us our dec relief action. And
4 frankly, this is the bank's play and the bank's way of doing it
5 because the bank would just assume, maintain possession of their
6 deed of trust arguably and not act and not do anything until we
7 were forced to do something and then bring up these claims any
8 number of years later and that's the whole point.

9 What Counsel doesn't understand, and I want to make this
10 clear to the Court, the cases that counsel cites for a statute of
11 limitations -- for a defense of statute of limitations or a defense, if
12 you will -- I'm not being barred by a statute of limitations -- is that
13 it's not to prejudice people or entities that have defenses to a case.
14 It's really not a defense that they're arguing. They're really arguing
15 that the foreclosure sale as an act did not extinguish their deed of
16 trust. That's really the issue. It's really not a defense. It is a claim
17 that they needed to act upon after the foreclosure on March 2nd of
18 2011.

19 They had notice that the HOA fore -- of the transferred
20 ownership of the property, which by its very nature is a breach of
21 the deed of trust and the note. And if you go from that process and
22 you go from the fact that they had actual knowledge that their
23 collateral had been impaired by at the very least a slander of title,
24 all right, in terms of who owns the property currently, then you
25 need to understand that they need to do something. Just like in

1 *Hera*, they needed to do something. And the Supreme -- and the
2 Nevada -- I mean, the Ninth Circuit said it's six years. That is no
3 different than the bank's claims to do something.

4 They need to go and straighten out whether or not their
5 deed of trust is appropriate. Frankly, they need to foreclose.
6 They've sat back on their rights on foreclosing even. If the deed of
7 trust had been transferred or the ownership of that property is
8 transferred, the deed is breached, as of March 2nd, 2011. Why
9 didn't they foreclose. Why did it take until 2017 for my client to file
10 an action, unbeknownst to him any tender had ever occurred, in
11 order to obtain title insurance?

12 So if we look at the real bases here, we are a BFP in terms
13 of when we come to the case, we know we're going to have to file a
14 quiet title action. And you can compare this, if you will, to a tax
15 sale. You know, the Clark County files and sells a property at tax
16 sale. They get a tax sale deed. It's an actual deed. However, every
17 title company requires a quiet title action before they will provide
18 title insurance on a tax deed. Does that make it any less effective?
19 Does that make that person not a BFP at the tax sale -- tax
20 foreclosure sale? It does not. So I submit to you by analogy that's -
21 - these are very, very different things.

22 We talk about fraud, oppression, and unfairness. We have
23 been dealing with the low prices at auctions in the 2011 timeframe
24 for many years. And the Nevada Supreme Court has come out
25 numerous times unless you can show evidence of fraud,

1 oppression, or unfairness in the sale process, that contributed to
2 the low sale price, the price is satisfactory. There has been zero
3 evidence that notices weren't provided. There is zero evidence
4 there weren't plenty of people there to bid. There is zero evidence
5 of fraud on anybody's part. There is zero chilling of the sale
6 evidence. There is nothing.

7 So the argument about price is nothing but a red herring,
8 it is not supported by fraud, oppression, or unfairness, and there is
9 nothing there that the Court can hang their hat on and somehow
10 invalidate the sale, if you will because that's really what you're
11 talking about would be invalidating the sale on an inappropriate
12 price.

13 Now, going back to -- and by the way, you know, let's face
14 it, Exhibit 39, when it talks about the amount and what sums are
15 due, that was obviously resolved by *Ikon*, Your Honor and you
16 know that. By the fine -- by the finally that time that case came out
17 it was *Ikon*.

18 But getting back to the *Noonan* argument, Mr. Garner
19 raised all the arguments that his firm raised in *Noonan* at the time
20 before the Supreme Court, and Your Honor, they lost. They lost.
21 So why should they win here when you have a case that's exactly
22 on point?

23 Now, if it's overturned, I'm assuming, you know, if this
24 goes up on appeal, they'll remand it back and, you know -- or they'll
25 fix it on appeal and make the determination but at this point in time

1 that's not the state of the law.

2 Nine months to six months -- again, the statute changed
3 to a nine-month superpriority payment in October of '09. This
4 Notice of Delinquent Assessment Lien was filed June of '09. The
5 assessments immediately being due six months prior to this HOA
6 lien were due as of 1/1 of '09. 1,000 percent squarely within the
7 ambit of the statute and 100 percent due at the time of this lien sale.
8 Again, squarely within the case of *Noonan* and in the case law.
9 Substituting nine months for six months in that case does nothing
10 to the outcome.

11 All right. So we need to parse for ourselves this concept
12 that counsel's seeming to assert that says, well yeah, we only
13 submitted 88.50, but you know what really we didn't -- really didn't
14 need to submit a check at all. Well, if you submitted the check, you
15 obviously thought you needed to submit a check. So you couldn't
16 have had an understanding that the check would be summarily
17 rejected and stand on that basis with any logic. Why would you
18 send a check if your argument should be and was, and has been,
19 and they all knew it that they wouldn't have accepted a name.

20 That also gives us another area of argument because if
21 you have a rejected tender, shouldn't the bank be concerned
22 because at that time, if we're putting it perspective -- at that time,
23 there were no tender cases. So if there is no tender cases that gave
24 any insight to the bank and the money was in fact rejected, as set
25 forth in the *SFR* decision in September of 2014, why didn't the bank

1 take the next step? Why didn't the bank stop the sale? Why didn't
2 the bank seek an injunction just like the purchasers at the HOA
3 foreclosure sales had to?

4 It had no guidance on any tender cases that were
5 presented at that time. So I submit to you that they didn't have this
6 knowledge that the Miles Bauer second letter would be deemed an
7 appropriate tender. There was no knowledge at that point in time
8 that the first letter may be sustained in a *Jessup* type analysis *Perla*
9 *Del March*, after taking evidence and hearing trial -- hearing
10 testimony at trial regarding Mr. Jung's practice and procedures and
11 NAS's practice and procedure.

12 And I also submit to you, glomming on that practice and
13 procedure and unilaterally applying it to a different case at a
14 different time with a different HOA Trustee is highly inappropriate.
15 And *Jessup II* essentially says it's a fact question. And the trier of
16 fact has the ability to do that, but it is a fact question after evidence
17 is adduced. The only evidence that's been adduced here was my
18 client telling you what he knew about the sale prior to the sale
19 occurring and what he learned after the sale when they filed a
20 lawsuit in 2017.

21 The only other testimony we received was from Ms.
22 Saucedo about when the payments were due; how much they were
23 due. And as far as the A&K practices -- Alessi and Koenig practices,
24 she knew nothing. And she had no communication based on their
25 files and there were no attempted tenders to the HOA that she

1 could testify to; there was nothing. The only evidence that was
2 presented to the Court of any kind regarding any practice, policy,
3 and procedure, is 39 and 40. 39 is on a different property, at a
4 different timeframe, after the sale. And 40 talks generically about
5 an advisory opinion dated in 2010.

6 If you read the Miles Bauer letter, they clearly identify the
7 nature of the gravamen of their problem. They state without
8 payment of the superpriority lien in that document that they are
9 arguably junior to the HOA's lien. The interesting thing about that,
10 Your Honor, is all of these Miles Bauer's letters say the same thing
11 for the most part. Grammatically they may change a little bit but
12 over time they've said the same thing.

13 I defy Counsel to demonstrate in one case where these
14 were ever produced between 2010 and before the *SFR* decision in
15 2014. I submit to you they were not. Ever. Why? Because they
16 were essentially declarations against interest. The banks were
17 taking the position that it was not a true lien, if you can recall. And
18 these letters identify it as being a true lien; in fact, identify the law
19 as being a true lien subject to extinguishment of the First Deed of
20 Trust if the nine months was not paid. That's contrary to the
21 decision -- the position they took as an amicus brief, I believe -- and
22 I believe that was the position for the *SFR* decision.

23 So I think we all need to be fair about what's going on
24 here in terms of time and whether or not the bank, based upon all
25 of the actions, had an obligation to do something. This is an '11

1 sale. If we applied five years to that, they would have had to have
2 acted in 2016. And that was their statute at a maximum level.

3 All right. So Counsel talks about substantial compliance
4 doctrine, I don't really understand that. I think he's saying that
5 substantial compliance by providing \$88.50 instead of the correct
6 amount. But that flies in the face of the exact written case law.
7 Tender is only effective if tender is paid in full. If it's a dollar short,
8 it's still not tendered, it's still not paid. And there has to be some
9 line in the sand to figure that out.

10 In this particular case, they sent the check, it was rejected,
11 they did nothing for 6 years and 104 days. And since they were
12 divested of the property at that point -- or divested of the potential
13 collateral at that point since the homeowner is -- was effectively
14 eradicated from the property, their Second Deed of Trust was
15 extinguished; right? I mean, because we have a Second Deed of
16 Trust in this case, Your Honor.

17 And the Second Deed of Trust for \$52,000, no one's
18 argued about, but it's our Exhibit 15. It was issued by the same
19 lender on the same asset, on the same property. And was
20 subordinated to the First Deed of Trust. And there is no argument
21 that it was wiped out. It was a Countrywide home loan, just like the
22 first one was. Did give them rise that they should do something,
23 Your Honor? It's the same lender who had the first, owned the
24 second.

25 And we know for a fact under an NRS 116 sale, whether

1 we tender or not, the second is extinguished. Did that give them
2 rise to do something? Does the statute of limitations apply in that
3 regard? That they should have acted at least in that sense and then
4 had a compulsory counterclaim also -- or a compulsory claim that
5 they should have raised at that point that quieted title to their First
6 Deed of Trust.

7 So I mean, these are all arguments of evidence that are in
8 the record. But what's before this Court and what's been presented
9 as evidence is limited to the documents. And from those
10 documents you cannot infer a policy that was pervasive enough to
11 be known to Miles Bauer that would obviate their need to even
12 send a check. And that evidence is the fact they did send a check.

13 Again, I don't think there's any of the elements of *Shadow*
14 *Canyon*, I've already gone through that that deem this to be some
15 unfairness by which equity should opine.

16 I believe that is all the issues, Your Honor, I wanted to
17 rebut. So I would respectfully request a judgment in favor of the
18 Plaintiff and a judgment against the Defendant on its counterclaim
19 on the basis of the *Noonan* decision and coupled with that, even
20 though you don't need to get there, on the statute of limitations'
21 arguments that I've outline in my briefing and the remaining case
22 law that we've gone through.

23 THE COURT: All right. Thank you. That will close the
24 summation.

25 I think it would be helpful to the Court if I received from

1 both sides Proposed Findings of Fact and Conclusion of Law and a
2 Proposed Judgment; right? Because you know, there are nuances
3 involved in the case and they're helpful in the sense of the
4 perspective that I will receive from each side relative to the facts
5 and the law.

6 What I usually do in asking for these is just set a date by
7 which both sides serve and file their proposed Findings of Facts and
8 Conclusions of Law; all right? In other words, I don't ask for
9 Plaintiff's first and then Defense or whatever; I just ask for them
10 both to be submitted.

11 MR. CROTEAU: You want them in Word format, Your
12 Honor?

13 THE COURT: Beg your pardon?

14 MR. CROTEAU: Would you like them in Word format?

15 THE COURT: I believe -- let's see, Madalyn?

16 THE CLERK: Yes?

17 THE COURT: Madalyn, are you present? Hopefully.

18 THE CLERK: Yes.

19 THE COURT: Yeah. We normally -- how have we received
20 those in the past, by Word or by pdf or what?

21 THE CLERK: Well, I believe you file the pdf version and
22 then e-mail to the law clerk e-mail and to Lorraine, a Word version
23 in case you want to use that or -- you know, so you can edit them.

24 MR. CROTEAU: Yeah.

25 THE COURT: Okay. So what is --

1 MR. CROTEAU: We'll take care of it.

2 THE COURT: [Inaudible] is a proposed -- as the proposed
3 items will be in pdf, all right?

4 MR. CROTEAU: Yeah.

5 THE COURT: And then you'll also submit Word to my law
6 clerk and my JEA, okay?

7 I think -- is that -- how would that be submitted Madalyn?
8 Would that be to the inbox or --

9 THE CLERK: E-mail it directly to Steven and his e-mail is
10 dept13lc@clarkcountycourts.us.

11 THE COURT: Okay. Do you have that information?

12 All right. So -- and make sure on the items that you
13 submit that you're going to serve and file you put proposed --

14 MR. CROTEAU: Yeah, of course.

15 THE COURT: -- or -- show as proposed and it's not carried
16 as -- I don't want people looking at the record thinking that it's final
17 because it's not.

18 Now, how much time would you need to be able to do
19 that?

20 MR. CROTEAU: Honestly, Your Honor, today is
21 Wednesday. I really would like a couple of weeks. I've got a whole
22 bunch of stuff in between.

23 THE COURT: Oh that's --

24 MR. GARNER: [Inaudible].

25 THE COURT: Is that okay with you, Mr. Garner?

1 MR. GARNER: For sure.

2 THE COURT: Okay. So now today is -- let's see --

3 MR. CROTEAU: How about two weeks from Friday? Does
4 that work?

5 THE COURT: Works for me. That would be --

6 MR. GARNER: Works for me.

7 THE COURT: What would that be, the 14th of August?

8 MR. GARNER: Yep.

9 THE CLERK: Yes.

10 THE COURT: Okay. Close of business, 14th of August,
11 submission of Proposed Findings of Fact and Conclusions of Law
12 service -- to be served and filed, okay?

13 MR. CROTEAU: Your Honor, can we -- just because I am
14 who I am, can we not do close of business but just have it done by
15 that day?

16 THE COURT: Just by what?

17 MR. CROTEAU: Can we not do close of business? Can we
18 do just the judicial day? That day?

19 THE COURT: Yes, that's fine. Okay.

20 MR. GARNER: You want all the way to midnight, Roger?

21 MR. CROTEAU: You know what, I haven't worked so late
22 in the last year and a half that I have -- I've been doing all-nighters;
23 I've been doing stupid times, so.

24 THE COURT: Right. No, I --

25 MR. CROTEAU: So I'd appreciate it.

1 THE COURT: No, I understand. That's fine. Yes, it'll be by
2 the end of the day, okay?

3 MR. CROTEAU: Yeah, by midnight. I got it.

4 THE COURT: Now -- and then it'll stand submitted as of
5 August -- end of the day August 14th and I'll then issue my ruling,
6 okay?

7 MR. GARNER: Very good.

8 MR. CROTEAU: I appreciate it, Your Honor.

9 THE COURT: What I'll be doing is I'll be issuing Findings
10 of Fact and Conclusions of Law based upon one or the other of
11 those or both or whatever, okay? You understand?

12 MR. CROTEAU: Okay.

13 THE COURT: So very well. Thank you very much. And
14 Madalyn, would you please stay on after Counsel leaves?

15 THE CLERK: I'll stay on.

16 THE COURT: Okay. Counsel, that concludes the non-jury
17 trial in this case, and I look forward to receipt of Proposed Findings
18 of Fact and Conclusions of Law and Judgment, okay?

19 MR. CROTEAU: Thank you, Your Honor.

20 And again, thank you, everybody. You were awesome. I
21 really appreciate it. Madalyn, you were great. Thank you.

22 And honestly, this wasn't as bad as I thought it was going
23 to be, so I do appreciate it.

24 THE COURT: Right. And thank you, Counsel. Very well-
25 presented case. Both sides have done an excellent job and I

1 appreciate it. Thank you.

2 MR. GARNER: Thank you.

3 MR. CROTEAU: Thank you very much.

4 THE COURT: Stay safe. Thank you.

5 MR. CROTEAU: You too, Your Honor.

6 [Hearing concluded at 10:56 a.m.]

7 * * * * *

8
9
10
11
12
13
14
15
16
17
18
19
20
21 ATTEST: I do hereby certify that I have truly and correctly
22 transcribed the audio/video proceedings in the above-entitled case
23 to the best of my ability.

24 

25 Brittany Mangelson
Independent Transcriber