

IN THE SUPREME COURT OF THE STATE OF NEVADA

LN MANAGEMENT LLC SERIES 3111	)	Supreme Court Clerk Elizabeth A. Brown
BEL AIR 24G,	)	
	)	
Appellant,	)	
v.	)	
	)	
BANK OF AMERICA, N.A.; DITECH	)	
FINANCIAL LLC,	)	
	)	
Respondent.	)	
_____	)	

Electronically Filed
Sep 16 2021 08:03 a.m.
Docket 82534
Elizabeth A. Brown
Clerk of Supreme Court

Appeal
From the Eighth Judicial District Court, Clark County, Nevada
The Honorable Mark R. Denton
District Court Case A-12-669570-C

APPENDIX TO BRIEFS
VOLUME 4

Kerry Faughnan, Esq., NSB# 12204
PO Box 335361
North Las Vegas, NV 89086
(702) 301-3096
(702) 331-4222-Fax
Kerry.faughnan@gmail.com

Attorney for Appellant

INDEX OF DOCUMENTS

File Date	Title	Page(s)
10/03/2012	Bank of America Complaint	1PA1-1PA92
05/17/2013	LN Management Complaint	1PA93-1PA104
10/29/2013	Order Granting Motion to Consolidate	1PA105-1PA106
10/30/2013	Notice of Entry of Order Granting Motion to Consolidate	1PA107-1PA111
06/19/2014	Green Tree Servicing's Motion for Summary Judgment	1PA112-2PA263
08/12/2014	Order Granting Green Tree Servicing's Motion for Summary Judgment	2PA264-2PA270
09/03/2014	LN Management LLC Series 3111 Bel Air 24G's Motion to Set Aside Summary Judgment Entered August 12, 2014	2PA271-2PA276
09/24/2014	Order Granting LN Management LLC Series 3111 Bel Air 24G's Motion to Set Aside Summary Judgment	2PA277-2PA278
09/25/2014	Notice of Entry of Order Granting LN Management LLC Series 3111 Bel Air 24G's Motion to Set Aside Summary Judgment	2PA279-2PA282
07/27/2018	LN Management LLC Series 3111 Bel Air 24G's Motion for Summary Against Green Tree Servicing LLC	2PA283-2PA363
08/28/2018	Bank of America's Opposition to Plaintiff's Motion	2PA364-2PA376

	for Summary Judgment	
09/17/2018	Reply to Green Tree's Opposition to LN Management LLC Series 3111 Bel Air 24G's Motion for Summary Judgment; Errata to LN Management's Motion for Summary Judgment	2PA377-2PA381
03/26/2018	Errata to Bank of America's Opposition to Plaintiff's Motion for Summary Judgment	2PA382-2PA495
03/27/2019	Notice of Bankruptcy Filing and Imposition of Automatic Stay	2PA496-3PA583
09/29/2020	Bank of America N.A. and Ditech Financial LLC F/K/A Green Tree Servicing LLC's Motion for Summary Judgment	3PA584-4PA867
11/11/2020	Opposition to Ditech Financial LLC F/K/A Green Tree Servicing LLC's Motion for Summary Judgment	4PA868-4PA879
11/30/2020	Bank of America N.A. and Ditech Financial LLC F/K/A Green Tree Servicing LLC's Reply Supporting Motion for Summary Judgment	4PA880-4PA935
12/14/2020	Court Minutes from Hearing on Bank of America N.A. and Ditech Financial LLC F/K/A Green Tree Servicing LLC's Motion for Summary Judgment	4PA936
01/20/2021	Findings of Fact, Conclusions of Law and Judgment	4PA937-4PA962
01/21/2021	Notice of Entry of Findings of Fact, Conclusions of Law and Judgment	4PA963-4PA991
02/22/2021	Notice of Appeal	4PA992-4PA993

CERTIFICATE OF SERVICE

I certify that on September 16, 2021, I served a copy of the foregoing pleading upon all counsel of record by allowing the Court's ECF system to serve same upon:

Ariel Stern, Esq.
AKERMAN LLP
1635 Village Center Cir. Ste. 200
Las Vegas, NV 89134
(702) 634-5000
(702) 380-8572- Fax
Attorneys for Respondent

DATED September 16, 2021

/s/ Kerry P. Faughnan
Kerry P. Faughnan, Esq.
Nevada Bar No. 12204
P.O. Box 335361
North Las Vegas, NV 89033
(702) 301-3096
(702) 331-4222 – FAX
Kerry.faughnan@gmail.com
Attorney for Appellant

Recording Requested By:
Bank of America
Prepared By: Julia Cortez

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



DocID# 795 543111415

Tax ID: 16210812003

Property Address:

3111 Bel Air Dr Unit 24G

Las Vegas, NV 89109-1507

NV0-ADT 24889029 5/20/2013 GT0430E

Inst #: 201307300000199
Fees: \$18.00
N/C Fee: \$25.00
07/30/2013 09:01:38 AM
Receipt #: 1712397
Requestor:
CORELOGIC
Recorded By: DHG Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

This space for Recorder's use

2051

5-1

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063 does hereby grant, sell, assign, transfer and convey unto GREEN TREE SERVICING LLC whose address is 7360 S. KYRENE ROAD, TEMPE, AZ 85283 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: **BANK OF AMERICA, N.A.**

Made By: **MICHAEL T. ELLIOTT, AN UNMARRIED PERSON**

Trustee: **PRLAP, INC.**

Date of Deed of Trust: 10/6/2004 Original Loan Amount: \$322,100.00

Recorded in Clark County, NV on: 10/20/2004, book N/A, page N/A and instrument number 20041020-0001569

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

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on
MAY 20 2013

Bank of America, N.A.

By: 

Martha R. Gallardo
Assistant Vice President

State of California
County of Los Angeles

On MAY 20 2013 before me, Rhonda E. Kaley, Notary Public, personally appeared
Martha R. Gallardo

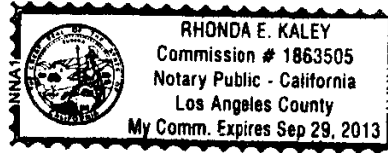
, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Rhonda E. Kaley

Notary Public: Rhonda E. Kaley
My Commission Expires: Sept. 29, 2013



(Seal)

DocID# 795 543111415

EXHIBIT D

The undersigned does hereby affirm that this document submitted for recording does not contain personal information about any person.

Parcel#: 162-10-812-185, 162-10-812-003

When Recorded Mail To:
Ditech Financial LLC
C/O Nationwide Title Clearing, Inc.
2100 Alt. 19 North
Palm Harbor, FL 34683

Prior# [REDACTED] 5431
Custodian# [REDACTED] 7051



Inst #: 20191220-0000234
Fees: \$40.00
12/20/2019 08:02:07 AM
Receipt #: 3936228
Requestor:
NATIONWIDE TITLE CLEARING I
Recorded By: MIDO Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER
Src: ERECORD
Ofc: ERECORD

CORPORATE ASSIGNMENT OF DEED OF TRUST

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, DITECH FINANCIAL LLC F/K/A GREEN TREE SERVICING LLC, WHOSE ADDRESS IS 2100 E. ELLIOT RD., BLDG 94, Mailstop T314, TEMPE, AZ 85284, (ASSIGNOR), by these presents does convey, grant, assign, transfer and set over the described Deed of Trust together with all interest secured thereby, all liens, and any rights due or to become due thereon to NEW RESIDENTIAL MORTGAGE LLC, WHOSE ADDRESS IS 1345 AVENUE OF THE AMERICAS, 45th FLOOR, NEW YORK, NY 10105 (212)798-6100, ITS SUCCESSORS AND ASSIGNS, (ASSIGNEE).

Said Deed of Trust made by MICHAEL T ELLIOTT and recorded as Instrument # 200410200001569, in the Recorder's office of CLARK County, Nevada.

Dated this 19th day of December in the year 2019
DITECH FINANCIAL LLC F/K/A GREEN TREE SERVICING LLC

By: A Farve
AMBER FARVE
VICE PRESIDENT

All persons whose signatures appear above have qualified authority to sign and have reviewed this document and supporting documentation prior to signing.

DT001 409160508 NRZFNMA12 DOCR T191912-10:47:41 [C-2] EFRMN1



D0044471355

Parcel#:162-10-812-185, 162-10-812-003

Prior# [REDACTED] 5431

Custodian# [REDACTED] 7051



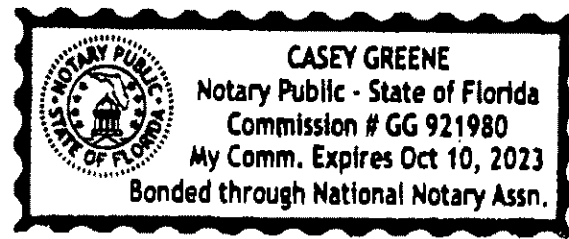
**STATE OF FLORIDA
COUNTY OF PINELLAS**

The foregoing instrument was acknowledged before me on this 19th day of December in the year 2019, by Amber Farve as VICE PRESIDENT of DITECH FINANCIAL LLC F/K/A GREEN TREE SERVICING LLC, who, as such VICE PRESIDENT being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

Casey Greene

CASEY GREENE

COMM EXPIRES: 10/10/2023



Document Prepared By: Dave LaRose/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152

DT001 409160508 NRZFNMA12 DOCR T191912-10:47:41 [C-2] EFRMNV1



D0044471355

EXHIBIT E

Inst #: 20200317-0001075

Fees: \$42.00

03/17/2020 10:44:58 AM

Receipt #: 4020518

Requestor:

CORELOGIC

Recorded By: TIKG Pgs: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: ERECORD

Ofc: ERECORD

Recording Requested By:

Shellpoint Mortgage Servicing

Prepared By: Audrey B Trumble

855-369-2410

When recorded mail to:

CoreLogic

P.O. Box 9232

Coppell, TX 75019



Case Nbr: 37908841

Ref Number: 579385025

Tax ID: 162-10-812-185

Property Address:

3111 BEL AIR DR 24G

LAS VEGAS, NV 89109

NV0-ADT-SHPVT37908841 E 3/16/2020 UR001

This space for Recorder's use

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is **1345 AVENUE OF THE AMERICAS, 45TH FLOOR, NEW YORK, NY 10105** does hereby grant, sell, assign, transfer and convey unto **NEWREZ LLC D/B/A SHELLPOINT MORTGAGE SERVICING** whose address is **1345 AVENUE OF THE AMERICAS, 45TH FLOOR, NEW YORK, NY 10105** all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Beneficiary: **BANK OF AMERICA, N.A.**

Made By: **MICHAEL T. ELLIOTT, AN UNMARRIED PERSON**

Trustee: **PRLAP, INC.**

Date of Deed of Trust: **10/6/2004** Original Loan Amount: **\$322,100.00**

Recorded in **Clark County, NV** on: **10/20/2004**, book **N/A**, page **N/A** and instrument number **20041020-0001569**

37908841

Page 1 of 2



579385025

4PA757

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

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on **3/16/2020**

**NEW RESIDENTIAL MORTGAGE, LLC BY NEWREZ
LLC F/K/A NEW PENN FINANCIAL, LLC D/B/A
SHELLPOINT MORTGAGE SERVICING, AS
ATTORNEY IN FACT**

By: 
Ratanaphone Vilaylueth, Vice President

STATE OF **TX**

COUNTY OF **Dallas**

On _____ (date), before me, **Jessica Lynn Lykins**, a Notary Public, personally appeared **Ratanaphone Vilaylueth, Vice President of NEW RESIDENTIAL MORTGAGE, LLC BY NEWREZ LLC F/K/A NEW PENN FINANCIAL, LLC D/B/A SHELLPOINT MORTGAGE SERVICING, AS ATTORNEY IN FACT** personally known to me to be the person(s) whose name(s) is/are subscribed to the within document and acknowledged to me that he/she/they of his/her/their free act and deed executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the document the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.



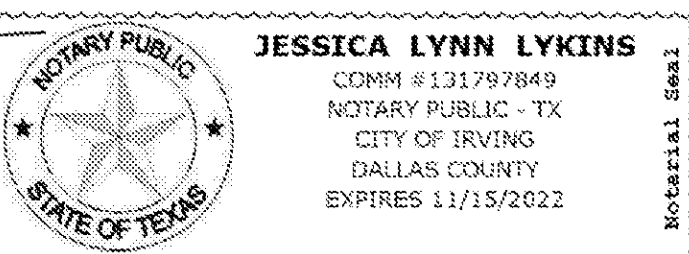
Notary Pub
Printed Name
My Commission Expires


EXHIBIT F

Inst #: 201206210001804
Fees: \$17.00
N/C Fee: \$0.00
06/21/2012 12:29:12 PM
Receipt #: 1206223
Requestor:
COLLECTIONS OF AMERICA
Recorded By: MSH Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 162-10-812-185
Collections of America, Inc.
1500 East Tropicana #108
Las Vegas, NV. 89119
(702) 806-0989 or (702) 463-3285
FAX: (702) 361-0196

June 21, 2012

Elliott, Michael T.
3111 Bel Air Drive #24 G
Las Vegas, NV 89109

APN: 162-10-812-185

NOTICE OF CLAIM OF LIEN-DELINQUENT HOMEOWNERS ASSESSMENT NOTICE is hereby given that **Las Vegas International Country Club Estates Association**, A Nevada Corporation, and its successors and assigns, hereinafter called "the Association," formed to provide the maintenance, preservation, and architectural control of the residence lots and common area of the Association homeowners in the County of Clark, State of Nevada, entitled N. R. S. Section 1,144.17 et. Seq. and N. R. S. 116.3115 et. Seq., for the services performed which were to be and were actually furnished, used and performed on the said premises, located in the county of Clark, State of Nevada, more particularly described as follows:

PARCEL# 162-10-812-185

COMMONLY KNOWN AS: 3111 Bel Air Drive # 24G Las Vegas, NV 89109

Legal Description: REGENCY TOWERS AMD PLAT BOOK 14 PAGE 37 UNIT 185 SEC 10 TWP 21 RNG 61

And that the whole of said real estate upon which the buildings are situated is reasonably necessary for the convenient use and occupancy of said building(s).

That **Elliott, Michael T.** own(s) and reputedly own(s) said real property and improvements herein above described. THAT THE AMOUNT OWING AND UNPAID TOTALS **\$4,366.00 AS OF June 21, 2012.**

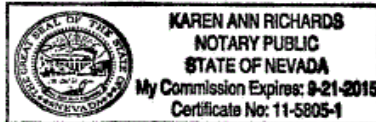
This amount includes collections fees, trustees fees, and ATTORNEY FEES AND THE FEES OF THE MANAGEMENT BODY INCURRED IN CONNECTION WITH PREPARATION, RECORDING, AND FORECLOSURE

June 21, 2012

By *Sara Olen* Sara Olen

STATE OF NEVADA
County of Clark

When Recorded Mail to:
Collections of America, Inc.
1500 East Tropicana #108
Las Vegas, NV. 89119



THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME,
A NOTARY PUBLIC OF THIS 21st DAY OF June 2012.
BY *Sara Olen* *Karen Ann Richards* NOTARY PUBLIC

EXHIBIT G

APN#: 162-10-812-185
Collections of America, Inc.
1500 East Tropicana # 108
Las Vegas, NV. 89119
(702) 806-0989 FAX(702)361-0196

Inst #: 201207250002134
Fees: \$18.00
N/C Fee: \$0.00
07/25/2012 01:09:28 PM
Receipt #: 1247151
Requestor:
COLLECTIONS OF AMERICA
Recorded By: ADF Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

NOTICE OF DEFAULT AND ELECTION TO SELL

Michael T. Elliott
3111 Bel Air Drive #24G
Las Vegas, NV 89109

July 25, 2012

RE: NOTICE OF DEFAULT AND ELECTION TO SELL

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE YOU COULD LOSE YOUR HOME EVEN IF THE AMOUNT IS IN DISPUTE. A NOTICE OF DEFAULT AND ELECTION TO SELL UNDER NOTICE ASSESSMENT CLAIM AND LIEN HAS BEEN FILED. YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE DELINQUENT IN YOUR HOMEOWNER ASSOCIATION ASSESSMENTS. YOUR PROPERTY MAY BE SOLD WITHOUT ANY COURT ACTION. And this is to advise you that you have the legal right to bring your account current by paying all of the past due assessments plus permitted costs and expenses, including interest and late fees within the time permitted by law for the reinstatement of your account Ninety (90) days from the recorded date of this Notice of Default, a sale date will be set. NOTICE IS HEREBY GIVEN that Las Vegas International Country Club Estates located at 2854 Geary Place #3809 Las Vegas, NV 89109 is the lien holder and beneficiary under an Assessment Lien dated June 21, 2012 and recorded as instrument #0001804 Book #20120621 of Official Records, in Clark County, Nevada to secure certain obligations under the Declaration of Covenants, Conditions, and Restrictions. Carol Salmon of Collections of America, Inc. has been appointed as agent for Las Vegas International Country Club Estates the foreclosure of this property described therein as:

July 25, 2012

Commonly known as: 3111 Bel Air Drive #24G Las Vegas, NV 89109
Legal Description: REGENCY TOWERS AMD PLAT BOOK 14 PAGE 37
UNIT 185 SEC 10 TWP 21 RNG 61

Amount due is \$5,184.50 as of July 25, 2012. This amount includes collection fees, late fees, interest, and attorney fees.

The beneficial Interest under such claim of Lien and the obligations secured thereby are presently held by the undersigned. A breach of, and default in the obligations for which such lien is secured has occurred. In that payment has not been made. By reason thereof, the present beneficiary under such Claim of Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected to cause
APN# 162-10-812-185

Notice of Default and Election to Sell
the property to be sold to satisfy the obligations secured thereby.

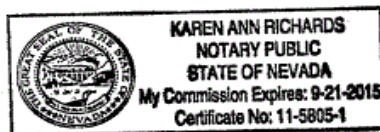
PURSUANT TO NEVADA REVISED STATUTES, CHAPTER 116, a sale will be held if this obligation is not completely satisfied and paid within (90) days from the date of recording of this Notice and on the property described herein above.

DATED this 25 day of July, 2012. Las Vegas International Country Club Estates

BY: _____
Amanda Olen

State of Nevada)

) SS;
County of Clark)



THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME NOTARY PUBLIC ON
THIS 25 DAY OF July, 2012.

SIGNATURE Karen Ann Richards
(Notary Public)

EXHIBIT H

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:

Borrower(s): Michael T. Elliott

Property Address: 3111 Bel Air Drive #24G, Las Vegas, NV 89109

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.

{41347031;2}

Page 2 of 3

48204616;1

4PA766

8. Based on Miles Bauer's business records, attached as **Exhibit 2** is a copy of a August 16, 2012 letter from Paterno C. Jurani, Esq., an attorney with Miles Bauer, to Las Vegas International Country Club Estates, care of Collections of America, Inc.

9. Based on Miles Bauer's business records, attached as **Exhibit 3** is a copy of a Statement of Account from Collections of America, Inc. 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 an e-mail chain between Jory Garabedian, an attorney at Miles Bauer, and Collections of America, Inc.

FURTHER DECLARANT SAYETH NOT:

Date: 3/22/19


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 22nd day of March, 2019,

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  (Seal)
(Signature of Notary Public)



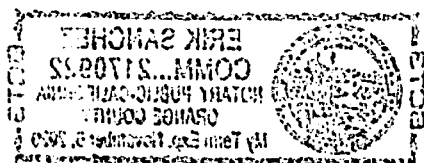


Exhibit 1

Matter ID: 12-H1606		Desc.: Elliott, Michael T. BANA v. Elliott HOA	
Client Sort: BANK OF AMERICA, N.A. (CFP)			
General Notes Billing Contacts Matters Events Inquiry Settlement Civil Contract Info Custom			
☐ ☒ ☐ ☐ ☐ Date: (all)		☐ ☐	
1/1/2004 8/23/2004 ...			
☒ 8/15/2012: CASE ASSESSMENT TEMPLATE DUE		Docket F	
☐ 8/15/2012: EMF AWB re: New Referral		Date: 8/1	
☐ 8/15/2012: EMF PCJ re: Confirmation of New Referral / Elliott		Type: CAT	
☒ 8/15/2012: RCVD REFERRAL, OPENED 8/15/12		Place:	
☒ 8/16/2012: 8/16 EMT CLIENT WITH INITIAL LETTERS ATTACHED; FU		Loc.:	
☐ 8/16/2012: EMF PCJ re: Initial Letters and Completed Assessment re: 12-H1606 Elliot			
☐ 8/23/2012: EMF PCJ re: status update, COA file, no payoff			
☒ 8/23/2012: 8/23 EMT CLIENT RE HOA UPDATE AND THAT NO FO			
☐ 9/6/2012: See related matter 12-L0358			
☐ 9/18/2012: 12-H1606, scanned items from physical file.PDF			
☐ 11/28/2012: 1606 - NOS firm CoA, Trustee.pdf			
☐ 12/7/2012: EMF JCG re: confirm phone conversation that CoA not fcl on sp lien, no			
☐ 12/7/2012: EMF Trustee re: that is correct			
☐ 12/11/2012: EMF Clint re: since no need to make offer can proceed as normal		Notes: CAS	
☐ 12/11/2012: EMF JCG re: HOA sale			
☐ 12/11/2012: EMC w PCJ/AWB re payoff tender			
☐ 12/12/2012: EMF PCJ re: payment request/payoff funds status update			
☐ 12/12/2012: EMF PCJ re: Payoff Funds (COA file - funds advanced), 12-H1606, Elliott			
☐ 12/12/2012: EMT Clint re: Duplicate Referral/NOS re: 12-H1606 / Elliott			
☐ 12/12/2012: EMF Clint re: No New File Opened re: 12-H1606 / Elliott			
☐ 12/12/2012: EMF RKJ re: duplicate, trustee stated property will be going to sale			
☒ 12/14/2012: 12/12 CHECK SENT TO HOA; FU 12/18 SEE IF CHECK WAS			
☒ 12/21/2012: PROPERTY SOLD TO 3RD PARTY AT HOA SALE; FU 1/4			
☒ 1/4/2013: PROPERTY SOLD TO 3RD PARTY AT HOA SALE, NEW			
☐ 1/25/2013: EMF PCJ re: closing file (prop sold at HOA sale)			
☐ 1/30/2013: Returned LTR; Unable to Forward.pdf			
☐ 2/1/2013: EMT CLNT w/invoices & excel spreadsheet for week ending 02/01/13 attac			
☐ 2/6/2013: EMF MRT re: invoices do not appear to be MRT-litigated matters.			
☐ 2/20/2013: EMT MRT re: invoices are for files forwarded to Matt Compton;			
☐ 2/28/2013: EMF MRT re: rejected invoice due to more than 1 month of charges			
☐ 3/4/2013: EMT Matt Compton re: lwd MRT rejected e-mail; file is NV Bulk			
☐ 4/1/2013: EMT MRT w/updated spreadsheet for Bulk past due invoices dated after D			
☐ 4/12/2013: EMT Matt Compton re: outstanding past due invoices; attached A/R Aging			
☐ 4/23/2013: EMT Matt Compton re: follow-up on monitor & past due Bulk			

4PA770

Exhibit 2

DOUGLAS E. MILES
Also Admitted in California &
Illinois
JEREMY T. BERGSTROM
Also Admitted in Arizona
GINA M. CORENA
ROCK K. JUNG
KRISTA J. NIELSON
JORY C. GARABEDIAN
THOMAS M. MORLAN
Admitted in California
STEVEN E. STERN
Admitted in Arizona & Illinois
ANDREW H. PASTWICK
Also Admitted in Arizona &
California
PATERNO C. JURANI



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

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

CALIFORNIA OFFICE
1231 E. Dyer Road, Suite 100
Santa Ana, CA 92705
Phone: (714) 481-9100
Fax: (714) 481-9141

RICHARD J. BAUER, JR.
FRED TIMOTHY WINTERS
KEENAN E. McCLENAHAN
MARK T. DOMEYER
Also Admitted in the District of
Columbia & Virginia
TAMI S. CROSBY
L. BRYANT JAQUEZ
VY T. PHAM
HADI R. SEYED-ALI
BRIAN H. TRAN
CORI B. JONES
CATHERINE K. MASON
CHRISTINE A. CHUNG
HANH T. NGUYEN
S. SHELLY RAISZADEH
SHANNON C. WILLIAMS
LAWRENCE R. BOIVIN
RICK J. NEHORAFF
BRIAN M. LUNA
ELIZABETH D. SCOTT

August 16, 2012

Las Vegas International Country Club Estates
Collections of America, Inc.
1500 E. Tropicana Avenue, St. 108
Las Vegas, NV 89119

SENT VIA FIRST CLASS MAIL

Re: *Property Address: 3111 Bel Air Drive #24G, Las Vegas, NV 89109*
MBBW File No. 12-H1606

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 Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP (hereinafter "BANA") with regard to these issues. BANA is the beneficiary/servicer of the first deed of trust loan secured by the property.

As you know, NRS 116.3116 governs liens against units for assessments. Pursuant to NRS 116.3116:

The association has a lien on a unit for:

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

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

2. A lien under this section is prior to all other liens and encumbrances on a unit except:

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent...

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

Subsection 2b of NRS 116.3116 clearly provides that an HOA lien "is prior to all other liens and encumbrances on a unit except: a first security interest on the unit..." But such a lien is prior to a first security interest to the extent of the assessments for common expenses which would have become due during the 9 months before institution of an action to enforce the lien.

Based on Section 2(b), a portion of your HOA lien is arguably senior to BANA's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated July 25, 2012. For purposes of calculating the nine-month period, the trigger date is the date the HOA sought to enforce its lien. It is unclear, based upon the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA 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) 942-0413. Please fax the breakdown of the HOA arrears to my attention at (702) 942-0411. I will be in touch as soon as I've reviewed the same with BANA.

Sincerely,

MILES, BAUER, BERGSTROM & WINTERS, LLP



Paterno C. Jurani, Esq.

Exhibit 3

Collections of America, Inc.
1500 East Tropicana #108
Las Vegas, NV. 89119
(702) 806-0989 or (702) 463-3285 FAX (702) 361-0196

PAYOFF DEMAND

November 27, 2012

Sent Certified Mail

Attention: Jory C. Garabedian/Miles, Bauer, Bergstrom, & Winters
Property: 3111 Bel Air Drive #24G Las Vegas, NV 89109
APN# 162-10-812-185
HOA: Las Vegas International Country Club Estates
Owner on Deed: Michael T. Elliott
Tax ID# 57-1197983. (Collections of America)
TS#: 4936
Escrow ID #

HOA Assessments through November 2012	\$ 1,870.50
December 2012 assessments	\$ 64.50
Transfer Fee (only if new owner)	\$ 300.00
Management Fee	\$ 25.00
Collection Fee	\$ 4,353.00
Total	\$ 6,613.00

Expiration date: 12/11/12

Carol Salmon/Collections of America

MAKE CHECK PAYABLE TO:

COLLECTIONS OF AMERICA
1500 East Tropicana #108
Las Vegas, NV.. 89119

Sale for the above property is scheduled for 12/12/12. Instructions to proceed or not proceed with sale will be given 12/11/12.

HOA: Las Vegas International Country Club Estates
2854 Geary Place #3809
Las Vegas, NV 89109

Upon receipt of payment in full, a lien rescission will be recorded

4PA775

DATE: 11/27/12 TIME: 11:03 AM Las Vegas International Country Club Estates HOA

Page: 7

FINANCIAL TRANSACTIONS - 11/27/12

3111 Bel Air Drive # 24G
Michael Elliot
Unit ID: 24G
STATUS: 05 - CofA
PREPAID BAL: 0.00

DATE	PAYMT AMT	CHECK#	DEPDT	CODE	N/A	DESCRIPTION	AMOUNT	BALANCE
11/01/12						APPLY CHARGES	7.41	
						ASSESSMENT	164.50	1870.50

+ 25 mgmt

1,895

4PA776

FINANCIAL TRANSACTIONS - 11/27/12

3111 Bel Air Drive # 24G
 Michael Elliot
 Unit ID: 24G
 STATUS: 05 - CofA
 PREPAID BAL: 0.00

DATE	PAYM/PMT	CHECK	DEP/DT	CODE	NA	DESCRIPTION	AMOUNT	BALANCE
013105		EXPENSE ADJ	07			Fine	50.00	50.00
013105	1/20/05	speeding 23mph in 20mph zone						
013105	guest Call/per 1/26/05 hearing							
013105	50.00	757	013105	07		Fine	(50.00)	10.00
022805		EXPENSE ADJ	07			Fine	50.00	50.00
022805	1/20/05	speeding ticket 23mph in 20mph zone						
022805	guest Don Call/per 2/24/05 hearing							
070105		EXPENSE ADJ	20			Reserve Assm	71.00	121.00
092105		EXPENSE ADJ	07			Fine	(50.00)	71.00
092105	fine double charged for same ticket							
093005	71.00	100	093005	20		Reserve Assm	(71.00)	0.00
121905		EXPENSE ADJ	07			Fine	100.00	100.00
121905	11/16/05	speeding 38mph in 20mph zone						
121905	part 2/8/05 hearing							
121905	100.00	7560	Benson	121905	07	Fine	(100.00)	0.00
060106		APPLY CHARGES	A1			ASSESSMENT	60.00	60.00
060106	60.00	1372	060106	A1		ASSESSMENT	(60.00)	0.00
070106		APPLY CHARGES	A1			ASSESSMENT	60.00	60.00
070106			C1			Ombudsman's Fee	3.00	63.00
071406	60.00	1395	071406	A1		ASSESSMENT	(60.00)	3.00
080106		APPLY CHARGES	A1			ASSESSMENT	60.00	63.00
081006	60.00	1418	081006	A1		ASSESSMENT	(60.00)	3.00
090106		APPLY CHARGES	A1			ASSESSMENT	60.00	63.00
091406	60.00	1432	091406	A1		ASSESSMENT	(60.00)	3.00
100106		APPLY CHARGES	A1			ASSESSMENT	60.00	63.00
101206	60.00	1725	101206	A1		ASSESSMENT	(60.00)	3.00
110106		APPLY CHARGES	A1			ASSESSMENT	60.00	63.00
110906	60.00	1771	110906	A1		ASSESSMENT	(60.00)	3.00

FINANCIAL TRANSACTIONS - 11/27/12

3111 Bel Air Drive # 24G
 Michael Elliot
 Unit ID: 24G
 STATUS: 05 - CofA
 PREPAID BAL: 0.00

DATE	PAYMT AMT	CHECK #	DEPT	CODE	N/A	DESCRIPTION	AMOUNT	BALANCE
120107						APPLY CHARGES	60.00	63.00
121506	60.00	1802	121506	A1		ASSESSMENT	(60.00)	3.00
010107						APPLY CHARGES	60.00	63.00
011507	60.00	1469	011507	A1		ASSESSMENT	(60.00)	3.00
020107						APPLY CHARGES	60.00	63.00
021507	60.00	1845	021507	A1		ASSESSMENT	(60.00)	3.00
030107						APPLY CHARGES	60.00	63.00
031507	60.00	1880	031507	A1		ASSESSMENT	(60.00)	3.00
040107						APPLY CHARGES	60.00	63.00
041207	60.00	1888	041207	A1		ASSESSMENT	(60.00)	3.00
050107						APPLY CHARGES	60.00	63.00
051507	60.00	1915	051507	A1		ASSESSMENT	(60.00)	3.00
060107						APPLY CHARGES	60.00	63.00
061407	60.00	1930	061407	A1		ASSESSMENT	(60.00)	3.00
070107						APPLY CHARGES	60.00	63.00
071507	60.00	1941	071507	A1		ASSESSMENT	(60.00)	3.00
080107						APPLY CHARGES	60.00	63.00
081407	60.00	1967	081407	A1		ASSESSMENT	(60.00)	3.00
090107						APPLY CHARGES	60.00	63.00
091507	60.00	1989	091507	A1		ASSESSMENT	(60.00)	3.00
100107						APPLY CHARGES	60.00	63.00
101507	60.00	1430	101507	A1		ASSESSMENT	(60.00)	3.00
110107						APPLY CHARGES	60.00	63.00

4PA778

FINANCIAL TRANSACTIONS - 11/27/12

3111 Bel Air Drive # 24G
 Michael Elliot
 Unit ID: 24G
 STATUS: 05 - CofA
 PREPAID BAL: 0.00

DATE	PAYMT AMT	CHECK #	DEP DT	CODE	N/A	DESCRIPTION	AMOUNT	BALANCE
111607	60.00	2018	111607	A1		ASSESSMENT	(60.00)	3.00
120107		APPLY CHARGES		A1		ASSESSMENT	60.00	63.00
121407	60.00	1548	121407	A1		ASSESSMENT	(60.00)	0.00
121407				C1		Ombudsman's Fee	(3.00)	
010108		APPLY CHARGES		A1		ASSESSMENT	60.00	60.00
011408	60.00	15650000	011408	A1		ASSESSMENT	(60.00)	0.00
020108		APPLY CHARGES		A1		ASSESSMENT	60.00	60.00
020708	60.00	2056000000	020708	A1		ASSESSMENT	(60.00)	0.00
030108		APPLY CHARGES		A1		ASSESSMENT	60.00	60.00
031308	60.00	2071000000	031308	A1		ASSESSMENT	(60.00)	0.00
040108		APPLY CHARGES		A1		ASSESSMENT	60.00	60.00
041408	60.00	16070000	041408	A1		ASSESSMENT	(60.00)	0.00
050108		APPLY CHARGES		A1		ASSESSMENT	60.00	60.00
051208	60.00	16190000	051208	A1		ASSESSMENT	(60.00)	0.00
060108		APPLY CHARGES		A1		ASSESSMENT	60.00	60.00
061308	60.00	16360000	061308	A1		ASSESSMENT	(60.00)	0.00
070108		APPLY CHARGES		A1		ASSESSMENT	60.00	60.00
071408	60.00	2114000000	071408	A1		ASSESSMENT	(60.00)	0.00
080108		APPLY CHARGES		A1		ASSESSMENT	60.00	60.00
081108	60.00	16530000	081108	A1		ASSESSMENT	(60.00)	0.00
090108		APPLY CHARGES		A1		ASSESSMENT	60.00	60.00
091408	60.00	2147000000	091408	A1		ASSESSMENT	(60.00)	0.00
100108		APPLY CHARGES		A1		ASSESSMENT	60.00	60.00
101308	60.00	16720000	101308	A1		ASSESSMENT	(60.00)	0.00
110108		APPLY CHARGES		A1		ASSESSMENT	60.00	60.00
111008	60.00	2180000000	111008	A1		ASSESSMENT	(60.00)	0.00

FINANCIAL TRANSACTIONS - 11/27/12

3111 Bel Air Drive # 24G
 Michael Elliot
 Unit ID: 24G
 STATUS: 05 - CofA
 PREPAID BAL: 0.00

DATE	PAYMT/AMT	CHECK#	CREDIT	CODE	DESCRIPTION	AMOUNT	BALANCE
120109					APPLY CHARGES		
				A1	ASSESSMENT	60.00	60.00
121508	60.00	2210000000	121508	A1	ASSESSMENT	(60.00)	0.00
121508	(60.00)	2210000000	121508	PP	Credit-Prepaid	(60.00)	(60.00)
121508	(60.00)	2210000000	PA-ADJ	PP	Credit-Prepaid	60.00	0.00
121508	Correct duplicate Lkbx posting						
011009					APPLY CHARGES		
				A1	ASSESSMENT	69.00	69.00
011409	69.00	2224000000	011409	A1	ASSESSMENT	(69.00)	0.00
020109					APPLY CHARGES		
				A1	ASSESSMENT	69.00	69.00
021709	69.00	2239000000	021709	A1	ASSESSMENT	(69.00)	0.00
030109					APPLY CHARGES		
				A1	ASSESSMENT	69.00	69.00
031209	69.00	2259000000	031209	A1	ASSESSMENT	(69.00)	0.00
040109					APPLY CHARGES		
				A1	ASSESSMENT	69.00	69.00
041209	69.00	2269000000	041209	A1	ASSESSMENT	(69.00)	0.00
050109					APPLY CHARGES		
				A1	ASSESSMENT	69.00	69.00
051309	69.00	2298000000	051309	A1	ASSESSMENT	(69.00)	0.00
060109					APPLY CHARGES		
				A1	ASSESSMENT	69.00	69.00
061509	69.00	2316000000	061509	A1	ASSESSMENT	(69.00)	0.00
070109					APPLY CHARGES		
				A1	ASSESSMENT	69.00	69.00
071309	69.00	2331000000	071309	A1	ASSESSMENT	(69.00)	0.00
080109					APPLY CHARGES		
				A1	ASSESSMENT	69.00	69.00
081309	69.00	2352000000	081309	A1	ASSESSMENT	(69.00)	0.00
090109					APPLY CHARGES		
				A1	ASSESSMENT	69.00	69.00
091409	69.00	2369	091409	A1	ASSESSMENT	(69.00)	0.00
100109					APPLY CHARGES		
				A1	ASSESSMENT	69.00	69.00
101209	69.00	2382	101209	A1	ASSESSMENT	(69.00)	0.00
110109					APPLY CHARGES		
				A1	ASSESSMENT	69.00	69.00

FINANCIAL TRANSACTIONS - 11/27/12

3111 Bel Air Drive # 24G
 Michael Elliot
 Unit ID: 24G
 STATUS: 05 - CoA
 PREPAID BAL: 0.00

DATE	PAYMT AMT	CHECK #	EPID	CODE	DESCRIPTION	AMOUNT	BALANCE
110909	69.00	2405	110909	A1	ASSESSMENT	(69.00)	0.00
120109				A1	ASSESSMENT	69.00	69.00
121409	69.00	2428	121409	A1	ASSESSMENT	(69.00)	0.00
121410				A1	ASSESSMENT	64.50	64.50
011310	64.50	2442	011310	A1	ASSESSMENT	(64.50)	0.00
020110				A1	ASSESSMENT	64.50	64.50
030110				A1	ASSESSMENT	64.50	129.00
040110				A1	ASSESSMENT	64.50	193.50
050110				A1	ASSESSMENT	64.50	258.00
051710	193.50	2510	051710	A1	ASSESSMENT	(193.50)	64.50
060110				A1	ASSESSMENT	64.50	129.00
070610	64.50	2528	070610	A1	ASSESSMENT	(64.50)	129.00
072110	64.50	2538	072110	A1	ASSESSMENT	(64.50)	64.50
080110				A1	ASSESSMENT	64.50	129.00
090110				A1	ASSESSMENT	64.50	193.50
100110				A1	ASSESSMENT	64.50	258.00
110110				A1	ASSESSMENT	64.50	322.50
120110				A1	ASSESSMENT	64.50	387.00
121410				A1	ASSESSMENT	64.50	451.50
012011				A1	ASSESSMENT	64.50	516.00
030111				A1	ASSESSMENT	64.50	580.50

FINANCIAL TRANSACTIONS - 11/27/12

3111 Bel Air Drive # 24G
Michael Elliot
Unit ID: 24G
STATUS: 05 - CoFA
PREPAID BAL: 0.00

DATE	PAYMT AMT	CHECK#	DEPT DT	CODE	N/A	DESCRIPTION	AMOUNT	BALANCE
1040111				A1		ASSESSMENT	64.50	64.50
1050111				A1		ASSESSMENT	64.50	129.00
1060111				A1		ASSESSMENT	64.50	193.50
1070111				A1		ASSESSMENT	64.50	258.00
1080111				A1		ASSESSMENT	64.50	322.50
1090111				A1		ASSESSMENT	64.50	387.00
1100111				A1		ASSESSMENT	64.50	451.50
1110111				A1		ASSESSMENT	64.50	516.00
1120111				A1		ASSESSMENT	64.50	580.50
1130111				A1		ASSESSMENT	64.50	645.00
1140111				A1		ASSESSMENT	64.50	709.50
1150111				A1		ASSESSMENT	64.50	774.00
1160111				A1		ASSESSMENT	64.50	838.50
1170111				A1		ASSESSMENT	64.50	903.00
1180111				A1		ASSESSMENT	64.50	967.50
1190111				A1		ASSESSMENT	64.50	1032.00
1200111				A1		ASSESSMENT	64.50	1096.50
1210111				A1		ASSESSMENT	64.50	1161.00
1220111				A1		ASSESSMENT	64.50	1225.50
1230111				A1		ASSESSMENT	64.50	1290.00
1240111				A1		ASSESSMENT	64.50	1354.50
1250111				A1		ASSESSMENT	64.50	1419.00
1260111				A1		ASSESSMENT	64.50	1483.50
1270111				A1		ASSESSMENT	64.50	1548.00
1280111				A1		ASSESSMENT	64.50	1612.50
1290111				A1		ASSESSMENT	64.50	1677.00
1300111				A1		ASSESSMENT	64.50	1741.50
1310111				A1		ASSESSMENT	64.50	1806.00

4PA782

Collections of America, Inc
Las Vegas, NV 89119

Statement

Date
11/27/2012

To:
Elliott, Michael T. #4936 Michael T. Elliott 3111 Bel Air Drive.#24-G Las Vegas, NV 89109

		Amount Due	Amount Enc.		
		\$4,353.00			
Date	Transaction	Amount	Balance		
02/17/2011	Balance forward		0.00		
04/29/2011	Apr 11 COA Fees- INV #25266. --- MF, 1 @ \$20.00 = 20.00 --- Payoff, 1 @ \$80.00 = 80.00 --- CM, 2 @ \$20.00 = 40.00 --- nod auth, 1 @ \$10.00 = 10.00	150.00	150.00		
04/17/2012	Apr 2012 COA Fees- INV #27769. --- MF, 1 @ \$20.00 = 20.00	20.00	170.00		
08/15/2012	Aug 12 COA Fees- INV #28407. --- MF, 1 @ \$20.00 = 20.00	20.00	190.00		
08/31/2011	Aug 2011 COA Fees- INV #26289. --- MF, 1 @ \$20.00 = 20.00 --- maf, 1 @ \$2.00 = 2.00 --- Breach of agreement, 1 @ \$25.00 = 25.00 --- nod auth, 1 @ \$10.00 = 10.00	57.00	247.00		
12/01/2011	Dec 2011 COA Fees- INV #26722. --- MF, 1 @ \$20.00 = 20.00 --- NOD, 1 @ \$400.00 = 400.00 --- Release, 1 @ \$30.00 = 30.00 --- not, 6 @ \$10.00 = 60.00 --- affidavit, 4 @ \$15.00 = 60.00 --- CM, 7 @ \$20.00 = 140.00 --- maf, 7 @ \$2.00 = 14.00 --- TSG, 1 @ \$375.00 = 375.00	1,099.00	1,346.00		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	746.00	0.00	0.00	3,607.00	\$4,353.00

Collections of America, Inc
Las Vegas, NV 89119

Statement

Date
11/27/2012

To:
Elliott, Michael T. #4936 Michael T. Elliott 3111 Bel Air Drive.#24-G Las Vegas, NV 89109

		Amount Due	Amount Enc.		
		\$4,353.00			
Date	Transaction	Amount	Balance		
02/25/2011	Feb 11 COA Dues- INV #25057. --- MF, 1 @ \$20.00 = 20.00 --- INTENT, 1 @ \$80.00 = 80.00 --- CM, 2 @ \$20.00 = 40.00	140.00	1,486.00		
02/03/2012	Feb 2012 COA Fees- INV #27026. --- MF, 1 @ \$20.00 = 20.00	20.00	1,506.00		
01/04/2012	Jan 2012 COA Fees- INV #26868. --- MF, 1 @ \$20.00 = 20.00	20.00	1,526.00		
07/25/2012	Jul 12 COA Fees- INV #27921. --- NOD, 1 @ \$400.00 = 400.00 --- Release, 1 @ \$30.00 = 30.00 --- MF, 1 @ \$20.00 = 20.00 --- CM, 7 @ \$20.00 = 140.00 --- maf, 7 @ \$2.00 = 14.00 --- affidavit, 6 @ \$15.00 = 90.00 --- not, 6 @ \$10.00 = 60.00	754.00	2,280.00		
07/08/2011	Jul 2011 COA Fees- INV #25941. --- MF, 1 @ \$20.00 = 20.00	20.00	2,300.00		
06/08/2011	Jun 2011 COA Fees- INV #25940. --- MF \$20.00	20.00	2,320.00		
	Jun 2012 COA Fees-				
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	746.00	0.00	0.00	3,607.00	\$4,353.00

Collections of America, Inc
Las Vegas, NV 89119

Statement

Date
11/27/2012

To: ..
Elliott, Michael T. #4936 Michael T. Elliott 3111 Bel Air Drive #24-G Las Vegas, NV 89109

		Amount Due	Amount Enc.		
		\$4,353.00			
Date	Transaction	Amount	Balance		
06/21/2012	INV #27772. --- MF, 1 @ \$20.00 = 20.00 --- Lien, 1 @ \$275.00 = 275.00 --- Release, 1 @ \$30.00 = 30.00 --- 30 Day, 1 @ \$80.00 = 80.00 --- CM, 4 @ \$20.00 = 80.00 --- maf, 4 @ \$2.00 = 8.00 --- not, 2 @ \$10.00 = 20.00	513.00	2,833.00		
03/04/2011	Mar 11 COA Fees- INV #25058. --- MF, 1 @ \$20.00 = 20.00 --- Lien, 1 @ \$275.00 = 275.00 --- Release, 1 @ \$45.00 = 45.00 --- Demand, 1 @ \$80.00 = 80.00 --- affidavit, 2 @ \$15.00 = 30.00 --- CM, 2 @ \$20.00 = 40.00	490.00	3,323.00		
03/12/2012	Mar 2012 COA Fees- INV #27768. --- MF, 1 @ \$20.00 = 20.00	20.00	3,343.00		
05/09/2011	May 11 COA Fees- INV #25431. --- MF, 1 @ \$20.00 = 20.00	20.00	3,363.00		
05/08/2012	May 2012 COA Fees- INV #27770. --- MF, 1 @ \$20.00 = 20.00 Nov 12 COA Fees-	20.00	3,383.00		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	746.00	0.00	0.00	3,607.00	\$4,353.00

Collections of America, Inc
Las Vegas, NV 89119

Statement

Date
11/27/2012

To:
Elliott, Michael T. #4936 Michael T. Elliott 3111 Bel Air Drive #24-G Las Vegas, NV 89109

		Amount Due	Amount Enc.		
		\$4,353.00			
Date	Transaction	Amount	Balance		
11/15/2012	INV #28410. --- MF, 1 @ \$20.00 = 20.00 --- affidavit, 4 @ \$15.00 = 60.00 --- CM, 8 @ \$20.00 = 160.00 --- maf, 8 @ \$2.00 = 16.00 --- NOS, 1 @ \$275.00 = 275.00 --- not, 5 @ \$10.00 = 50.00 --- rec, 1 @ \$40.00 = 40.00 --- tdus, 1 @ \$125.00 = 125.00	746.00	4,129.00		
11/29/2011	Nov 2011 COA Fees- INV #26721. --- MF, 1 @ \$20.00 = 20.00	20.00	4,149.00		
10/10/2011	Oct 11 COA Fees- INV #26472. --- MF, 1 @ \$20.00 = 20.00 --- 30 Day, 1 @ \$80.00 = 80.00 --- CM, 2 @ \$20.00 = 40.00 --- maf, 2 @ \$2.00 = 4.00	144.00	4,293.00		
10/15/2012	Oct 12 COA Fees- INV #28409. --- MF, 1 @ \$20.00 = 20.00	20.00	4,313.00		
09/15/2012	Sep 12 COA Fees- INV #28408. --- MF, 1 @ \$20.00 = 20.00	20.00	4,333.00		
09/01/2011	Sep 2011 COA Fees- INV #26290. --- MF, 1 @ \$20.00 = 20.00	20.00	4,353.00		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	746.00	0.00	0.00	3,607.00	\$4,353.00

Exhibit 4

Herrera, Amanda (Para-Lax)

From: Jory Garabedian
Sent: Friday, December 7, 2012 2:34 PM
To: Paterno Jurani; Alexander Bhame
Subject: FW: Michael T. Elliott - 3111 Bel Air Drive Unit 24G, Las Vegas, NV 89109 (TS 4936)

FYI - below. You may want to profile this in your case.

Jory C. Garabedian
MILES, BAUER, BERGSTROM & WINTERS, LLP
2200 Paseo Verde Parkway, Suite 250
Henderson, NV 89052
Phone: (702) 369-5960 x 472
Fax: (702) 369-4955

NOTICE: This E-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521. The information herein is confidential, privileged and exempt from disclosure under applicable law. This E-mail (including attachments) are intended solely for the use of the addressee hereof. If you are not the intended recipient of this message, you are prohibited from reading, disclosing, reproducing, distributing, disseminating, or otherwise using this transmission. The originator of this e-mail and its affiliates do not represent, warrant or guarantee that the integrity of this communication has been maintained or that this communication is free of errors, viruses or other defects. Delivery of this message or any portions herein to any person other than the intended recipient is not intended to waive any right or privilege. If you have received this message in error, please promptly notify the sender by e-mail and immediately delete this message from your system.

-----Original Message-----

From: collect1@lvcoxmail.com [mailto:collect1@lvcoxmail.com]
Sent: Friday, December 07, 2012 2:32 PM
To: Jory Garabedian
Subject: RE: Michael T. Elliott - 3111 Bel Air Drive Unit 24G, Las Vegas, NV 89109 (TS 4936)

Yes that is correct Thank you

On Fri, Dec 7, 2012 at 11:56 AM, Jory Garabedian wrote:

> Hi Carol:
>
> This will confirm our phone conversation this morning that Collections
> of America and Las Vegas International Country Club Estates HOA is not
> foreclosing on a super-priority lien pursuant to NRS 116.3116.
> Moreover, Collections of America and Las Vegas International Country
> Club Estates HOA is not claiming to have a super-priority lien since
> the first mortgage has not foreclosed on the property. Please confirm
> receipt of this email and acknowledgement of this understanding. If I

> am mistaken in any way, please contact me immediately and/or provide
> me with a payoff demand of any super-priority lien that may exist at
> this time. Obviously, my client Bank of America would like to payoff
> any potential senior lien, should one exist, to protect its first
> mortgage security interest.
> Thank you for your time and attention.
>
> <<Elliott Payoff.pdf>>
> Jory C. Garabedian MILES, BAUER, BERGSTROM & WINTERS, LLP 2200 Paseo
> Verde Parkway, Suite 250 Henderson, NV 89052 Phone: (702) 369-5960 x
> 472 Fax: (702) 369-4955 NOTICE: This E-mail (including attachments) is
> covered by the Electronic Communications Privacy Act, 18 U.S.C. §§
> 2510-2521. The information herein is confidential, privileged and
> exempt from disclosure under applicable law. This E-mail (including
> attachments) are intended solely for the use of the addressee hereof.
> If you are not the intended recipient of this message, you are
> prohibited from reading, disclosing, reproducing, distributing,
> disseminating, or otherwise using this transmission. The originator of
> this e-mail and its affiliates do not represent, warrant or guarantee
> that the integrity of this communication has been maintained or that
> this communication is free of errors, viruses or other defects.
> Delivery of this message or any portions herein to any person other
> than the intended recipient is not intended to waive any right or
> privilege. If you have received this message in error, please promptly
> notify the sender by e-mail and immediately delete this message from
> your system.

EXHIBIT I

Inst #: 201211150002365
Fees: \$18.00
N/C Fee: \$0.00
11/15/2012 01:20:15 PM
Receipt #: 1383773
Requestor:
COLLECTIONS OF AMERICA
Recorded By: SAO Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY &
when recorded return to:
Collections of America, Inc.
1500 East Tropicana Avenue #108
Las Vegas, NV. 89119
TS# 4936

APN#: 162-10-812-185

NOTICE OF TRUSTEE SALE

To: Michael T. Elliott

You are in default of your **Las Vegas International Country Club Estates** assessments. Unless you take action to protect your property, it may be sold at a public sale. If you need an explanation of the nature of the proceedings against you, you should contact a lawyer.

**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 CAROL SALMON
OF COLLECTIONS OF AMERICA, (702-463-3285) ACTING ON
BEHALF OF LAS VEGAS INTERNATIONAL COUNTRY CLUB
ESTATES. IF YOU NEED ASSISTANCE, PLEASE CALL THE
FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE,
NEVADA REAL ESTATE DIVISION, AT THEIR TOLL FREE
NUMBER (877-829-9907) IMMEDIATELY.**

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state will be held by the duly authorized agent shown below, of all right, title, and interest, subject to any (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; and (d) Any other liens deemed superior to the assessment lien that is being foreclosed. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to pay the amount if delinquent assessment, with interest and late charges thereon, management fees, attorney's fees charges and cost of the sale for the total amount (at the time of the initial publication of the Notice of Sale) reasonably estimated to be set forth below. The amount may be greater on the day of sale.

TRUSTOR: Michael T. Elliott

Authorized Agent: **COLLECTIONS OF AMERICA**

Assessment Lien Recorded; **June 21, 2012**, Book 20120621 as Instrument No. 0001804 in the Official Records of the Office of the County Recorder of **CLARK** County, Nevada, described as follows:
PARCEL# 162-10-812-185 REGENCY TOWERS AMD PLAT BOOK 14 PAGE 37 UNIT 185 SEC 10 TWP 21 RNG 61 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY NEVADA.

Date of sale: **December 12, 2012** at 10:00 AM

Place of Sale: **At the front entrance to the Nevada Legal News located at 930 South 4th Street, Las Vegas, Nevada 89101.**

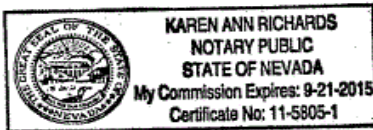
Amount necessary to satisfy lien as of **November 15, 2012** **\$6,248.50**

Estimated Sale Amount: **\$7,000.00**

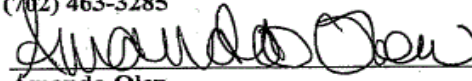
Street Address or other common designation of real property: **3111 Bel Air Drive #24G Las Vegas, NV 89109**

The undersigned Authorized Agent disclaims any liability for any incorrectness of the street address or other common designation, if any, shown above.

Date: **November 15, 2012**

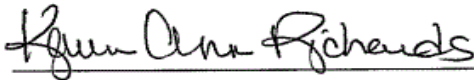


COLLECTIONS OF AMERICA
1500 EAST TROPICANA AVENUE #108
LAS VEGAS, NV. 89119
(702) 463-3285


Amanda Olen
Collections of America

STATE OF NEVADA
COUNTY OF CLARK

SUBSCRIBED and SWORN to before me this 15 day of November 2012.



Notary Public in and for said State NV

EXHIBIT J

(2)-1

RECORDING REQUESTED BY &
WHEN RECORDED RETURN TO:
Collections of America, INC.
1500 East Tropicana Avenue #108
Las Vegas, Nevada 89119

Forward Tax Statements to Address listed below

3111 Bel Air Drive 24G Trust
900 South Las Vegas Blvd. #810
Las Vegas, NV 89101
T.S. 4936
Title Oder No.

Inst #: 201212170000834
Fees: \$18.00 N/C Fee: \$25.00
RPTT: \$38.25 Ex: #
12/17/2012 10:09:52 AM
Receipt #: 1423129
Requestor:
COLLECTIONS OF AMERICA INC
Recorded By: ANI Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

TRUSTEE'S DEED UPON SALE NEVADA

A.P.N.: 162-10-812-185

The amount of the unpaid debt was \$ 7,000.00

Grantee: 3111 Bel Air Drive 24G Trust
900 South Las Vegas Blvd. #810
Las Vegas, NV 89101

The amount paid by the Grantee was \$7,001.00

The property is located in the city of Las Vegas, County of Clark

The documentary transfer tax is \$ 38.25

The Grantee herein was the beneficiary

Grantor: Collections of America
1500 East Tropicana Avenue #108
Las Vegas, NV 89119

Collections of America, Inc. as duly appointed Agent and authorized Trustee, under the Notice of Default and Election to Sell referred to below, and herein called "Trustee," does hereby grant without covenant or warranty to 3111: Bel Air Drive 24G Trust herein called "Grantee", the following described real property situated in Clark County Nevada:

PROPERTY: 3111 Bel Air Drive #24G Las Vegas, NV 89109

LEGAL DESCRIPTION: REGENCY TOWERS AMD PLAT BOOK14 PAGE 37 UNIT 185 SEC 10 TWP 25 RNG 61
APN: 162-10-812-185

This conveyance is made pursuant to the powers conferred upon Trustee by N.R.S. 116.33162 to N.R.S 116.33168 pursuant to the Notice of Delinquent Assessment recorded on behalf of Las Vegas International Country Club Estates against the Trustor Michael T. Elliott, which was duly recorded on June 21, 2012 in Book 20120621 as Document No. 0001804 in the office of the County Recorder of Clark County, Nevada, and pursuant to the Notice of Default and Election to sell recorded on behalf of Las Vegas International Country Club Estates against the Trustor Michael T. Elliott, which was duly recorded on July 25, 2012 in Book 20120725, as Document No. 0002134 in the office of the County Recorder of Clark County, Nevada. Notice of Trustee Sale recorded November 15, 2012 in Book 20121115 and as Document Number 0002365 in the office of the County Recorder of Clark County, Nevada. All requirements of law regarding the recording of the Notice of Delinquent Assessments, mailing of the Notice of Delinquent Assessments, recording of the Notice of Default and Election to Sell, mailing of the Notice of Default and Election to Sell, the lapsing of ninety days after the recording of the Notice of Default and Election to Sell, and the mailing, posting, and publication of the Notice of Sale have been complied with. Trustee,

in compliance with said Notice of Trustee's Sale, and pursuant to powers conferred upon them under N.R.S. 116.33162 to N.R.S. 116.33168 sold said real property at public auction on December 12, 2012. Grantee at said sale became the purchaser of said property for the amount of sale bid price which was \$7,001.00.

Dated: December 14, 2012

STATE OF NEVADA) ss
COUNTY OF CLARK)

Collections of America, Inc. Trustee

BY: Carol Salmon

Carol Salmon

Collections of America, Inc.
1500 East Tropicana Avenue #108
Las Vegas, NV 89119



APN: 162-10-8121-185
TS#: 4936



On this 14th day of December, 2012, before me, the undersigned Notary Public, duly commissioned and sworn, personally appeared Carol Salmon, known to me, or proved on the basis of satisfactory evidence to be the person whose name is subscribed to the written instrument, and who acknowledged to me that she executed the same freely and voluntarily, and for uses and purposes therein mentioned.

SIGNATURE: Bonnie Moe
(Notary Public)

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

- a) 162-10-812-185
b)
c)

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:

\$ 7,001.00

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

()

c. Transfer Tax Value:

\$ 7,001.00

d. Real Property Transfer Tax Due:

\$ 38.25

4. If Exemption Claimed:

a. Transfer Tax Exemption, per NRS 375.090, Section: _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100%

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the 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 Crista Lee

Capacity Grantor

Signature _____

Capacity Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Collections of America
Address: 1500 East Tropicana Ave
City, St., Zip: Las Vegas, NV 89119

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: 3111 Bel Air Drive # 246
Address: 900 South Las Vegas Blvd # 810
City, St., Zip: Las Vegas, NV 89101

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

Print Name:
Address:
City/State/Zip:

Escrow #:

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT K

31

A.P.N.: 162-10-812-185

R.P.T.T.: \$None-Exempt 7

When Recorded Mail To and Mail Tax Statements To:
LN MANAGEMENT LLC, SERIES 3111 BEL AIR 24G
PO Box 36208
Las Vegas NV 89133

Inst #: 201304260003246
Fees: \$18.00 N/C Fee: \$0.00
RPTT: \$0.00 Ex: #007
04/26/2013 04:36:34 PM
Receipt #: 1591902
Requestor:
LAW OFFICES OF KERRY FAUGHN
Recorded By: COJ Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

QUITCLAIM DEED

FOR NO CONSIDERATION,

3111 BEL AIR DRIVE 24G TRUST do(es) hereby remise, release and forever quitclaim to
LN MANAGEMENT LLC, SERIES 3111 BEL AIR 24G

the real property situate in the County of Clark, State of Nevada, described as follows:

Parcel One:

Unit One Hundred Eighty-Five (185) of the Amended Plat of the Regency Towers as the same is established and identified in the plan of Condominium filed pursuant to the provisions of NRS 117.020 on April 12, 1972 in Book 14 of Plats, page 37 as Clarified by Affidavits recorded September 5, 1972, Document No. 220126 and May 10, 1973, Document No. 285994 and on August 10, 1973 in Book 16 of Plats, page 27, in the Official Records of Clark County, Nevada ("Plan") and Amendments thereto.

Parcel Two:

An undivided .549% interest in the Common Areas included in the Plan.

Parcel Three:

An undivided .549% interest in the Estate for Years created by that certain lease ("Lease") dated January 1, 1971, between Chanin Nevada Properties, Inc., as landlord and Regency Holding Corp., as tenant, recorded on January 7, 1971, in Book 91 as Instrument No. 72485, of Official Records, Clark County, Nevada.

Subject to:

1. All general and special taxes for the current fiscal year.
2. Covenants, Conditions, Restrictions, Reservations, Rights, Rights of Way and Easements now of record.

TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

4PA798

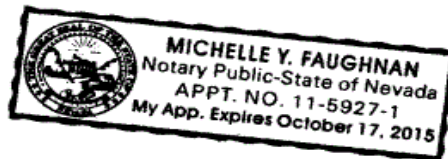
3111 Bel Air Drive 24G Trust

By: Iyad Haddad, Trustee

STATE OF **NEVADA**)
)
) : **ss.**
COUNTY OF **CLARK**)

On April 25, 2013, before me, a Notary Public, personally appeared Iyad Haddad, known to me to be the person who executed the foregoing, and who acknowledged to me he executed it on behalf of the entity named therein.

Notary Public
(My commission expires: 10/17/2015)



**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

- a) 162-10-812-185
b) _____
c) _____
d) _____

2. Type of Property

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

FOR RECORDERS OPTIONAL USE

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3. Total Value/Sales Price of Property: _____

\$ 0

Deed in Lieu of Foreclosure Only (value of property) (\$ _____)

Transfer Tax Value: \$N/A

Real Property Transfer Tax Due \$NONE

4. **If Exemption Claimed:**

a. Transfer Tax Exemption, per 375.090, Section: 7

b. Explain reason for exemption: Transfer from a trust without consideration

5. Partial Interest: Percentage being transferred: 100 %

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

Signature: _____

Capacity: Grantor

Signature: _____

Capacity: Grantee

SELLER (GRANTOR) INFORMATION
(REQUIRED)

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: 3111 Bel Air Drive 24G Trust

Print Name: LN Management LLC,

Address: PO Box 36208

Address: Series 3111 Bel Air 24G

City: Las Vegas

City: PO Box 36208

State: NV Zip: 89133

City: Las Vegas

State: NV Zip: 89133

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

Print Name: Kerry Faughnan, Esq.

File Number: _____

Address: PO Box 335361

City: North Las Vegas

State: NV Zip: 89086

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

EXHIBIT L



Statement

Statement on HOA Super-Priority Lien Foreclosures

FOR IMMEDIATE RELEASE

4/21/2015

Title 12 United States Code Section 4617(j)(3) states that, while the Federal Housing Finance Agency acts as Conservator, “[no] property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency.” This law precludes involuntary extinguishment of Fannie Mae or Freddie Mac liens while they are operating in conservatorships and preempts any state law that purports to allow holders of homeownership association (HOA) liens to extinguish a Fannie Mae or Freddie Mac lien, security interest, or other property interest.

As noted in our December 22, 2014 statement on certain super-priority liens, FHFA has an obligation to protect Fannie Mae’s and Freddie Mac’s rights, and will aggressively do so by bringing or supporting actions to contest HOA foreclosures that purport to extinguish Enterprise property interests in a manner that contravenes federal law. Consequently, FHFA confirms that it has not consented, and will not consent in the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection with HOA foreclosures of super-priority liens.

12/22/2014: [Statement of the Federal Housing Finance Agency on Certain Super-Priority Liens](#)

###

The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than \$5.6 trillion in funding for the U.S. mortgage markets and financial institutions. Additional information is available at www.FHFA.gov, on

Twitter [@FHFA](#), YouTube and LinkedIn.

Contacts:

Media: Corinne Russell (202) 649-3032 / Stefanie Johnson (202) 649-3030

Consumers: [Consumer Communications](#) or (202) 649-3811

© 2015 Federal Housing Finance Agency

EXHIBIT M

DECLARATION OF MATTHEW LUBAWY, MAI, CVA, CMEA

I, Matthew Lubawy, under penalty of perjury, hereby declare as follows:

1. I am 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 *Bank of America, Plaintiff(s) vs. Michael Elliott, Defendant(s)* filed in the Eighth Judicial District Court, District of Clark County, Nevada, Case No. A-12-669570-C.
5. I am a licensed Nevada Appraiser and Senior Managing Director of Valbridge Property Advisors.
6. I possess a CVA designation from the National Association of Certified Valuators and Analysts and an MAI designation from the Appraisal Institute.
7. I have conducted a retroactive appraisal analysis of the property located at 3111 Bel Air Drive, # 24G, Las Vegas, NV 89109. The conclusions I reached are fully expressed in the Summary Appraisal Report, a true and correct copy of which is attached hereto as Exhibit ____.
8. 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.
9. That I declare the opinions, analysis and conclusions are expressed in my report, attached hereto as Exhibit 1, are true and correct.
10. 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 23rd day of September, 2020.


MATTHEW LUBAWY

INDIVIDUAL CONDO UNIT APPRAISAL REPORT

File No.: 19-0257

SUBJECT

PROPERTY ADDRESS: 3111 Bel Air DrUnit #: 24GCity: Las VegasState: NV
Zip Code: 89109County: ClarkLegal Description: Regency Towers AMD Plat Book 14, Page 37, Unit 185Assessor's Parcel #: 162-10-812-185
Tax Year: 2012R.E. Taxes: \$ N/ASpecial Assessments: \$ 0Borrower (if applicable): N/A
Current Owner of Record: Michael T. Elliott *Occupant: ☒ Owner ☐ Tenant (Market Rent) ☐ Tenant (Regulated Rent) ☐ Vacant
Project Type: ☒ Condominium ☐ Other (describe)HOA: \$ 1,125 ☐ per year ☒ per month
Market Area Name: CentralMap Reference: 55-B4 Metro MapsCensus Tract: 0020.00
Project Name: Regency TowersPhase: 1

ASSIGNMENT

The purpose of this appraisal is to develop an opinion of: ☐ Market Value (as defined), or ☒ other type of value (describe) Fair Market Value
This report reflects the following value (if not Current, see comments): ☐ Current (the Inspection Date is the Effective Date) ☒ Retrospective ☐ Prospective
Approaches developed for this appraisal: ☒ Sales Comparison Approach ☐ Cost Approach ☐ Income Approach (See Reconciliation Comments and Scope of Work)
Property Rights Appraised: ☒ Fee Simple ☐ Leasehold ☐ Leased Fee ☐ Other (describe)
Intended Use: Litigation *as of December 12, 2012

Intended User(s) (by name or type): Akerman, LLP
Client: Akerman, LLPAddress: 1635 Village Center Circle, Suite 200, Las Vegas, NV 89134
Appraiser: Victoria M. ChurchAddress: 3034 S. Durango Drive, Suite 100, Las Vegas, NV 89117

MARKET AREA DESCRIPTION

Location:	☒ Urban	☐ Suburban	☐ Rural	Predominant Occupancy	Condominium Housing		Present Land Use		Change in Land Use			
Built up:	☒ Over 75%	☐ 25-75%	☐ Under 25%		PRICE \$(000)	AGE (yrs)	One-Unit	5 %	☒ Not Likely	* To: _____		
Growth rate:	☐ Rapid	☒ Stable	☐ Slow				2-4 Unit	%	☐ Likely *		☐ In Process *	
Property values:	☒ Increasing	☐ Stable	☐ Declining				25	Low	0		Multi-Unit	15 %
Demand/supply:	☐ Shortage	☒ In Balance	☐ Over Supply				2,874	High	45		Comm'l	75 %
Marketing time:	☒ Under 3 Mos.	☐ 3-6 Mos.	☐ Over 6 Mos.	☒ Vacant (>5%)	210	Pred	10	5 %				

Market Area Boundaries, Description, and Market Conditions (including support for the above characteristics and trends): The nbhd is bound on the north by Sahara Avenue, east by Maryland Parkway, south by Russell Road and west by I-15. The subject is situated in the central, resort corridor known as the Las Vegas Strip. Uses include hotels/casinos, retail, restaurants, and tourist oriented uses. Multi-family uses are typically along the east and west borders of the nbhd, industrial uses along I-15. McCarran International Airport anchors the nbhd to the south, UNLV is also to the south. Average overall and marketability. The high rise market continues to see favorable upward trends but at lower, more sustainable increases.

PROJECT SITE DESCRIPTION

Zoning Classification: H-1; Clark CountyDescription: Limited Resort and Apt., RHRC - Residential
High Rise planned land useZoning Compliance: ☒ Legal ☐ Legal nonconforming (grandfathered) ☐ Illegal ☐ No zoning
Ground Rent (if applicable) \$ N/A/Comments: Not applicable

Highest & Best Use as improved (or as proposed per plans & specifications): ☒ Present use, or ☐ Other use (explain) _____

Actual Use as of Effective Date: CondominiumUse as appraised in this report: Same
Summary of Highest & Best Use: The highest and best use of the subject is as it exists, as a condominium unit for owner occupancy.

Utilities	Public	Other	Provider/Description	Off-site Improvements	Type	Public	Private	Density	78 Units/Acre
Electricity	☒	☐		Street	Asphalt	☐	☒	Size	Typical for neighborhood
Gas	☒	☐		Curb/Gutter	Concrete	☐	☒	Topography	Level pad
Water	☒	☐		Sidewalk	Concrete	☐	☒	View	CtySky;Glfrw
Sanitary Sewer	☒	☐		Street Lights	Electric	☐	☒		
Storm Sewer	☐	☐		Alley	None	☐	☐		

Other site elements: ☐ Inside Lot ☐ Corner Lot ☐ Cul de Sac ☒ Underground Utilities ☐ Other (describe) _____

FEMA Spec'l Flood Hazard Area ☐ Yes ☒ No FEMA Flood Zone X FEMA Map # 32003C2170F FEMA Map Date 11/16/2011
Site Comments: No apparent adverse easements, encroachment, environmental conditions, illegal or legal nonconforming zoning uses noted; however, inspection was made with out the benefit of a title report or survey. The Regency Towers is situated on a parcel of about 2.81 acres or 122,044 square feet.

PROJECT INFORMATION

Data source(s) for project information Public records, MLS, appraiser files, SalesTraq/High Rise, Home Builders Research, news articles
Project Description ☐ Detached ☐ Row or Townhouse ☐ Garden ☐ Mid-Rise ☒ High-Rise ☐ Other (describe) _____

General Description of Project				Subject Phase		#	If Project Completed	#	If Project Incomplete	#
# of Stories	28	Exterior Walls	Stucco/Conc.	Units	218	Phases	1	Planned Phases		
# of Elevators	6	Roof Surface	Flat/Builtup	Units Completed	218	Units	218	Planned Units		
☒ Existing ☐ Proposed ☐ Und.Cons.		Total # Parking	318	Units For Sale	23	Units for Sale	23	Units for Sale		
Design (Style)	Modern	Ratio (spaces/unit)	Assume adeq.	Units Sold	218	Units Sold	218	Units Sold		
Actual Age (Yrs.)	38	Parking Type(s)	Open/garages	Units Rented	96	Units Rented	96	Units Rented		
Effective Age (Yrs.)	19	Guest Parking	Valet/Self	Owner Occup. Units	122	Owner Occup. Units	122	Owner Occup. Units		

Project Primary Occupancy ☐ Principal Residence ☒ Second Home or Recreational ☐ Tenant
Is the developer/builder in control of the Homeowners' Association (HOA)? ☐ Yes ☒ No
Management Group: ☒ Homeowners' Association ☐ Developer ☒ Management Agent (name of management agent or company): Regency Towers, 702-732-1311; Sea Breeze Management Company, 800-232-7517
Was the project created by the conversion of existing building(s) into a condominium? ☐ Yes ☒ No If Yes, describe the original use and date of conversion. _____

Are CC&Rs applicable? ☐ Yes ☒ No ☐ Unknown Have the documents been reviewed? ☐ Yes ☒ No Comments: Not provided for review, assumed adequate
Project Comments (condition, quality of construction, completion status, etc.): The overall quality of construction is rated as good and is typical for the resort/high rise corridor. The community appears to have been adequately and continually maintained.

Common Elements and Recreational Facilities: Located within Las Vegas Country Club, Guard gated entry, perimeter fencing, landscaped areas, private access roads, golf course, pool, jacuzzi, sauna, two tennis courts, outdoor barbecue grills, valet parking, concierge service, 24/7 security, 24/7 doorman

INDIVIDUAL CONDO UNIT APPRAISAL REPORT

File No.: 19-0257

PROJECT ANALYSIS

Summary of condominium project budget analysis for the current year (if analyzed):
The project budget was not available for review. A complete analysis of expenses, capital expenditures, long range plan is beyond the scope of this assignment and expertise of the appraisers.

Other fees for the use of the project facilities (other than regular HOA charges):
None known

Compared to other competitive projects of similar quality and design, the subject unit charge appears
☐ High ☒ Average ☐ Low (If High or Low, describe)

Are there any special or unusual characteristics of the project (based on the condominium documents, HOA meetings, or other information) known to the appraiser?
☐ Yes ☒ No If Yes, describe and explain the effect on value and marketability.
None known

DESCRIPTION OF THE UNIT IMPROVEMENTS

Unit Charge: \$ 1,125 per month X 12 = \$ 13,500.00 per year. Annual assessment charge per year per SF of GLA = \$ 6.11

Utilities included in the Unit Charge: ☐ None ☐ Heat ☐ Air Conditioning ☐ Electricity ☐ Gas ☒ Water ☒ Sewer ☒ Cable ☒ Other Trash

Source(s) used for physical characteristics of property: ☐ New Inspection ☒ Previous Appraisal Files ☒ MLS ☐ Assessment and Tax Records ☒ Prior Inspection

☐ Property Owner ☐ Other (describe) Data Source for Gross Living Area Clark County Assessor Records

General Description	Exterior Description	Foundation	Basement	Heating
Floor Location 24/corner	Foundation Concrete	☐ N/A	☒ N/A	Type FWA
# of Levels 1	Exterior Walls StucConc.	Slab Concrete	Area Sq. Ft.	Fuel Elec.
Design (Style) 1-Story Condo	Roof Surface flat/builtup	Crawl Space None	% Finished	
☒ Existing ☐ Proposed	Gutters & Dwnspts. None noted	Basement None	Ceiling	
☐ Under Construction	Window Type DualPane/Avg.	Sump Pump ☐ None	Walls	Cooling
Actual Age (Yrs.) 38	Storm/Screens None	Dampness ☐ None ntd	Floor	Central Yes
Effective Age (Yrs.) 19		Settlement None ntd	Outside Entry	Other
		Infestation None ntd		

Interior Description	Appliances	Attic	Amenities	Car Storage
Floors Tile/carpet/average	Refrigerator ☒	☒ N/A	Fireplace(s) # 0	☒ Garage #
Walls Drywall/paint/avg	Range/Oven ☒	Stairs ☐	Woodstove(s) # 0	☐ Covered #
Trim/Finish Wood/average	Disposal ☒	Drop Stair ☐	Patio No	☐ Open #
Bath Floor Tile/average	Dishwasher ☒	Scuttle ☐	Deck None	Total # of cars 1
Bath Wainscot Tile/average	Fan/Hood ☐	Doorway ☐	Porch Entry	☒ Assigned
Doors RaisedPanel/hollow	Microwave ☒	Floor ☐	Fence Community	☐ Owned
	Washer/Dryer ☒	Heated ☐	Pool Community	Space #(s)
		Finished ☐	Balcony Yes	

Finished area above grade contains: 5 Rooms 2 Bedrooms 2.0 Bath(s) 2,208 Square Feet of Gross Living Area Above Grade

Are the heating and cooling for the individual units separately metered? ☒ Yes ☐ No (If No, describe)

Additional features: Features are assumed to include tile and carpeted floor, vertical or mini blinds, tile countertops (kitchen and bathrooms), balcony. The entire complex is walled and gated with mature trees, shrubs, lawn and irrigation system,tennis courts, barbecue/picnic areas, pool-spa, sauna, valet parking, concierge, 24-hour security, and green belts.

Describe the condition of the property (including physical, functional and external obsolescence):
As of the effective date of this appraisal, the subject property is assumed to be in average condition. The effective age is based on the appraiser's exterior inspection of the property from the street and view of photographs. An exterior inspection of the property was performed from the street. An extraordinary assumption is made that the interior is in similar condition as the exterior and that the condition was similar at the effective date of this appraisal. The use of the extraordinary assumption may have affected the assignment results. Interior description has been based on public records and MLS records. Based on MLS (1344580) photos, it does not appear that there were any major repairs, renovations or remodeling.

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): County Records/MLS

1st Prior Subject Sale/Transfer	Analysis of sale/transfer history and/or any current agreement of sale/listing: County Records did not reveal any sale of the subject property in the 3-year period preceding the date of value, December 12, 2012. The subject property has been under variations of Michael T. Elliott since purchased in October 17, 2002 for \$450,000. We are not aware of any sale, offer or listing for the subject property during the 3 year period preceding the effective date of value.
Date: N/A	
Price: N/A	
Source(s): County Records, GLVAR	
2nd Prior Subject Sale/Transfer	
Date:	
Price:	
Source(s):	

INDIVIDUAL CONDO UNIT APPRAISAL REPORT

File No.: 19-0257

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	3111 Bel Air Dr, # 24G Las Vegas, NV 89109	3111 Bel Air Dr Unit 123 Las Vegas, NV 89109				2747 Paradise Rd Unit 2203 Las Vegas, NV 89109				3111 Bel Air Dr Unit 193 Las Vegas, NV 89109			
Project	Regency Towers	Regency towers				Turnberry Place				Regency towers			
Phase	1	1				3				1			
Proximity to Subject		0.03 miles NE				0.92 miles NW				0.02 miles E			
Sale Price	\$ N/A		\$	425,000		\$	355,000		\$	355,000			
Sale Price/GLA	\$ N/A /sq.ft.	\$	192.48 /sq.ft.		\$	161.73 /sq.ft.		\$	160.78 /sq.ft.				
Data Source(s)	Ext. Inspection	GLVARMLS#1134830;DOM 249				GLVARMLS#1288631;DOM 12				GLVARMLS#1292022;DOM 2			
Verification Source(s)	County Rcrds	County Rcrds, Doc.#02090				County Rcrds, Doc.#04737				County Rcrds, Doc.#02448			
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION		+ (-) \$ Adjust.	DESCRIPTION		+ (-) \$ Adjust.	DESCRIPTION		+ (-) \$ Adjust.			
Sales or Financing	N/A	Owner Carry			ArmLth			ArmLth					
Concessions	N/A	Traditional			Cash; \$0			Conv;0		0			
Date of Sale/Time	N/A	01/10/2012 COE			10/29/2012 COE			12/18/2012 COE*					
Rights Appraised	Fee Simple	Fee Simple			Fee Simple			Fee Simple					
Location	Regency Towers	Regency Towers			Turnberry Towers			Regency Towers					
HOA Fees (\$/Month)	1,125	1,084		0	1,200		0	1,125		0			
Common Elements and Recreational Facilities	Pool-spa,Tennis Valet/Concierge	Pool-spa,Tennis Valet/Concierge			Pool-spa,Fitness Valet/Concierge			Pool-spa,Tennis Valet/Concierge					
Floor Location	24/corner	17/corner		+17,500	22/corner		+5,000	25/corner		-2,500			
View	CtySky;Glfw	CtySky;Glfw			Inf. CtySky		+50,000	B;CtySky;Glfw					
Design (Style)	1-Story Condo	Modern			Modern			Modern					
Quality of Construction	Average	Average			Average			Average					
Age	38	38			9		-25,740	38					
Condition	Average	Average			Average			Average					
Above Grade	Total Bdrms Baths	Total	Bdrms	Baths	Total	Bdrms	Baths	Total	Bdrms	Baths			
Room Count	5 2 2.0	5	2	2.5	-2,500	5	2	2.5	-2,500	6	2 2.5 -2,500		
Gross Living Area	2,208 sq.ft.		2,208 sq.ft.			2,195 sq.ft.			2,208 sq.ft.				
Basement & Finished Rooms Below Grade	Osfc	0			0			0					
Functional Utility	Average	Average			Average			Average					
Heating/Cooling	FWA/Central	FWA/Central			FWA/Central			FWA/Central					
Energy Efficient Items	Standard	Standard			Standard			Standard					
Parking	1g	1g			1g			1g					
Porch/Patio/Deck	Balcony	Balcony			Balcony			Balcony					
Upgrades	Standard	Superior		-50,000	Superior		-25,000	Similar					
Contract Date	N/A	12/09/2011			10/10/2012			10/08/2012					
Days on Market	N/A	249			12			2					
Net Adjustment (Total)		☐ + ☒ -	\$	-35,000	☒ + ☐ -	\$	1,760	☐ + ☒ -	\$	-5,000			
Adjusted Sale Price of Comparables		Net 8.2 %			Net 0.5 %			Net 1.4 %					
		Gross 16.5 %	\$	390,000	Gross 30.5 %	\$	356,760	Gross 1.4 %	\$	350,000			
Summary of Sales Comparison Approach Three closed sales have been considered herein; Sales 1 and 3 are within the Regency Towers with the same floor plan, similar orientation and views. Sale 2 is within Turnberry Place, a nearby competing high-rise community with similar amenities. The sales occurred between January 2012 through December 2012; they are corner units on the 17th, 22nd and 25th floors. All are reported as being arms-length transactions with no unusual buyer or seller motivation. Adjustments have been made for basic differences indicated by the market including floor location and superior upgrades. A relatively tight range is established after making adjustments for basic differences indicated by the market at \$350,000 to \$390,000. These are considered to be the most recent, best comparable sales available at this time. We have adjusted \$2,500 per floor for the 11th floors and higher.													
Comparable 1 was on the market for 249 days before selling \$54,000 below list as a traditional sale; the owner carried \$225,000. It had been vacant at the time and under variations of the seller since purchased in December 2009. This unit has been completely remodeled with stone and wood flooring, upgraded kitchen, lighting, bathrooms.													
Comparable 2 was on the market for 12 days before selling \$44,000 below list as an all-cash traditional sale. The property was vacant at the time of sale and under variations of seller since purchased in September 2009. This unit has upgraded flooring and countertops. Though it is Turnberry Place, no adjustment was warranted as the amenities are similar.													
Comparable 3 was on the market for 2 days before selling \$24,000 below list as a traditional sale; Conventional financing was obtained. It was vacant at the time and had been under the sellers name since previously purchased in December 2010. This unit is similar overall with minimal upgrades and original kitchen. *Although the transaction recorded after our effective date of value, the sale commenced beforehand.													
A relatively tight range is established after making adjustments for basic differences at \$350,000 to \$390,000. Considering all 3 comps a market value of \$360,000 is estimated for the subject; this equates to \$163.04/sf which falls within the unadjusted range established by the comparables.													
Indicated Value by Sales Comparison Approach \$ 360,000													

SALES COMPARISON APPROACH

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 GPCONDO - "TOTAL" appraisal software by a la mode, inc. - 1-800-ALAMODE

GP CONDO

4PA807
LUBAW1000003

6/2007

INDIVIDUAL CONDO UNIT APPRAISAL REPORT

File No.: 19-0257

INCOME APPROACH

INCOME APPROACH TO VALUE (if developed)

☒ The Income Approach was not developed for this appraisal.

FEATURE	SUBJECT	COMPARABLE RENTAL # 1				COMPARABLE RENTAL # 2				COMPARABLE RENTAL # 3			
Address 3111 Bel Air Dr, # 24G Las Vegas, NV 89109													
Project Regency Towers Phase 1													
Proximity to Subject													
Current Monthly Rent		\$				\$				\$			
Rent/GLA		\$		/sq.ft.		\$		/sq.ft.		\$		/sq.ft.	
Rent Control		☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
Data Source(s)													
Date of Lease(s)													
Location		Regency Towers											
View		CtySky;Glfvw											
Age		38											
Condition		Average											
Above Grade		Total	Bdrms	Baths	Total	Bdrms	Baths	Total	Bdrms	Baths	Total	Bdrms	Baths
Room Count		5	2	2.0									
Gross Living Area		2,208		sq.ft.			sq.ft.			sq.ft.			
Utilities Included													
Summary of Income Approach (including support for market rent and GRM): Although sometimes leased, the units in this tower are typically purchased for owner occupancy, not for income producing potential; therefore, the income approach was considered but not used herein.													
Opinion of Monthly Market Rent \$ X Gross Rent Multiplier = \$ Indicated Value by Income Approach													

COST

COST APPROACH TO VALUE (if developed)

☒ The Cost Approach was not developed for this appraisal.

Summary of Cost Approach:

RECONCILIATION

Indicated Value by: Sales Comparison Approach \$ 360,000

Cost Approach (if developed) \$

Income Approach (if developed) \$ N/A

Final Reconciliation The sales comparison approach is considered the most reliable indicator of value, as it best reflects the actions of buyers/sellers in the market. Considering all three sales a market value of \$360,000 is estimated for the subject property.

This appraisal is made ☒ "as is", ☐ subject to completion per plans and specifications on the basis of a Hypothetical Condition that the improvements have been completed, ☐ subject to the following repairs or alterations on the basis of a Hypothetical Condition that the repairs or alterations have been completed, ☐ subject to the following required inspection based on the Extraordinary Assumption that the condition or deficiency does not require alteration or repair: The subject property is being appraised with a retrospective date of value as of December 12, 2012. We assume the condition noted from an exterior inspection is similar to the property's retrospective date.

☒ 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: \$ 360,000 , as of: December 12, 2012 , 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 21 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:

☒ Scope of Work

☒ Limiting Cond./Certifications

☒ Narrative Addendum

☒ Photograph Addenda

☐ Sketch Addendum

☐ Map Addenda

☐ Additional Sales

☐ Additional Rentals

☐ Flood Addendum

☐ Hypothetical Conditions

☒ Extraordinary Assumptions

☐ Budget Analysis

☒ Supplemental Addendum

☐

☐

SIGNATURES

Client Contact: Brienne Siriwan

Client Name: Akerman, LLP

E-Mail: brienne.siriwan@akerman.com

Address: 1635 Village Center Circle, Suite 200, Las Vegas, NV 89134

APPRaiser

Victoria M. Church

Appraiser Name: Victoria M. Church

Company: Valbridge Property Advisors

Phone: (702) 242-9369 Fax: (702) 242-6391

E-Mail: vmchurch@valbridge.com

Date of Report (Signature): 10/28/2019

License or Certification #: A.0207695-INTR State: NV

Designation:

Expiration Date of License or Certification: 04/30/2020

Inspection of Subject: ☐ Interior & Exterior ☒ Exterior Only ☐ None

Date of Inspection: October 25, 2019

SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)

Matthew J. Lubawy

Supervisory or Co-Appraiser Name: Matthew J. Lubawy, MAI

Company: Valbridge Property Advisors

Phone: (702) 242-9369 Fax: (702) 242-6391

E-Mail: mlubawy@valbridge.com

Date of Report (Signature): 10/28/2019

License or Certification #: A.0000044-CG State: NV

Designation: MAI

Expiration Date of License or Certification: 04/30/2021

Inspection of Subject: ☐ Interior & Exterior ☐ Exterior Only ☒ None

Date of Inspection:

GP CONDO

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 GPCONDO - "TOTAL" appraisal software by a la mode, inc. - 1-800-ALAMODE

4PA808

LUBAWY1000004

6/2007

Exhibit - Supplemental Addendum

File No. 19-0257

Owner	Michael T. Elliott *				
Property Address	3111 Bel Air Dr Unit 24G				
City	Las Vegas	County	Clark	State	NV Zip Code 89109
Client	Akerman, LLP				

Purpose: The purpose of this appraisal is to form an opinion of the fair market value for the subject property as of the effective date which is a retrospective date of December 12, 2012.

Intended User: Akerman, LLP. No other users are intended by the Appraiser. Appraiser shall consider the intended users when determining the level of detail to be provided in the Appraisal Report.

Intended Use: Litigation. No other use is intended by the Appraiser. The intended use as stated shall be used by the Appraiser in determining the appropriate Scope of Work for the assignment.

Scope of Appraisal:

Upon receiving this assignment from the client we identified the intended users of the report, confirmed that the effective date of the appraisal is to be consistent with a retrospective date provided by the client. Next the real property being appraised was identified and available property-specific data was collected through public records, various data services and or MLS database.

An exterior inspection of the property was completed as described herein; a visual observation of the unobstructed, exposed surfaces of accessible areas from standing height was performed on the exterior areas of the subject property for valuation purposes only. The appraiser is NOT a "home inspector" and can only report conditions based on the visual observation noted above. The appraiser DOES NOT warrant any part/whole of the subject property environmental conditions or other conditions that would require a licensed professional such as; identifying the existence of Lead Based paint, Mold, Soil Slippage, Hazardous Waste, Radon Gas etc. We did not test the subject's mechanical systems; the appraiser is not an expert with regard to mechanical issues or electrical, plumbing, roof, foundation systems, or State, City, County, Building Code compliance etc.

The appraiser's inspection included noting the apparent condition, quality, utility, amenities and architectural style. Measurements and room counts used in this report came from county records. Zoning data was obtained from public records, office files, and or city/county planning offices. The collected data was then used to develop a profile of the subject property and analyze the highest and best use of the subject property.

The appraiser performed a search of the local market area for the most similar closed comparable sales, pending/contingent sales and active listings. The accessible sales were viewed from the street; MLS photos may be used when there is; obstruction, people are outside, when there is no access to the property, or when the MLS photo is considered a more accurate depiction of the properties condition at the time of sale. The sales were confirmed and verified from public records, various data services, MLS and when necessary with an agent, the owner, or the title company. Interior/exterior upgrade adjustments may be made to one or more of the comparables due to information obtained from the appraiser's exterior inspection of the property and/or information obtained from the multiple listing service (MLS). Where available, the appraiser has reviewed interior photographs provided by listing agents on the comparables to obtain a better understanding of these properties. The sales data was then analyzed and a value opinion derived.

In the preparation of this report, we have relied on data from county records, multiple listing service, title companies, etc. We believe this report to be complete and accurate, however, should any error or omission be subsequently discovered, we reserve the right to correct it.

Sales Comparison Analysis:

For the purpose of this appraisal, when conflict between County Records and appraiser inspection were noted, appraiser inspection was used. For the purpose of this appraisal, when conflict between MLS and county records were noted, MLS was used.

Location Map

Owner	Michael T. Elliott *				
Property Address	3111 Bel Air Dr Unit 24G				
City	Las Vegas	County	Clark	State	NV
				Zip Code	89109
Client	Akerman, LLP				

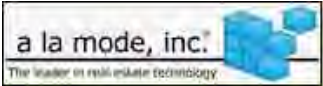


Exhibit - Aerial View

Owner	Michael T. Elliott *				
Property Address	3111 Bel Air Dr Unit 24G				
City	Las Vegas	County	Clark	State	NV Zip Code 89109
Client	Akerman, LLP				

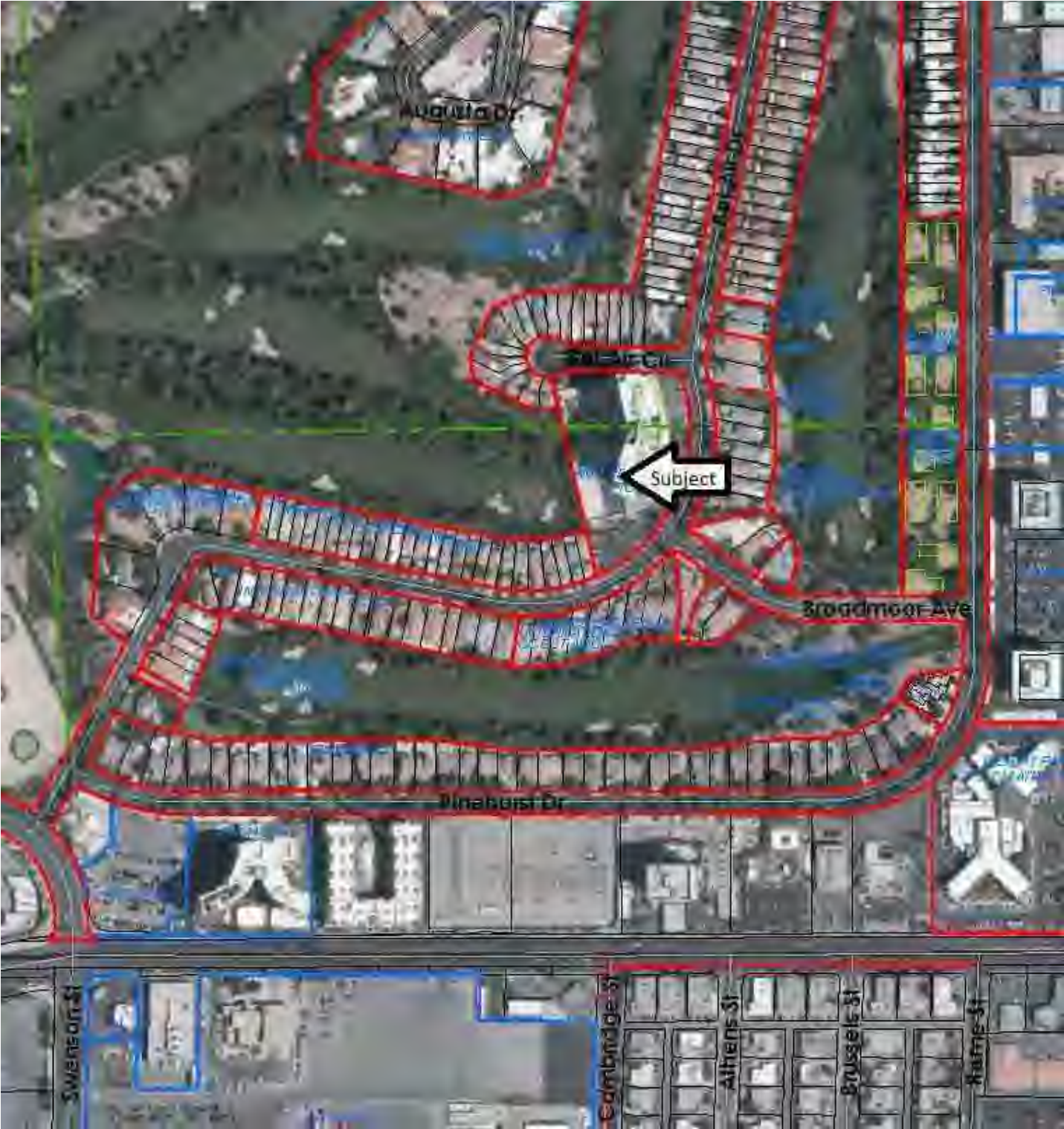


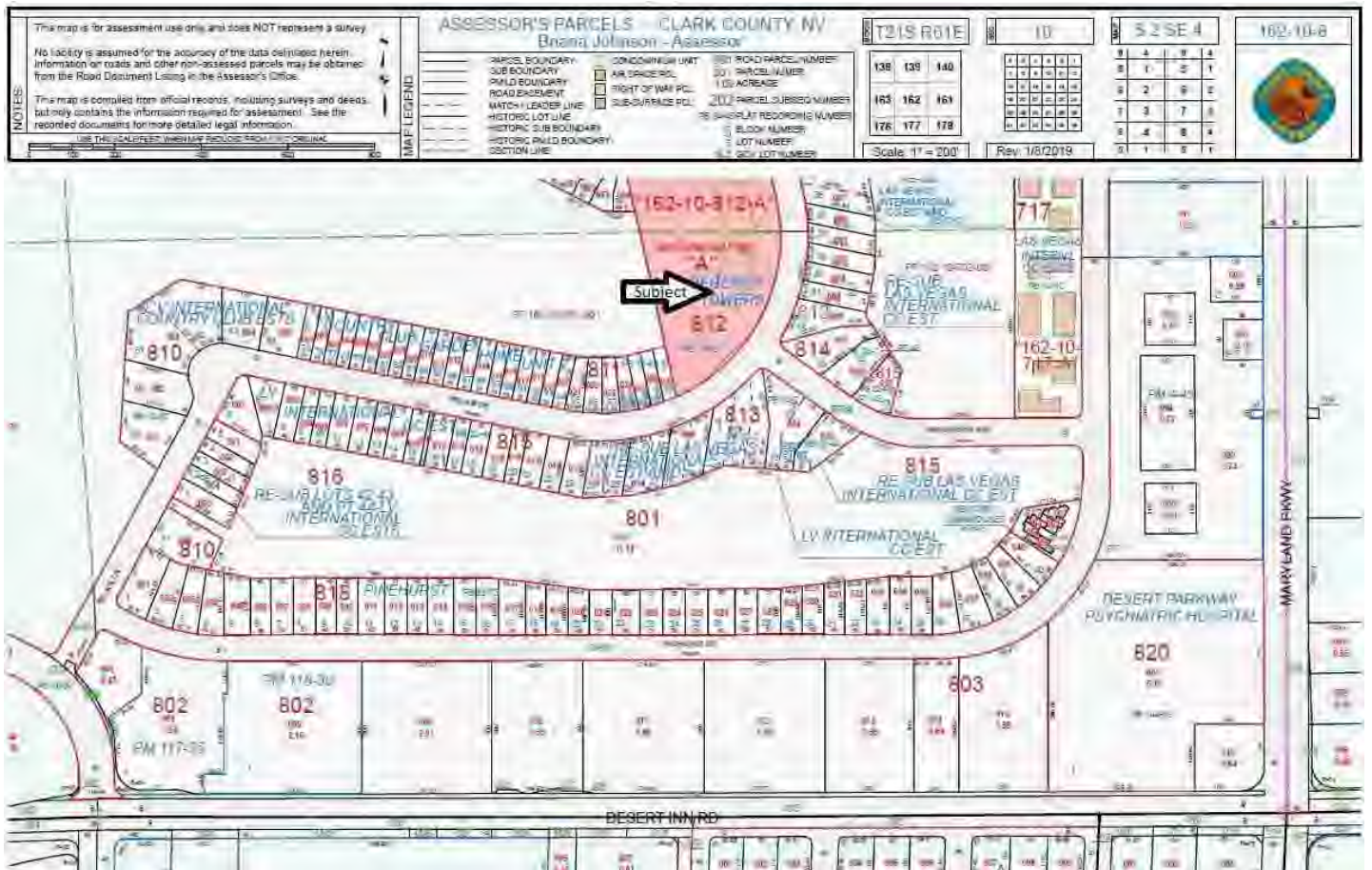
Exhibit - Aerial View - Close Up

Owner	Michael T. Elliott *			
Property Address	3111 Bel Air Dr Unit 24G			
City	Las Vegas	County	Clark	State NV Zip Code 89109
Client	Akerman, LLP			



Exhibit- Plat Map

Owner	Michael T. Elliott *						
Property Address	3111 Bel Air Dr Unit 24G						
City	Las Vegas	County	Clark	State	NV	Zip Code	89109
Client	Akerman, LLP						



Regency Towers Plat Map

Owner	Michael T. Elliott *				
Property Address	3111 Bel Air Dr Unit 24G				
City	Las Vegas	County	Clark	State	NV
Client	Akerman, LLP			Zip Code	89109

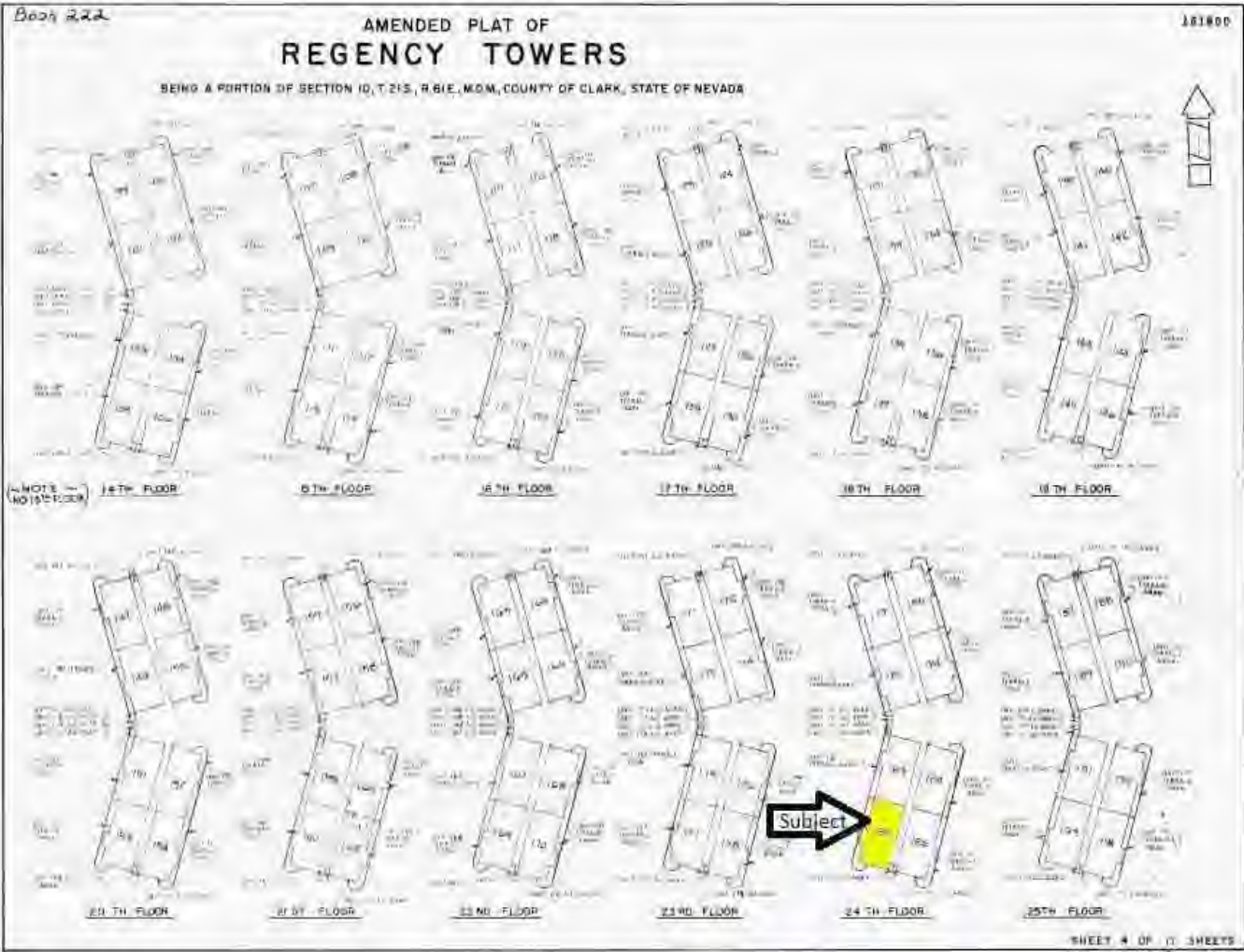


Exhibit - Subject Photos

Owner	Michael T. Elliott *				
Property Address	3111 Bel Air Dr Unit 24G				
City	Las Vegas	County	Clark	State	NV Zip Code 89109
Client	Akerman, LLP				



Front

3111 Bel Air Dr, # 24G	
Sales Price	N/A
Gross Living Area	2,208
Total Rooms	5
Total Bedrooms	2
Total Bathrooms	2.0
Location	Regency Towers
View	CtySky;Glfww
Site	14,375 sf
Quality	Average
Age	38



West side of Tower

Where the subject is located



Subject/Street scene

Looking south along
Bel Air Drive, subject on right

Comparable Sales Location Map

Owner	Michael T. Elliott *				
Property Address	3111 Bel Air Dr Unit 24G				
City	Las Vegas	County	Clark	State	NV Zip Code 89109
Client	Akerman, LLP				



Comparable Photo Page

Owner	Michael T. Elliott *				
Property Address	3111 Bel Air Dr Unit 24G				
City	Las Vegas	County	Clark	State	NV Zip Code 89109
Client	Akerman, LLP				



Comparable 1

3111 Bel Air Dr Unit 123	
Prox. to Subject	0.03 miles NE
Sale Price	425,000
Gross Living Area	2,208
Total Rooms	5
Total Bedrooms	2
Total Bathrooms	2.5
Location	Regency Towers
View	CtySky;Glfw
Site	condo
Quality	Average
Age	38



Comparable 2

2747 Paradise Rd Unit 2203	
Prox. to Subject	0.92 miles NW
Sale Price	355,000
Gross Living Area	2,195
Total Rooms	5
Total Bedrooms	2
Total Bathrooms	2.5
Location	Turnberry Towers
View	Inf. CtySky
Site	condo
Quality	Average
Age	9



Comparable 3

3111 Bel Air Dr Unit 193	
Prox. to Subject	0.02 miles E
Sale Price	355,000
Gross Living Area	2,208
Total Rooms	6
Total Bedrooms	2
Total Bathrooms	2.5
Location	Regency Towers
View	B;CtySky;Glfw
Site	11,761 sf
Quality	Average
Age	38

Assumptions, Limiting Conditions & Scope of Work

File No.: 19-0257

Property Address:	3111 Bel Air Dr Unit 24G	City:	Las Vegas	State:	NV	Zip Code:	89109
Client:	Akerman, LLP	Address:	1635 Village Center Circle, Ste. 200, Las Vegas, NV 89134				
Appraiser:	Victoria M. Church	Address:	3034 S. Durango Drive, Suite 100, Las Vegas, NV 89117				

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.):
An exterior inspection of the property was performed from the street. An extraordinary assumption is made the interior is in similar condition as the exterior and that these conditions were similar on the retrospective date of value. The use of the extraordinary assumption may have affected the assignment results.

The purpose of this appraisal is for a "non lender" appraisal. It should be noted that the appraisers's data and comparables utilized were retrieved as of the inspection date noted within the body of the report. This report is intended for use by the Client that is named on page 1 of this report.

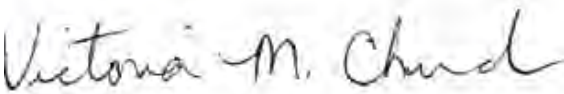
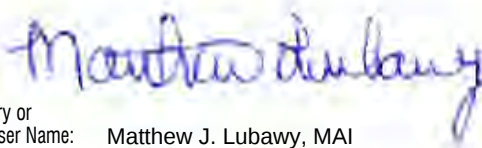
Living areas and room counts used in this report come Clark County records and MLS.

The sales were confirmed and verified from public records, various data services, MLS and when necessary with an agent, the owner or the title company.

In the preparation of this report, we have relied on data from county records, multiple listing service, title companies, etc. We believe this report to be complete and accurate, however, should any error or omission be subsequently discovered, we reserve the right to correct it.

Certifications

File No.: 19-0257

Property Address: 3111 Bel Air Dr Unit 24G		City: Las Vegas		State: NV		Zip Code: 89109	
Client: Akerman, LLP		Address: 1635 Village Center Circle, Ste. 200, Las Vegas, NV 89134					
Appraiser: Victoria M. Church		Address: 3034 S. Durango Drive, Suite 100, Las Vegas, NV 89117					
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. - Victoria Church, Intern A.0207695-INTR, provided significant real property appraisal assistance to the person(s) signing this certification. In the form of factual confirmation for the subject and comparable properties, inspection of subject and comps and report write up. Additional Certifications: 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 & Standards of Professional Appraisal Practice of the Appraisal Institute. -The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives. -As of the date of this report, Matthew Lubawy, MAI has completed the continuing education program of the Appraisal Institute. -The appraisers' state registration/certification has not been revoked, suspended, canceled or restricted. Disclosure of Prior Appraisal and/or Other Services: I certify that, to the best of my knowledge and belief: I have not performed a prior appraisal or other service regarding the subject property within the 3 year period immediately preceding acceptance of this appraisal assignment. DEFINITION OF FAIR MARKET VALUE *: "The price which a purchaser, willing but not obliged to buy, would pay an owner willing but not obliged to sell, taking into consideration all the uses to which the property is adapted and might in reason be applied." Source: Unruh v. Streight, 96 Nev. 684, 686, 615 P.2d 247 (1980) This definition of market value was obtained from the 1980 Nevada Supreme Court decision of Unruh v. Streight. In this case, the court required the determination of market value in order to ascertain the amount of the deficiency judgment as of the foreclosure date. Although components of the fair market value definition were not specifically stated, existing debt, liens, duress and distress were not included in appraising the property. Therefore, our conclusion of fair market value is based on the subject property being free and clear of liens, encumbrances and debt. Furthermore, it is based on sales that were purchased with cash or terms equivalent to cash, without any duress or distress of any parties to the transaction. Since the subject property involves the foreclosure of real estate, this definition was agreed to by the appraiser and the client as being reasonable and appropriate for their intended use.							
Client Contact: Brieanne Siriwan				Client Name: Akerman, LLP			
E-Mail: brieanne.siriwan@akerman.com				Address: 1635 Village Center Circle, Ste. 200, Las Vegas, NV 89134			
APPRAISER  Appraiser Name: Victoria M. Church Company: Valbridge Property Advisors Phone: (702) 242-9369 Fax: (702) 242-6391 E-Mail: vmchurch@valbridge.com Date Report Signed: 10/28/2019 License or Certification #: A.0207695-INTR State: NV Designation: Expiration Date of License or Certification: 04/30/2020 Inspection of Subject: ☐ Interior & Exterior ☒ Exterior Only ☐ None Date of Inspection: October 25, 2019				SUPERVISORY APPRAISER (if required) or CO-APPRAISER (if applicable)  Supervisory or Co-Appraiser Name: Matthew J. Lubawy, MAI Company: Valbridge Property Advisors Phone: (702) 242-9369 Fax: (702) 242-6391 E-Mail: mlubawy@valbridge.com Date Report Signed: 10/28/2019 License or Certification #: A.0000044-CG State: NV Designation: MAI Expiration Date of License or Certification: 04/30/2021 Inspection of Subject: ☐ Interior & Exterior ☐ Exterior Only ☒ None Date of Inspection:			

SIGNATURES

Qualifications of Victoria M. Church
Registered Intern Appraiser
Valbridge Property Advisors | Las Vegas | Reno



Independent Valuations for a Variable World

<u>State Certifications</u>	<u>Appraisal Institute & Related Courses:</u>
State of Nevada License	Basic Appraisal Principals 2018
#A. 0207695-INTR	Basic Appraisal Procedures 2018
	Appraisal Law in Nevada 2018
	National USPAP-15 Hour 2018
<u>Education</u>	
Real Estate Studies	<u>Experience:</u>
College Education,	Registered Intern Appraiser
In Progress	Valbridge Property Advisors (2018-Present)
<u>Contact Details</u>	Appraisal Researcher
702-242-9369 (p)	Valbridge Property Advisors (2017-2019)
702-242-6391 (f)	Accounting Duties - Seasonal
Valbridge Property Advisors	Solar City (2016)
Las Vegas Reno	Jolley Urga Woodbury & Little (2015 – 2016)
3034 S. Durango Dr. #100	Kim Walker, CPA (1/2015 – 4/2015)
Las Vegas, NV 89117	Appraisal Researcher
www.valbridge.com	Valbridge Property Advisors (2014)
vmchurch@valbridge.com	Regional Administrative Manager
	Grubb & Ellis – Landauer Valuation Services (2011 – 2012)
	Office Manager
	Integra Realty Resources – Nevada (2002-2011)

APPRAISER REGISTRATION CARD

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

NOT TRANSFERABLE REAL ESTATE DIVISION NOT TRANSFERABLE

This is to Certify That: VICTORIA M CHURCH Registration Number: A.0207695-INTR

Is duly authorized to act as an APPRAISER INTERN from the issue date to the expiration date at the business address stated here in, unless the registration is sooner revoked, cancelled, withdrawn, or invalidated.

Issue Date: August 15, 2019 Expire Date: April 30, 2020

In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in it by Chapter 645C, Nevada Revised Statutes has caused this Registration to be issued with its Seal printed thereon.

FOR: VALBRIDGE PROPERTY ADVISORS
3034 S DURANGO DR #100
LAS VEGAS, NV 89117

REAL ESTATE DIVISION

SHARATH CHANDRA
Administrator



Qualifications of Matthew Lubawy, MAI, CVA
Senior Managing Director
Valbridge Property Advisors | Las Vegas | Reno



Independent Valuations for a Variable World

State Certifications

Nevada License
A.0000044-CG

Arizona License
#32072

Michigan License
#1201075624

Education

Bachelor of Science
Business Administration
University of Nevada,
Las Vegas

Contact Details

702-242-9369 (p)
702-242-6391 (f)

Valbridge Property Advisors |
Las Vegas | Reno
3034 S. Durango Dr. #100
Las Vegas, NV 89117
www.valbridge.com
mlubawy@valbridge.com

Membership/Affiliations:

Member: Appraisal Institute - MAI Designation #10653
Director - (2008 – 2011)
President of Las Vegas Chapter (1998 - 1999)
1st V.P. of Las Vegas Chapter (1997 – 1998)
2nd V.P. of Las Vegas Chapter (1996 – 1997)
Member: NACVA – CVA Designation (Certified Valuation
Analyst for business valuation)
Board Member: Valbridge Property Advisors -
Vice-Chairman of the Board of Directors
(2011 – Present)
Member: International Right of Way Association
Member: National Association of Realtors
Member: GLVAR
Board Member: Nevada State Development Corporation
Chairman of the Board (2008-Present)

Experience:

Senior Managing Director

ValbridgePropertyAdvisors (2013 to Present)

Principal

Lubawy & Associates (1994-2013)

Independent Fee Appraiser and Real Estate Consultant

Timothy R. Morse and Associates (1992 – 1994)

Staff Appraiser/Assistant Vice President

First Interstate Bank (1988 - 1992)

Independent Fee Appraiser and Real Estate Consultant

The Clark Companies (1987 - 1988)

Appraisal/valuation and consulting assignments include: vacant land; apartment buildings; retail buildings; shopping centers; office buildings; industrial buildings; religious and special purpose properties including schools, churches hotel/casinos air hangars, automobile dealerships, residential subdivisions, and master-planned communities. Other assignments include tax credit valuations, Fannie Mae and Freddie Mac reports, and HUD MAP valuations and market studies, as well as valuation of fractional interests in FLP's, LP's LLC's and/or other business entities.

Appraisal Institute & Related Courses:

Comparative Analysis, Appraisal Institute	April 2019
Appraising Convenience Stores, Appraisal Institute	April 2019
Appraising Automobile Dealerships, Appraisal Institute	April 2019
7-Hour National USPS Update Course-2018/2019	March 2019
Eminent Domain 2016, CLE International	September, 2016
Supervisor Trainee Course for Nevada	January, 2016
USPAP 2016/2017	January, 2016
Small Hotel/Motel Valuation	February 2015
NEBB Institute Machinery & Equipment Certification Training	January 2014
2014-2015 National USPAP Update Course, Appraisal Institute	January 2014
NACVA Business Valuation Certification and Training Center	December 2013
Fundamentals of Separating Real Property, Personal Property, and Intangible Business Assets, Appraisal Institute	March 2012
7-Hour National USPAP Update Course, Appraisal Institute	January 2012
2010-2011 National USPAP Update, Appraisal Institute	January 2010
Appraising Distressed Commercial Real Estate, Appraisal Institute	July 2009
Understanding the Home Valuation Code of Conduct, Appraisal Institute	June 2009
Introduction to Valuation for Financial Reporting, Appraisal Institute	June 2009
Argus Based Discounted Cash Flow Analysis, Appraisal Institute	June 2009
National Uniform Standards of Professional Practice Course 400, Appraisal Institute	April 2009
Online Scope of Work: Expanding Your Range of Services, Appraisal Institute	April 2009
Online Rates and Ratios: Making sense of GIMs, OARs and DCF, Appraisal Institute	April 2009
Forecasting Revenue, Appraisal Institute	October 2008
Law of Easements: Legal Issues & Practical Considerations, Lorman Education	August 2008
Analyzing Operating Expenses, Appraisal Institute	May, 2007
Valuation of Detrimental Conditions in Real Estate, Appraisal Institute	April, 2007
2007 National USPAP Update, Appraisal Institute	March, 2007
Analyzing Commercial Lease Clauses, Appraisal Institute	February, 2007
Analyzing Distressed Real Estate, Appraisal Institute	February, 2007
Uniform Appraisal Standards for Federal Land Acquisitions, Appraisal Institute	October 2005
Online Analyzing Distressed Real Estate, Appraisal Institute	September 2005
Business Practices and Ethics, Course 420, Appraisal Institute	September 2005
USPAP Update - Course 400, Appraisal Institute	February 2005
Litigation Appraising: Specialized Topics and Applications	October 2004
Separating Real & Personal Property from Intangible Business Assets	September 2003
So. NV Public Land Mgt. Act BLM Appraisal Compliance Workshop	May 2003
Income Capitalization	March 2003
Appraising Non-Conforming and Difficult Properties	March 2003
Appraiser Liability	March 2003
2003 National USPAP	February 2003
Valuation of Partial Acquisitions, Course 401 through IRWA	October 2000
Partial Interest Valuation - Divided, Course A7414	April 2000
Highest & Best Use and Market Analysis	March 2000

Subdivision Analysis	January 2000
Writing the Narrative Appraisal Report	November 1999
USPAP 1999 Revisions A7415ES	March 1999
Reporting Sales Comparison Grid Adj. for Residential Properties	March 1999
USPAP 1999 Revisions – A7415ES	March 1998
Litigation Appraisal and Expert Testimony	June 1997
USPAP (Parts A & B)	1996
Ethics - USPAP Statements	March 1995
Comprehensive Appraisal Workshop	July 1994
Current Issues and Misconceptions in Appraisal	December 1993
Standards of Professional Appraisal Practice, Part B	1992
Land Faire Nevada	July 1992
Appraising From Blueprints and Specifications	September 1992
Accrued Depreciation	September 1992
Standards of Professional Appraisal Practice, Part A	1991
Report Writing and Valuation Analysis; Exam 2-2	June 1991
Case Studies; Exam 2-1	June 1991
Capitalization Theory and Techniques, Part B; Exam 1-BB	June 1990
Capitalization Theory and Techniques, Part A; Exam 1-BA	June 1990
Basic Valuation; Exam 1A2	May 1989
Principles of Real Estate Appraisal ; Exam 1A1	May 1989

National Association of Certified Valuers and Analysts (NACVA) Business Valuation Courses:

Working Your Way Through the DLOM Minefield	2017
Valuing Fast-Food Restaurants	2017
Valuation of Family Limited Partnerships	2017
Intangible Asset Valuation: Cost Approach Valuation Methods and Procedures	2017
ESOP Basics	2017
Common Sense and The S Corp Value Question	2017
Buy Sell Agreements	2017
Trust and Estates: S-Corporation Valuation Issues	2017
Trust and Estates: Gift & Estate Case Law Update	2017
The Expert's Draft Report and Pre-Trial Communications with Counsel	2017
Intangible Asset Valuation and Fair Value Accounting	2017
How and When to Implement a Discount for Lack of Control in Your Valuation	2017
Federal and State Case Law Update	2017
Business Valuation, DLOM and Daubert: The Issue of Redundancy	2017
Intangible Asset Valuation Considerations for Entertainment and Sports Businesses	2017
Excel- Building Better Budget Spreadsheets	2017
Excel- Automating Financial Statements	2017
Valuation and How to Address These Issues	2017
Automating Financial Statements	2017
Engagement Risk and Acceptance	2016
Cost of Capital	2016
Income Approach	2016
Guideline Transaction Method	2016
Guideline Company Method	2016
Synthesis of Conclusion	2016
Valuation Software and Databases	2016
Asset Approach	2016
Financial Statement Analysis, Economic, and Industry Overview	2016

Engagement Letters	2016
Information Requests and Site Visits	2016
Report Writing	2016
Discounts and Premiums	2016

APPRAISER CERTIFICATE

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

NOT TRANSFERABLEREAL ESTATE DIVISIONNOT TRANSFERABLE

This is to Certify That : MATTHEW J LUBAWY

Certificate Number: A.0000044-CG

Is duly authorized to act as a CERTIFIED GENERAL APPRAISER from the issue date to the expiration date at the business address stated here in, unless the certificate is sooner revoked, cancelled, withdrawn, or invalidated.

Issue Date: April 18, 2019

Expire Date: April 30, 2021

In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in Chapter 645C of the Nevada Revised Statutes, has caused this Certificate to be issued with its Seal printed thereon. This certificate must be conspicuously displayed in place of business.

FOR: VALBRIDGE PROPERTY ADVISORS
3034 S DURANGO DR #100
LAS VEGAS, NV 89117

REAL ESTATE DIVISION

SHARATH CHANDRA
Administrator



MATTHEW LUBAWY, MAI DEPOSITIONS/TRIAL TESTIMONY

DEPOSITIONS

NEVADA STATE DISTRICT COURT

- **Branch Banking and Trust Company, et al., vs. Joe D. Thomas, et al.,** (Case #A-12-670622-B)
Date: August 9, 2013
Attorneys: Gabriel Blumberg, Gordon Silver- Attorneys for Defendant; Allison Noto, Sylvester & Polednak, Attorneys for Plaintiff
Our File No: 13-0108-000
- **Richard & Bie-Shia K. Chu, et al. vs. Alan Schachtman, et al.,** (Case #A572474)
Date: November 19, 2014
Attorneys: Scott Coston, Burdman & Coston - Attorneys for Plaintiff; Jeff Garofalo, Lee, Hernandez, Landrum & Garofalo, Attorneys for Defendant
Our File No: 14-0195-001
- **SFR Investment Pool 1, LLC. vs. Nationstar Mortgage, LLC., Sandra Salas, Does 1 through X and ROE Corporations I through X** (Case #A-13-684596-C)
Date: July 1, 2015
Attorneys: Karen L. Hanks, Howard Kim & Associates - Attorneys for Plaintiff; Melanie D. Morgan, Akerman, LLP - Attorneys for Defendant
Our File No: 15-1013
- **Ignacio Gutierrez vs. SFR Investments Pool 1, LLC; Nevada Association Services, Inc., Horizon Heights Homeowners Association; KB Home Mortgage Company, , DOE Individuals I through X, ROE Corporations and Organization I through X.**

SFR Investments Pool 1, LLC. vs. Ignacio Gutierrez; Nationstar Mortgage, LLC, Countrywide Home Loans, Inc., Does I-X; and Roes 1-10, inclusive (Case #A-13-684715-C)
Date: August 5, 2015
Attorneys: Karen L. Hanks, Howard Kim & Associates - Attorneys for Plaintiff; Akerman, LLP, Attorneys for Defendant
Our File No: 15-1021

MATTHEW LUBAWY, MAI
DEPOSITIONS (continued)

Hodgepodge, LLC. vs. Blood Family Trust U/A/D 10/25/90, by and through its Trustees, John R. Blood and Paula Blood, Does I-X; and ROE Entities I-X, inclusive
(Case #A-15-719153-B)

Date: November 10, 2015

Attorneys: Erika Pike Turner with Garman, Turner, Gordon – Attorneys for Plaintiff;
Jeff Sylvester with Sylvester & Polednak, LTD, Attorneys for Defendant

Our File No: 15-0131-001 & 002

Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank. vs. Nevada Title Company (Case #2:14-cv-01567-GMN-GWF)

Date: December 21, 2015

Attorneys: Emilia P.E. Morris, Mortgage Recovery Law Group LLP. – Attorneys for Plaintiff;

Scott Burris with Wilson Elser Moskowitz Edelman & Dicker, LLP, Attorneys for Defendant

Our File No: 15-1070

Carrington Mortgage Services, LLC vs Saticoy Bay LLC Series 6709 Brick House; Cactus Springs at Fairfax Village Homeowners Association; Hampton & Hampton Collections, LLC (Case #2:15-cv-01852 APG-PAL)

Date: June 3, 2016

Attorneys: Maximiliano D. Couvillier, III, Black & Lobello – Attorneys for Plaintiff;

Robert S. Larsen and David T. Gluth, Gordon & Rees LLP - Attorneys for Defendant

Our File No: 16-0057

U.S. DISTRICT COURT

- **George F. Tibsherany, Inc. vs. The Midby Companies, LLC** (Case #CV-S-05-0613-LDG-GWF)

Date: December 11, 2006

Attorneys: Nicholas M. Wiczorek (Morris, Polich, and Purdy, LLPO),
William L. Coulthard (Harrison, Kemp & Jones), John Wendland (Weil & Drage, APC), Scott R. Cook (Gordon & Rees), Aviva Gordon (Ellis & Gordon)

Judge: Lloyd D. George

Our File No: 06-301

FEDERAL BANKRUPTCY COURT

- **Whitton Corporation** (Case #BK-S-10-32680-BAM)
Date: April 13, 2011
Attorneys: Rodney M. Jean and Mohamed A. Iqbal, Jr., (Lionel Sawyer Collins)
- **Marion Manor, LLC** (Case No. BK-S-11-28020-BAM)
Date: February 24, 2012
Attorneys: Chris Kaup and Lars Evensen with Holland & Hart; David J. Winterton & Associates, Ltd.
- **Desert Inn Management Company, LTD.** (Case No. BK-S-12-16719-LBR)
Date: January 29, 2013
Attorneys: Eric T. Gjerdingen, Gordon Silver & Jeffrey Willis, Snell & Wilmer

TRIAL TESTIMONY

NEVADA STATE DISTRICT COURT

- **Bank of Nevada vs. Monterey Industrial, LLC; and Maria Guadalupe De Tostado,** (Case #A-10-623435-C)
Date: March 15, 2011
Attorney: Michael D. Mazur, ESQ
Judge: Jessie Walsh
- **Alliance Homes LLC (Bank of NV) vs. N. Las Vegas II, LLC; Frank T. Ferraro, Jr.; Christopher Paskvan; Tom Fehrman,** (Case #A-10-610698-C)
Date: April 15, 2011
Attorneys: H. Stanley Johnson, CJD Law Group LLC; James B. Ball, Poli and Ball, PLC
Judge: Nancy L. Allf
- **Bank of Nevada vs. Pebble Pines, LLC and Quiet Moon, LLC,** (Case #A-11-637410-C)
Date: June 3, 2011
Attorney: Stephanie Hardie Allen - Kaempfer Crowell Penschaw Gronauer & Fiorentino
Judge: Jerry A. Wiese
Our File No: 10-468

- **NV Energy v. Copperfield Investment & Development Co.**
(Case # A-09-604760-C) testified on behalf of Plaintiff
Date: October 27, 2011
Attorneys: Plaintiff attorney: Kirby Gruchow (Leach, Johnson, Song & Gruchow)
Defendant attorney: John M. Netzorg
Judge: Susan Johnson
- **Bank of Nevada v. Classic Productions, LLC**
(Case # A-10-626894-C) testified on behalf of Plaintiff
Date: August 27, 2012
Attorneys: Plaintiff attorney: Michael D. Mazur
Defendant attorney: Lucas M. Gjovig
Judge: Jerry A. Wiese

- **Taylor Emanuel v. Richard Jones, et al.**
 (Case # A-10-611339-B) testified on behalf Defendant/Counter Claimant –
 Bank of Las Vegas
 Date: August 28, 2012
 Attorneys: Defendant/Counter Claimant attorney: Nicole Lovelock
 (Holland & Hart, LLP)
 Plaintiff attorney: David J. Winterton
 Judge: Elizabeth Gonzalez
- **November 2005 Land Investors, LLC, et al. vs. Nevada Power Co.**
 (Case # A-10-611150-C – testified on behalf of Defendant – Nevada Power Company
 Date: June 28 & July 1, 2013
 Attorneys: Defendant: William E. Peterson & Janine C. Prupas, Snell & Wilmer (Snell & Wilmer, LLP)
 Plaintiff attorney: J. Randall Jones & Eric M. Pepperman (Kemp, Jones & Coulthard, LLP) & Mark E. Ferrario (Greenberg Traurig)
 Judge: Gloria Sturman
- **Branch Banking and Trust Company, et al., vs. Joe D. Thomas, et al.,** (Case #A-12-670622-B)
 Date: September 9, 2013
 Attorneys: Gabriel Blumberg, Gordon Silver– Attorneys for Defendant; Allison Noto, Sylvester & Polednak, Attorneys for Plaintiff
 Our File No: 13-0108-000
 Judge: Elizabeth Gonzalez
- **Branch Banking and Trust Company, et al., vs. Joe D. Thomas, et al.,** (Case #A-12-670622-B)
 Date: September 9, 2013
 Attorneys: Gabriel Blumberg, Gordon Silver– Attorneys for Defendant; Allison Noto, Sylvester & Polednak, Attorneys for Plaintiff
 Our File No: 13-0108-000
 Judge: Elizabeth Gonzalez
- **Nevada State Bank vs. David Fandel,** (Case #A-14-697643-B)
 Date: August 24, 2015
 Attorneys: Erika Pike Turner, Garman Turner Gordon, LLP– Attorney for Plaintiff, John Gutke, Attorney for Defendants;
 Our File No: 134-0254-000 and 13-0255-000
 Judge: Mark Denton

- **2010-1 CRE Venture LLC vs. OHDB, LLC., Lawrence Doyle, Joseph Lamarca, Stan Wasserkrug, John Hessling, Keith Lyon and Bonnie Chu** (Case #A-13-680017-B)
Date: November 30, 2015
Attorneys: Alina Shell, McLetchie Shell, LLC- Attorney for Defendant, Leslie S. Godfrey, Greenberg Traurig, LLP, Attorney for Plaintiff;
Our File No: 15-0004-001
Judge: Susan W. Scann

U.S. DISTRICT COURT

- **FDIC as receiver for Community Bank of Nevada vs. Glen Smith & Glen Development Company LLC** (Case #A575592)
Date: January 10, 2011
Attorneys: Spencer H. Gunnerson, Kemp, Jones & Coulthard; Aaron Shipley, McDonald Carano Wilson
Judge: Elizabeth Gonzales
Our File No: 09-251

FEDERAL BANKRUPTCY COURT

- **Francis K. Poirier vs. Sean R. Harron and Elise M. Harron** (Bankruptcy Case #09-22463-mkn)
Date: November 9, 2010
Attorneys: Michael Stein and Erica J. Stutman of Snell & Wilmer
Chief Judge: Mike K. Nakagawa
Our File No: 1007-001C (Residential)
- **Francis K. Poirier vs. Sean R. Harron and Elise M. Harron** (Bankruptcy Case #09-22463-mkn)
Date: January 13, 2011
Attorneys: Michael Stein and Erica J. Stutman of Snell & Wilmer
Chief Judge: Mike K. Nakagawa
Our File No: 1007-001C (Residential)
- **Whitton Corporation** (Case #BK-S-10-32680-BAM)
Date: June 3, 2011
Attorneys: Rodney M. Jean and Mohamed A. Iqbal, Jr., (Lionel Sawyer Collins); David Snyder and Brett Axelrod (Fox Rothschild)
Judge: Bruce A. Markell

- **Marion Manor, LLC** (Bankruptcy Case No. BK-S-11-28020-BAM)
Date: February 28-29, 2011 and March 9, 2011
Attorneys: Tenille Pereira, (David J. Winterton & Associates, Ltd.) Debtor's
Attorneys; Lars K. Evensen, (Holland & Hart, LLP) Creditor's Attorney
Judge: Bruce A. Markell
Our File No: 11-272

Fee Schedule

Expert Witness Testimony	\$400/hr.
Deposition and Court Testimony	\$400/hr.
Supplemental Work, Research, Trial Preparation	\$400/hr.

Three-hour minimum for deposition and testimony.

If deposition or Court Testimony is cancelled within 24 hours of scheduled appearance, client will be billed for 50% of the three-hour minimum, in addition to any preparation time.

EXHIBIT N

20031016
01640

**STATE OF NEVADA
DECLARATION OF VALUE**

JK

1. Assessor Parcel Number(s) 162-10-812-185

38

2. Type of Property:

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

FOR RECORDERS OPTIONAL USE ONLY

Document Instrument No.:

Book:

Page:

Date of Recording:

Notes:

3. Total Value/Sales Price of Property:

\$0.00

Deed in Lieu of Foreclosure Only (value of property)

\$

Transfer Tax Value per NRS 375.010, Section 2:

\$0.00

Real Property Transfer Tax Due:

\$0.00

4. If Exemption Claimed

a. Transfer Tax Exemption, per NRS 375.090, Section 5

b. Explain Reason for Exemption: Release spousal interest

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 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: Regan Dawn Elliott

Capacity: Grantee

Capacity: Grantor

SELLER (GRANTOR) INFORMATION

BUYER (GRANTEE) INFORMATION

(Required)

(Required)

Print Name: Regan Dawn Elliott

Print Name: Michael T. Elliott

Address: 3110 Bel Air Dr

Address: 3111 Bel Air Dr

City/State/Zip: Las Vegas NV 89109

City/State/Zip: Las Vegas, NV 89109

COMPANY REQUESTING RECORDING

Co. Name: Ticor Title of Nevada, Inc.
777 North Rainbow Blvd. #150,
Las Vegas, NV 89107

Esc #: 3510674-YT

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED)

1640

DVI

4PA835

RECORDING REQUESTED BY:
United Title Company - Orange County

AND WHEN RECORDED MAIL TO:

Michael T. Elliott
P.O. Box 24
Rancho Santa Fe, CA 92087

38
Tax statements
TO:

Title Order No. 13828
Escrow No. 53005499-LW

03510674 YT

20031016
01640

CLARK COUNTY, NEVADA
FRANCES DEANE, RECORDER

RECORDED AT THE REQUEST OF:

TICOR TITLE OF NEVADA INC

10-16-2003 10:19 CAB

OFFICIAL RECORDS

BOOK/INSTR:20031016-01640

PAGE COUNT: 2

FEE: 15.00
RPTT: EX#005

Spac

A.P.N. 162-10-812-185

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

City Transfer Tax is \$.00
County Transfer Tax is \$.00

- (X) Computed on the full consideration or value of property conveyed
OR
() Computed on the full consideration or value less liens or encumbrances remaining at time of sale
(X) Unincorporated Area, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Regan Dawn Elliott, a married woman

hereby GRANT(S) to Michael T. Elliott, A Married Man as his sole and separate property

the real property in the Unincorporated Area, County of Clark, State of California, described as:
Legal Description as per Exhibit "A" Attached Hereto and Made a part Hereof:

Dated: October 9, 2003

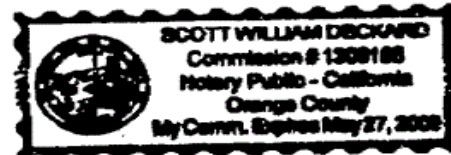
STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss

Regan Dawn Elliott
Regan Dawn Elliott

On Oct 9, 2003 before me

SCOTT William DECKARD

Personally appeared REGAN DAWN ELLIOTT



personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Scott William Deckard

MAIL TAX STATEMENTS AS DIRECTED ABOVE

4PA836

EXHIBIT A

PARCEL 1:

UNIT ONE HUNDRED EIGHTY-FIVE (185) AS AMENDED PLAT OF REGENCY TOWERS, AS THE SAME IS ESTABLISHED AND IDENTIFIED IN THE PLAN OF CONDOMINIUM FILES PURSUANT TO THE PROVISIONS OF NRS 117.020 ON APRIL 12, 1972 IN BOOK 14 OF PLATS, PAGE 37, AS CLARIFIED BY AFFIDAVITS RECORDED SEPTEMBER 5, 1972, DOCUMENT NO. 285994, AND AS AMENDED ON AUGUST 10, 1973 IN BOOK 16 OF PLATS, PAGE 27, IN THE OFFICIAL RECORDS OF CLARK COUNTY, NEVADA ("PLAN"), AND AMENDED HERETO.

PARCEL 2:

AN UNDIVIDED .549% INTEREST IN THE COMMON AREAS INCLUDED IN THE PLAN.

PARCEL 3:

AN UNDIVIDED .549% INTEREST IN THE ESTATE FOR YEARS CREATED BY THAT CERTAIN LEASE DATED JANUARY 1, 1971 BETWEEN CHAININ NEVADA PROPERTIES, INC., AS LANDLORD AND REGENCY HOLDING CORP. AS TENANT, RECORDED ON JANUARY 7, 1971 AS INSTRUMENT NO. 72485, BOOK NO. 91, IN OFFICIAL RECORDS OF CLARK COUNTY NEVADA.

EXHIBIT O

20071231-0000735

I the undersigned hereby affirm that this document submitted for recording does not contain a Social Security Number.

Linda Blankenship
Signature LINDA BLANKENSHIP

FUNDER
Title

12-17-2007
Date

Assessor Parcel No(s): 162-10-812-003

Fee: \$24.00

M/C Fee: \$0.00

12/31/2007

09:52:24

T20070224283

Requestor:

BANK OF AMERICA NA

Debbie Conway

JYB

Clark County Recorder Pgs: 11

WHEN RECORDED MAIL TO:

Bank of America Consumer Collateral Tracking, FL9-700-04-11, 9000 Southside Blvd, Bldg 700, Jacksonville, FL 32256

SEND TAX NOTICES TO:

MICHAEL T ELLIOTT, 2918 5TH AVE STE 210, SAN DIEGO, CA 92103-5910

FOR RECORDER'S USE ONLY

DEED OF TRUST

THIS DEED OF TRUST is dated December 17, 2007, among MICHAEL T ELLIOTT, A MARRIED PERSON ("Grantor"); Bank of America, N.A., whose address is c/o Nevada Main Office, 300 S. 4th Street, 2nd Floor Executive Office, Las Vegas, NV 85101 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and PRLAP, INC., whose address is 10850 WHITE ROCK ROAD SUITE 201, RANCHO CORDOVA, CA 95670-0000 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Grantor irrevocably grants, bargains, sells and conveys to Trustee with power of sale for the benefit of Lender as Beneficiary all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating

**DEED OF TRUST
(Continued)**

Page 2

to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in CLARK County, State of Nevada:

See Exhibit A, which is attached to this Deed of Trust and made a part of this Deed of Trust as if fully set forth herein.

The Real Property or its address is commonly known as 3111 BEL AIR DR #216, LAS VEGAS, NV 89109-0000.

Grantor presently, absolutely, and irrevocably assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS INCLUDING FUTURE ADVANCES AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Grantor's obligations under the Note, this Deed of Trust, and the Related Documents.

STATUTORY COVENANTS. The following Statutory Covenants are hereby adopted and made a part of this Deed of Trust: Covenants Nos. 1, 3, 4, 5, 6, 7, 8 and 9 of N.R.S. 107.030. For Covenant 4, upon default, including failure to pay upon final maturity, the interest rate on the Note shall be increased to 18.000% per annum. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law. The percent of counsel fees under Covenant No. 7 shall be ten percent(10%). Except for Covenants Nos. 6, 7, and 8, to the extent any terms of this Deed of Trust are inconsistent with the Statutory Covenants the terms of this Deed of Trust shall control. Covenants 6, 7, and 8 shall control over the express terms of any inconsistent terms of this Deed of Trust.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in good condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Hazardous Substances. Grantor represents and warrants that the Property never has been, and never will be so long as this Deed of Trust remains a lien on the Property, used for the generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance in violation of any Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Grantor hereby (1) releases and waives any future claims against Lender for

**DEED OF TRUST
(Continued)**

Page 3

indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims and losses resulting from a breach of this paragraph of the Deed of Trust. This obligation to indemnify and defend shall survive the payment of the indebtedness and the satisfaction of this Deed of Trust.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property or any mobile home or manufactured home located on the property whether or not it is legally a part of the real property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Nevada law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust:

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender, together with such other hazard and liability insurance as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard

**DEED OF TRUST
(Continued)**

Page 4

area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

LENDER'S EXPENDITURES. If Grantor fails (A) to keep the Property free of all taxes, liens, security interests, encumbrances, and other claims, (B) to provide any required insurance on the Property, or (C) to make repairs to the Property then Lender may do so. If any action or proceeding is commenced that would materially affect Lender's interests in the Property, then Lender on Grantor's behalf may, but is not required to, take any action that Lender believes to be appropriate to protect Lender's interests. All expenses incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Grantor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons.

EVENTS OF DEFAULT. At Lender's option, Grantor will be in default under this Deed of Trust if any of the following happen:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Break Other Promises. Grantor breaks any promise made to Lender or fails to perform promptly at the time and strictly in the manner provided in this Deed of Trust or in any agreement related to this Deed of Trust.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

Default on Other Payments. Failure of Grantor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Death or Insolvency. The death of Grantor, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

**DEED OF TRUST
(Continued)**

Page 5

Events Affecting Guarantor. Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the Indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Insecurity. Lender in good faith believes itself insecure.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of any Event of Default under any indebtedness, or should Grantor fail to comply with any of Grantor's obligations under this Deed of Trust, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. All of Lender's rights and remedies will be cumulative and may be exercised alone or together. An election by Lender to choose any one remedy will not bar Lender from using any other remedy. If Lender decides to spend money or to perform any of Grantor's obligations under this Deed of Trust, after Grantor's failure to do so, that decision by Lender will not affect Lender's right to declare Grantor in default and to exercise Lender's remedies.

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property. The power of sale under this Deed of Trust shall not be exhausted by any one or more sales (or attempts to sell) as to all or any portion of the Real Property remaining unsold, but shall continue unimpaired until all of the Real Property has been sold by exercise of the power of sale and all Indebtedness has been paid in full.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction).

**DEED OF TRUST
(Continued)**

Page 6

appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law. Fees and expenses shall include attorneys' fees that Lender, Trustee, or both incur, if either or both are made parties to any action to enjoin foreclosure or to any legal proceeding that Grantor institutes. The fees and expenses are secured by this Deed of Trust and are recoverable from the Property.

NONTITLED SPOUSES AND NON-BORROWER GRANTORS. Any Grantor or Trustor who signs this Deed of Trust, Mortgage or Modification ("Security Instrument") but does not execute the Note or Credit Agreement ("Non-borrower Grantor or Trustor"): (a) is signing only to grant, bargain, sell and convey such Non-borrower Grantor's or Trustor's interest in the Property under the terms of this Security Instrument; (b) is not by signing becoming personally obligated to pay the Note or Credit Agreement; and (c) agrees that without such Non-borrower Grantor's or Trustor's consent, Lender and any other Grantor or Trustor may agree to renew, extend, modify, forbear or make any accommodations with regard to the terms of all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the obligation evidenced by the Note or the Credit Agreement ("Related Document").

Any spouse of a Grantor or Trustor who is not in title to the Property and who signs this Security Instrument: (a) is signing only to grant, bargain, sell and convey any marital and homestead rights of such spouse in the Property; (b) is not by signing becoming personally obligated to pay the Note or Credit Agreement; and (c) agrees that without such spouse's consent, Lender and any other Grantor or Trustor may agree to renew, extend, modify, forbear or make any accommodations with regard to the terms of any Related Document.

Neither of the two foregoing sentences limit the liability of any Non-borrower Grantor or Trustor or signing spouse of a Grantor or Trustor, as applicable, under any guaranty agreement or other agreement by such person, whereby such person becomes liable for the indebtedness in whole or in part; both such sentences apply notwithstanding any language to the contrary in this Security Instrument or any of the Related Documents and apply only to the extent permitted by applicable law.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Governing Law. This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Nevada without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Nevada.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waive Jury. All parties to this Deed of Trust hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and

**DEED OF TRUST
(Continued)**

Page 7

benefits of the homestead exemption laws of the State of Nevada as to all indebtedness secured by this Deed of Trust.

DEFINITIONS. The following words shall have the following meanings when used in this Deed of Trust:

Beneficiary. The word "Beneficiary" means Bank of America, N.A., and its successors and assigns.

Borrower. The word "Borrower" means MICHAEL T ELLIOTT and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Grantor, Lender, and Trustee.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Grantor. The word "Grantor" means MICHAEL T ELLIOTT.

Guaranty. The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Trustee or Lender to enforce Grantor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

Lender. The word "Lender" means Bank of America, N.A., its successors and assigns. The words "successors or assigns" mean any person or company that acquires any interest in the Note.

Note. The word "Note" means the promissory note dated December 17, 2007, in the original principal amount of \$149,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. The maturity date of this Deed of Trust is December 31,

**DEED OF TRUST
(Continued)**

Page 8

2032.

Personal Property. The words "Personal Property" mean all equipment, fixtures, mobile homes, manufactured homes or modular homes which have not been legally acceded to the real property in accordance with Nevada law, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

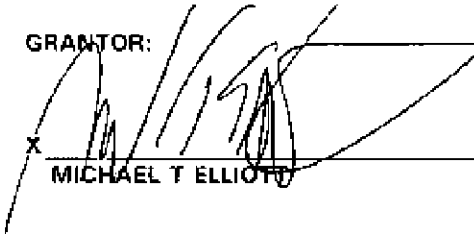
Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means PRLAP, INC., whose address is 10850 WHITE ROCK ROAD SUITE 201, RANCHO CORDOVA, CA 95670-0000 and any substitute or successor trustees.

GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

X 
MICHAEL T ELLIOTT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

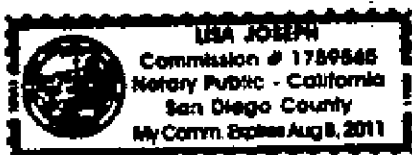
State of California

County of San Diego } ss.

On 12/17/07 before me, USA Joseph, Notary Public
Date Name and Title of Officer (e.g., "June Doe, Notary Public")
 personally appeared Michael T. Elliott
Name(s) of Signer(s)

☐ personally known to me
☒ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

USA Joseph
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Deed of Trust

Document Date: 12/17/07 Number of Pages: 9

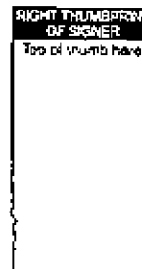
Signer(s) Other Than Named Above: na

Capacity(ies) Claimed by Signer

Signer's Name: Michael T. Elliott

- ☒ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____



DEED OF TRUST
(Continued)

Page 9

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____)
) SS
COUNTY OF _____)

This instrument was acknowledged before me on _____ by MICHAEL T ELLIOTT.

(Signature of notarial officer)

Notary Public in and for State of _____

(Seal, if any)

REQUEST FOR FULL RECONVEYANCE

(To be used only when obligations have been paid in full)

To: _____, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. All sums secured by this Deed of Trust have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Deed of Trust or pursuant to any applicable statute, to cancel the Note secured by this Deed of Trust (which is delivered to you together with this Deed of Trust), and to reconvey, without warranty, to the parties designated by the terms of this Deed of Trust, the estate now held by you under this Deed of Trust. Please mail the reconveyance and Related Documents to:

Date: _____

Beneficiary: _____

By: _____

Its: _____

14418 PRO Lending Ver. 9 2002 008 Clear Notary Finance Software Inc. 1997-2007 All Rights Reserved NY E 071 C170R1G05 PC 14 20130915 14 14081

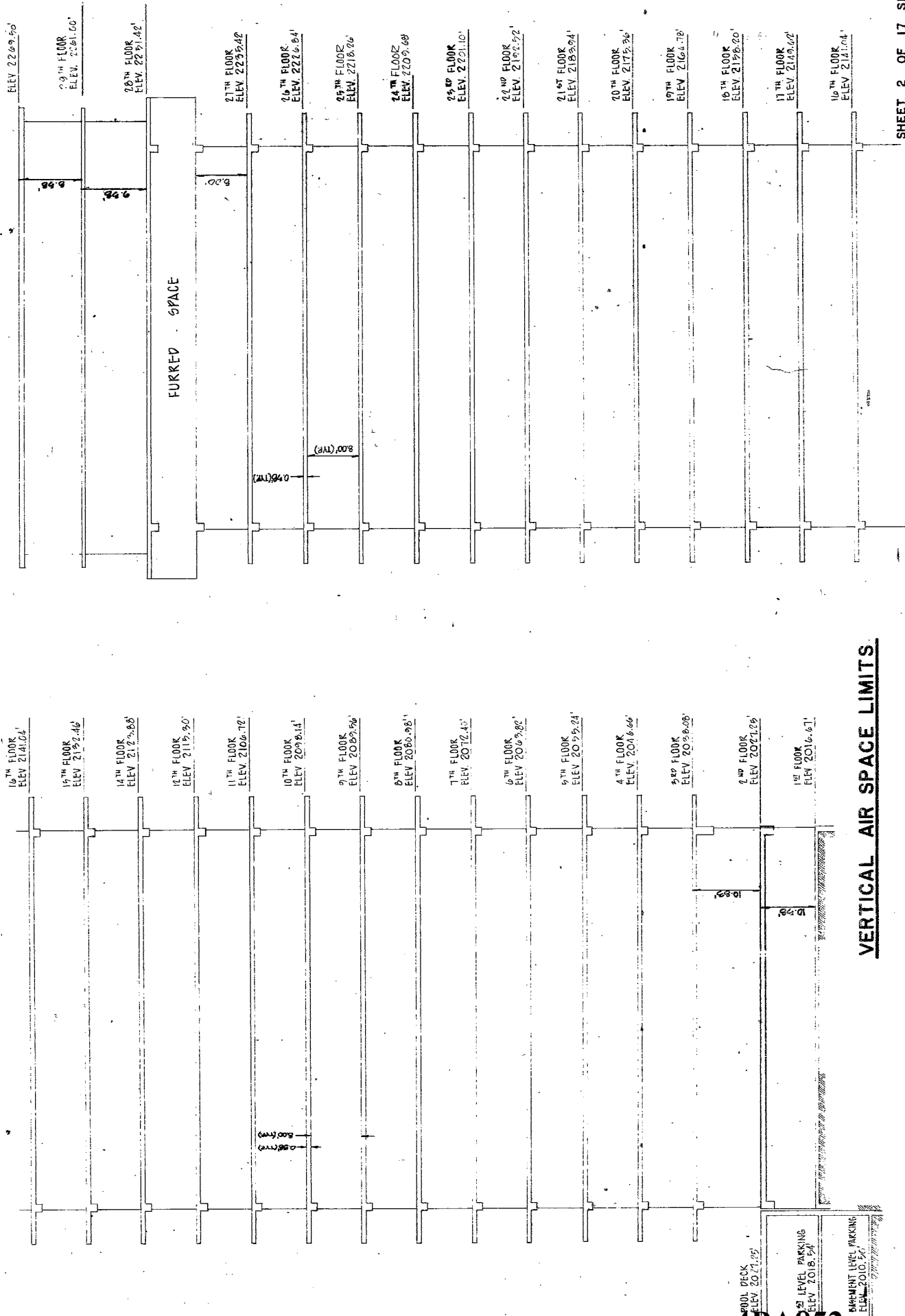
EXHIBIT "A"

SITUATED IN THE COUNTY OF CLARK AND STATE OF NEVADA: PARCEL 1: UNIT 3 OF AMENDED PLAT OF REGENCY TOWERS AS THE SAME IS ESTABLISHED AND IDENTIFIED IN THE PLAN OF CONDOMINIUMS FILED PURSUANT TO THE PROVISIONS OF NRS 117.020 ON APRIL 12, 1972 IN BOOK 14 OF PLATS, PAGE 3 AND ON AUGUST 10, 1973 IN BOOK 16 OF PLATS, PAGE 27, IN THE OFFICIAL RECORDS OF CLARK COUNTY, NEVADA ("PLAN"). PARCEL 2: AN UNDIVIDED .153% INTEREST IN THE COMMON AREAS INCLUDED IN THE PLAN, BEING ALL OF THAT CERTAIN PROPERTY CONVEYED TO MICHAEL T. ELLIOTT, A MARRIED MAN FROM DONALD G. STELZNER BY DEED DATED 01/18/03 AND RECORDED 01/31/03 IN INSTRUMENT NO. 2003013104429, PAGE IN THE LAND RECORDS OF CLARK COUNTY, NEVADA, BEING ALL OF THAT CERTAIN PROPERTY CONVEYED TO MICHAEL ELLIOTT, A MARRIED MAN FROM REGAN ELLIOTT, A MARRIED WOMAN BY DEED DATED 01/30/03 AND RECORDED 01/31/03 IN INSTRUMENT NO. 2003013104430, PAGE IN THE LAND RECORDS OF CLARK COUNTY, NEVADA. PERMANENT PARCEL NUMBER: 162-10-812-003 FIRST AMERICAN ORDER NO: 13637412

EXHIBIT P

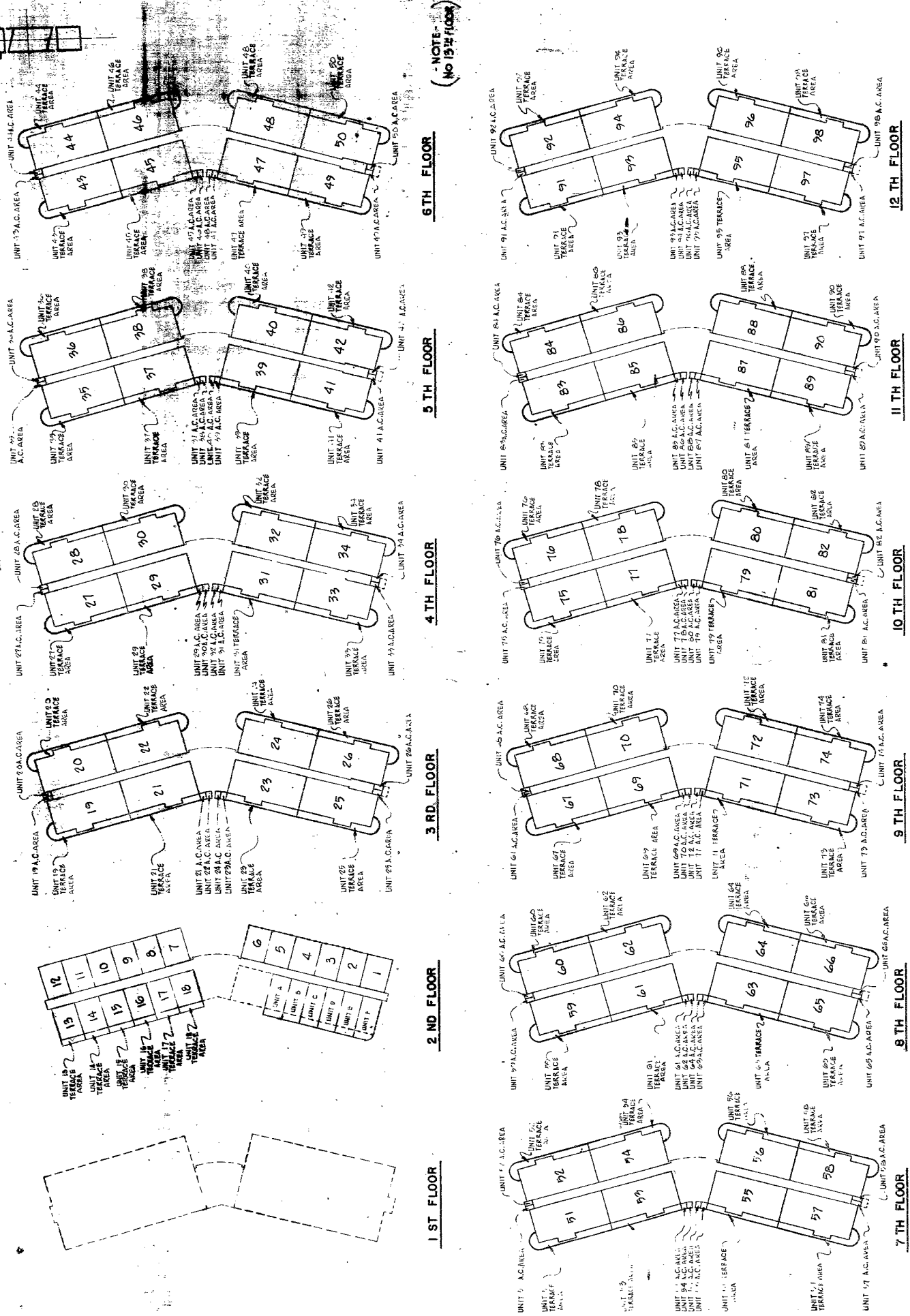
REGENCY TOWERS

BEING A PORTION OF SECTION 10, T.21S., R.61E., M.D.M., COUNTY OF CLARK, STATE OF NEVADA



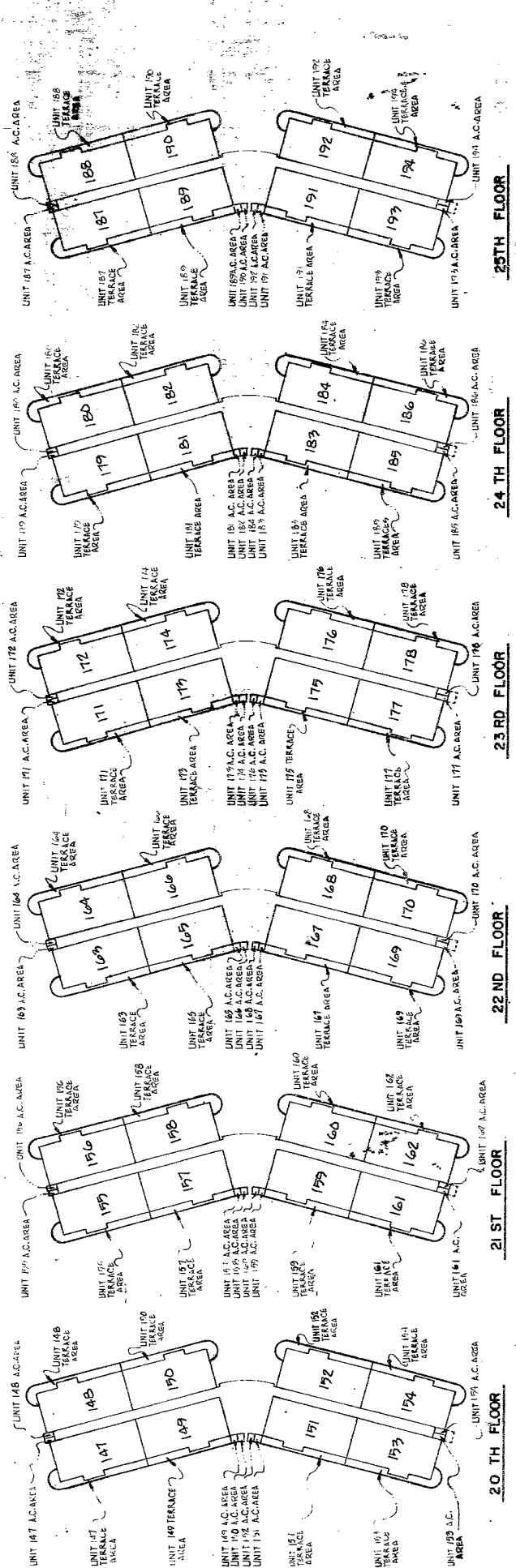
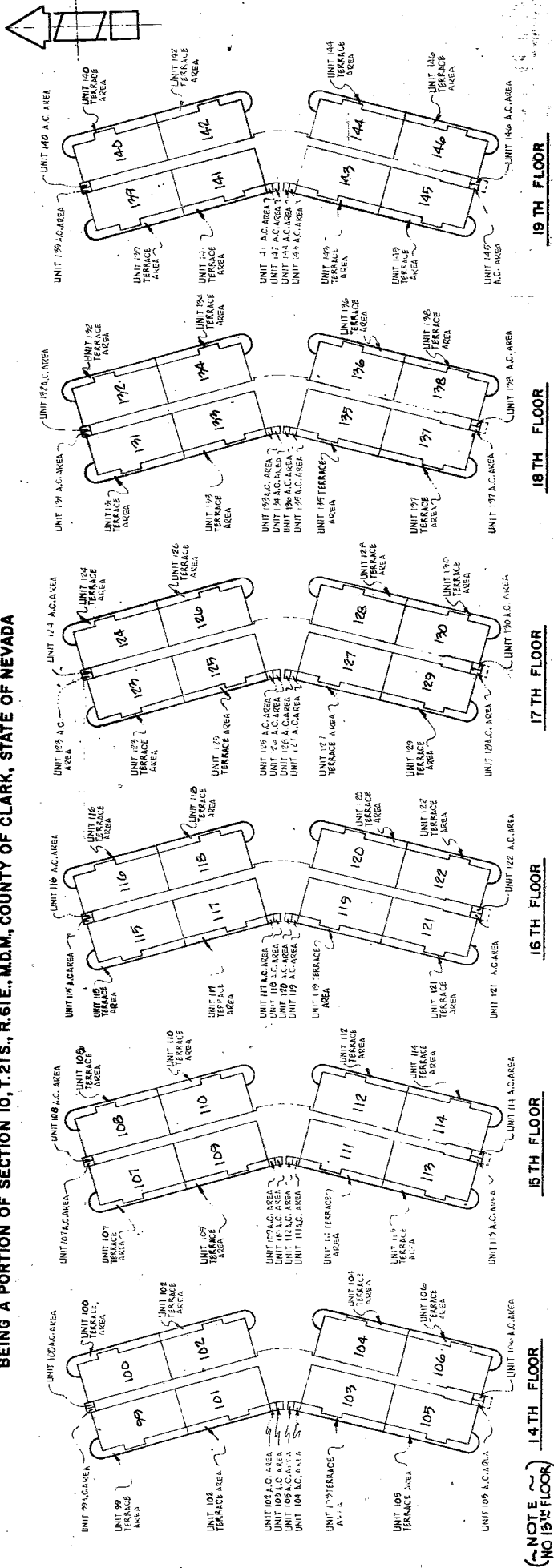
REGENCY TOWERS

BEING A PORTION OF SECTION 10, T.21S., R.61E., M.D.M., COUNTY OF CLARK, STATE OF NEVADA



REGENCY TOWERS

BEING A PORTION OF SECTION 10, T.21S., R.61E., M.D.M., COUNTY OF CLARK, STATE OF NEVADA

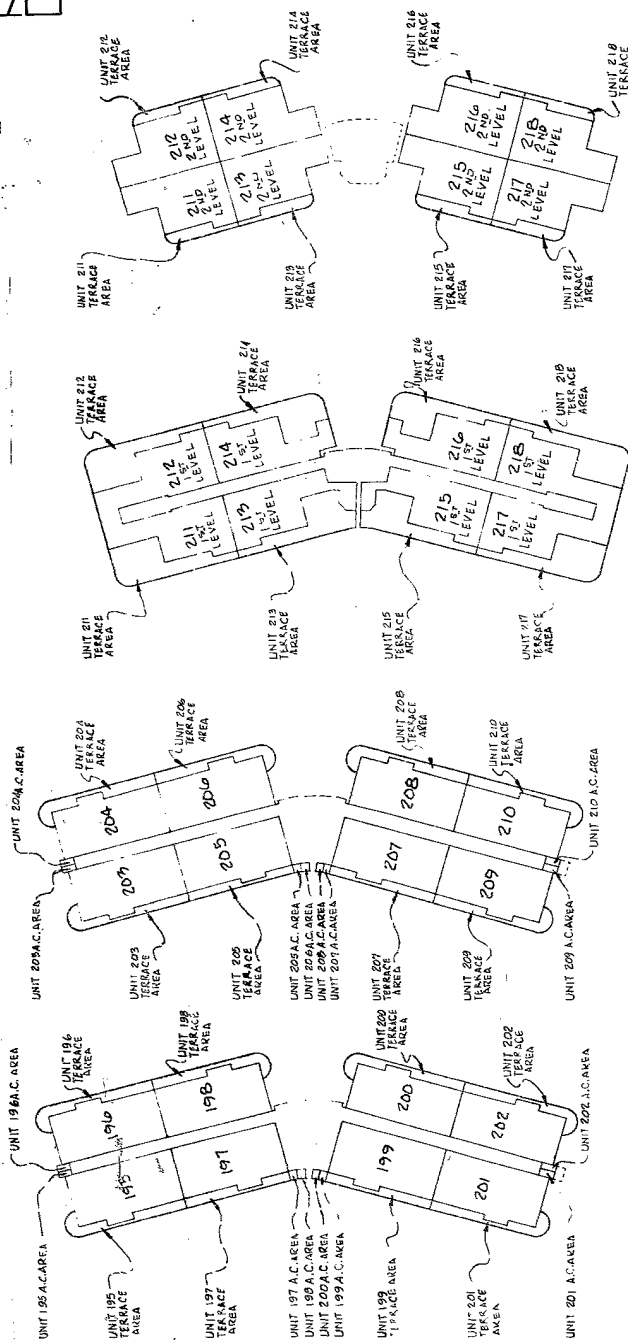
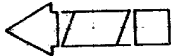


REGENCY TOWERS

BEING A PORTION OF SECTION 10, T.21S., R.61E., M.D.M., COUNTY OF CLARK, STATE OF NEVADA

NOTES AND DEFINITIONS

1. THE COMMON AREA OF THIS CONDOMINIUM PLAN IS THE LAND AND REAL PROPERTY INCLUDED WITHIN THE LIMITS OF THE PROJECT AS DEFINED ON SHEET 14, EXCEPTING THEREFROM UNITS 1 THROUGH 210 INCLUSIVE AS SHOWN AND DEFINED THEREIN.
2. PORTIONS OF THE COMMON AREA ARE HEREBY SET ASIDE AND ALLOCATED FOR THE RESTRICTED USE OF CERTAIN UNITS AS SHOWN HEREON AND ARE HEREBY DESIGNATED AS "RESTRICTED COMMON AREAS" AND SUCH RESTRICTED COMMON AREAS SHALL BE EXCLUSIVE APPURTENANT TO SAID UNITS FOR THE EXCLUSIVE USES AND PURPOSES FOR WHICH THE SAME ARE DESIGNATED HEREIN.
3. EACH OF UNITS 1 THROUGH 210 SHALL BE KNOWN AND DESCRIBED AS "UNIT" FOLLOWED BY THE APPLICABLE NUMERICAL AND/OR ALPHABETICAL DESIGNATION. THE BOUNDARIES OF THE UNITS ARE MEASURED TO THE INTERIOR SURFACES OF THE PERIMETER WALLS, FLOORS, CEILINGS, WINDOWS AND DOORS THEREOF, AND INCLUDES THE PORTION OF THE BUILDING SO DESCRIBED AND THE AIRSPACE SO ENCOMPASSED.
4. EACH UNIT INCLUDES BOTH THE PORTION OF THE BUILDINGS SO DESCRIBED AND THE AIR SPACE SO ENCOMPASSED. EXCEPT THE FOLLOWING: BEARING WALLS, COLUMNS, FLOORS, ROOFS, FOUNDATIONS, ELEVATOR EQUIPMENT AND SHAFTS, CENTRAL HEATING, CENTRAL AIR CONDITIONING, AND CENTRAL AIR CONDITIONING EQUIPMENT, REFRIGERATORS, TANKS, PUMPS, AND OTHER UTILITY INSTALLATIONS, WHEREAS LOCATED OUTSIDE THE OUTLETS THEREOF WHEN LOCATED WITHIN THE UNIT SHALL BE PART OF A UNIT. NOTWITHSTANDING ANYTHING CONTAINED IN THE FOREGOING SENTENCE TO THE CONTRARY, ANY HEATING, REFRIGERATION OR AIR CONDITIONING EQUIPMENT SERVING A UNIT EXCLUSIVELY SHALL BE A PART OF SUCH UNIT.
5. EACH OF UNITS 1 THROUGH 210 ARE COMPOSED OF 1 ELEMENT: A LIVING AREA.
6. EACH AREA DEPICTED WITHIN THIS MAP BEARING THE DESIGNATION "UNIT TO TERRACE AREA" THROUGH "UNIT TERRACE AREA" ARE "RESTRICTED COMMON AREAS" WHICH ARE HEREBY DESIGNATED AS "RESTRICTED COMMON AREAS" AND ARE ADJACENT TO THE UNITS HAVING THE IDENTICAL NUMERICAL AND/OR ALPHABETICAL DESIGNATION AND ARE FURTHER DEFINED IN THE DECLARATION OF RESTRICTIONS TO BE HEREAFTER RECORDED.
7. THE BOUNDARIES OF SAID "TERRACE AREAS" ARE MEASURED TO THE EXTERIOR SURFACES OF THE WALLS, WINDOWS AND DOORS OF THE ADJOINING BUILDING WHERE SUCH SURFACES ADJOIN THE TERRACES; OTHERWISE THE LATERAL BOUNDARIES ARE VERTICAL PLANES AT THE LIMITS OF THE UNITS. THE HORIZONTAL DIMENSIONS SHOWN HEREIN FOR EACH SUCH TERRACE, HOWEVER ANY PORTION OF THE WALLS, WINDOWS AND DOORS OF THE ADJOINING BUILDING WHERE SUCH SURFACES ADJOIN SAID "RESTRICTED COMMON AREA" AND BOUNDARIES SHALL NOT BE CONSIDERED A PORTION OF THE "RESTRICTED COMMON AREA".
8. THE LOWER AND UPPER ELEVATIONS OF SAID TERRACE AREAS COINCIDE WITH THE LOWER AND UPPER ELEVATIONS OF THE UNIT BEARING THE IDENTICAL NUMERICAL AND/OR ALPHABETICAL DESIGNATION.
9. EACH AREA DEPICTED WITHIN THIS MAP BEARING THE DESIGNATION "UNIT 211 POOL UTILITY AREA" THROUGH "UNIT 210 POOL UTILITY AREA" ARE "RESTRICTED COMMON AREAS" WHICH ARE HEREBY DESIGNATED AS "RESTRICTED COMMON AREAS" AND ARE ADJACENT TO THE UNITS HAVING THE IDENTICAL NUMERICAL AND/OR ALPHABETICAL DESIGNATION, AND ARE FURTHER DEFINED IN THE DECLARATION OF RESTRICTIONS TO BE HEREAFTER RECORDED.
10. THE BOUNDARIES OF SAID "POOL UTILITY AREAS" ARE MEASURED TO THE EXTERIOR SURFACES OF THE WALLS WHERE THEY EXIST; OTHERWISE THE LATERAL BOUNDARIES ARE VERTICAL PLANES AT THE LIMITS OF THE HORIZONTAL DIMENSIONS SHOWN HEREIN.
11. THE VERTICAL LIMITS OF THE "POOL UTILITY AREAS" SHOWN HEREIN ARE HORIZONTAL PLANES HAVING LOWER AND UPPER ELEVATIONS AS SHOWN HEREIN ON SHEETS 16 AND 17.
12. EACH AREA DEPICTED WITHIN THIS MAP BEARING THE DESIGNATION "UNIT 211 POOL UTILITY AREA" THROUGH "UNIT 210 POOL UTILITY AREA" ARE "RESTRICTED COMMON AREAS" WHICH ARE HEREBY DESIGNATED AS "RESTRICTED COMMON AREAS" AND ARE ADJACENT TO THE UNITS HAVING THE IDENTICAL NUMERICAL AND/OR ALPHABETICAL DESIGNATION, AND ARE FURTHER DEFINED IN THE DECLARATION OF RESTRICTIONS TO BE HEREAFTER RECORDED.
13. THE BOUNDARIES OF SAID "POOL UTILITY AREAS" ARE MEASURED TO THE EXTERIOR SURFACES OF THE WALLS WHERE THEY EXIST; OTHERWISE THE LATERAL BOUNDARIES ARE VERTICAL PLANES AT THE LIMITS OF THE HORIZONTAL DIMENSIONS SHOWN HEREIN.
14. THE VERTICAL LIMITS OF THE "POOL UTILITY AREAS" SHOWN HEREIN ARE HORIZONTAL PLANES HAVING LOWER AND UPPER ELEVATIONS AS SHOWN HEREIN ON SHEETS 16 AND 17.
15. EACH AREA DEPICTED WITHIN THIS MAP BEARING THE DESIGNATION "A C. AREA A" THROUGH "A C. AREA W" AND "UNIT 19 C. AREA A" THROUGH "UNIT 19 C. AREA W" ARE "RESTRICTED COMMON AREAS" WHICH ARE HEREBY DESIGNATED AS "RESTRICTED COMMON AREAS" AND ARE FURTHER DEFINED IN THE DECLARATION OF RESTRICTIONS TO BE HEREAFTER RECORDED.
16. THE BOUNDARIES OF SAID "AIR CONDITIONING AREAS" ARE MEASURED TO THE EXTERIOR SURFACES OF THE WALLS WHERE THEY EXIST; OTHERWISE THE LATERAL BOUNDARIES ARE VERTICAL PLANES AT THE LIMITS OF THE HORIZONTAL DIMENSIONS SHOWN HEREIN.
17. C. AREAS ("UNIT 19 A.C. AREA", TYPICAL) 15' 0" TO 25' 0" TO 27' 0" TO 34' 35" TO 41' 42" TO 44' 48" TO 51' 52" TO 57' 58" TO 60' 59" TO 73' 47" TO 81' 83' 84' 89' 90' 91' 92' 97' 98' 99' 100' 101' 102' 103' 104' 105' 106' 107' 108' 109' 110' 111' 112' 113' 114' 115' 116' 117' 118' 119' 120' 121' 122' 123' 124' 125' 126' 127' 128' 129' 130' 131' 132' 133' 134' 135' 136' 137' 138' 139' 140' 141' 142' 143' 144' 145' 146' 147' 148' 149' 150' 151' 152' 153' 154' 155' 156' 157' 158' 159' 160' 161' 162' 163' 164' 165' 166' 167' 168' 169' 170' 171' 172' 173' 174' 175' 176' 177' 178' 179' 180' 181' 182' 183' 184' 185' 186' 187' 188' 189' 190' 191' 192' 193' 194' 195' 196' 197' 198' 199' 200' 201' 202' 203' 204' 205' 206' 207' 208' 209' 210' ARE 4.20 FEET LOWER THAN THE CORRESPONDING UNITS, ALL OTHER A.C. AREAS HAVE THE SAME UPPER AND LOWER LIMITS AS CORRESPONDING UNITS.
18. EACH AREA DEPICTED WITHIN THIS MAP AS "UNIT A" THROUGH "UNIT F" ARE HEREBY SET ASIDE AS "RESTRICTED COMMON AREAS".



29 TH FLOOR

28 TH FLOOR

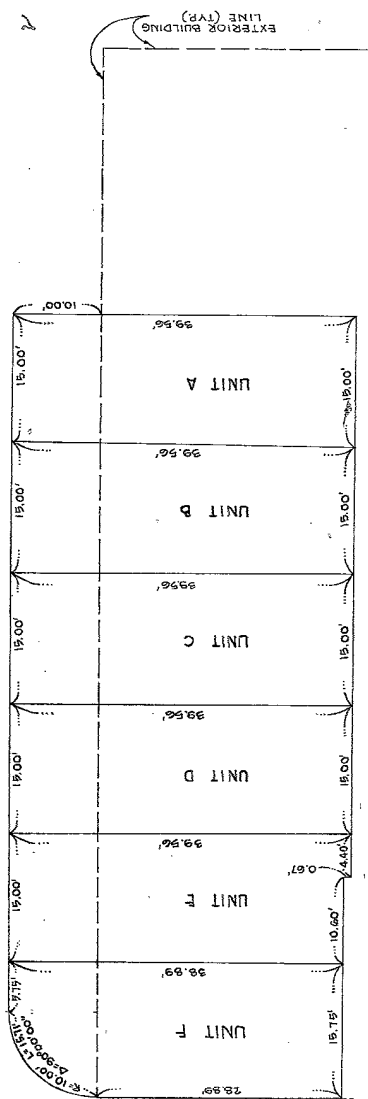
27 TH FLOOR

26 TH FLOOR

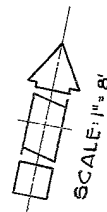
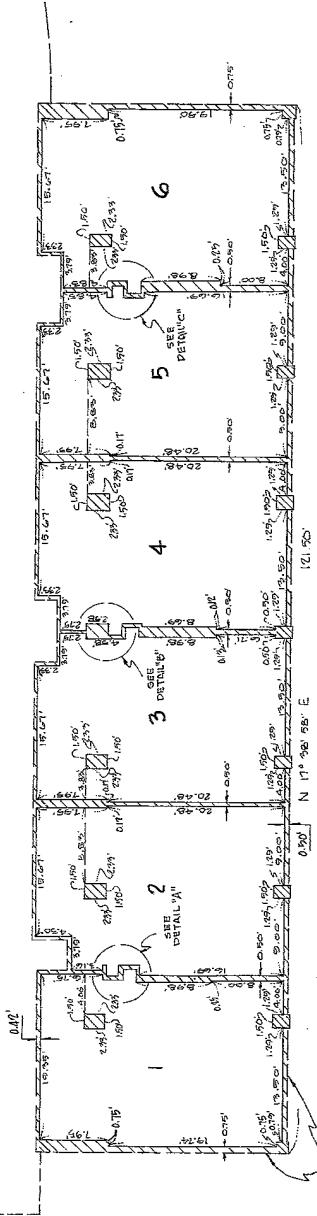
NOTE
SHEETS 2, 4 AND 5 SHOW RELATIVE UNIT
LOCATIONS FOR UNIT NUMBERING ONLY.
SEE NOTE ON SHEET 1 FOR UNIT DEFINITIONS,
AND SHEETS 6 THROUGH 12, INCLUSIVE, FOR
DIMENSIONS OF UNITS.

REGENCY TOWERS

BEING A PORTION OF SECTION 10, T.21S., R.61E., M.D.M., COUNTY OF CLARK, STATE OF NEVADA

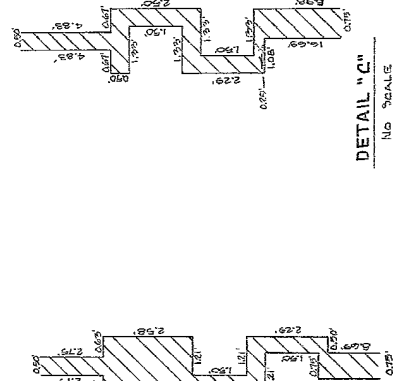


SEE SHEET NO. 6

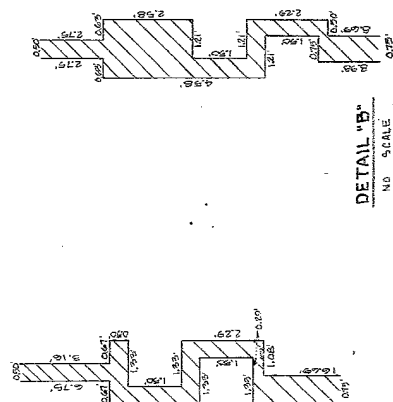


SCALE: 1" = 8'

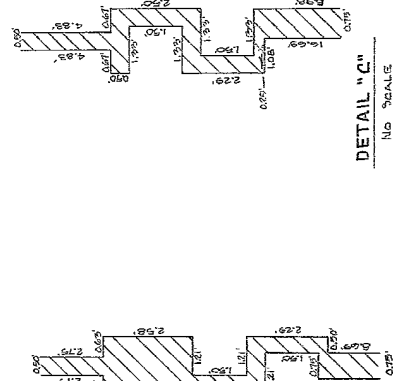
NOTE:
ALL "UNIT" BOUNDARIES
SHOWN HEREON ARE PARALLEL OR
PERPENDICULAR TO THE LINE SHOWN AS
"N 17° 38' 55" E, 121.80' UNLESS SHOWN
OTHERWISE.



DETAIL "A"
NO SCALE



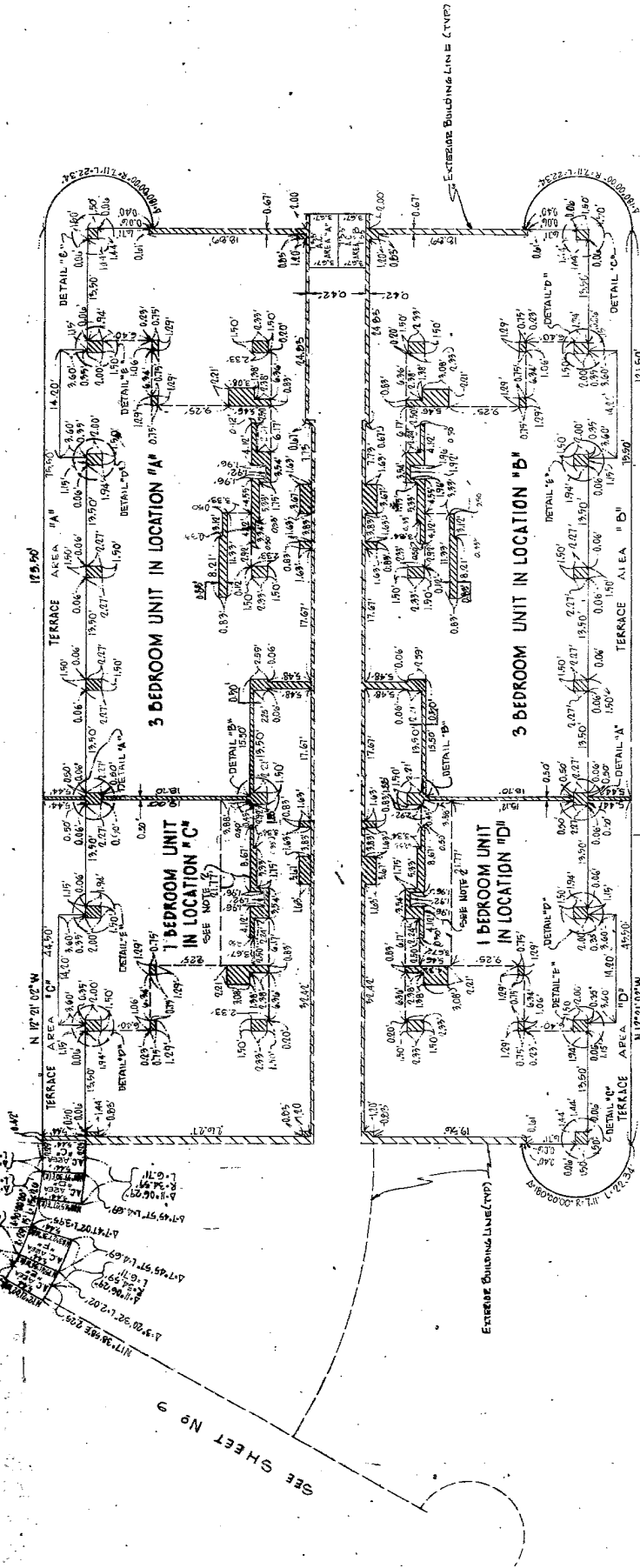
DETAIL "B"
NO SCALE



DETAIL "C"
NO SCALE

REGENCY TOWERS

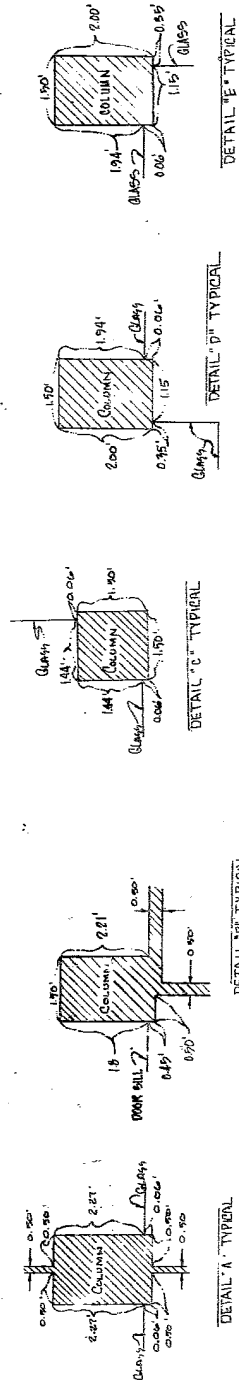
BEING A PORTION OF SECTION 10, T.21S., R.61E., M.D.M., COUNTY OF CLARK, STATE OF NEVADA



NOTES:

1. ALL UNIT AND/OR "AREA" BOUNDARIES SHOWN HEREON ARE PARALLEL WITH OR PERPENDICULAR TO THE LINE SHOWN AS "N 12°10'21\" W, 12.50' UNLESS SHOWN OTHERWISE.

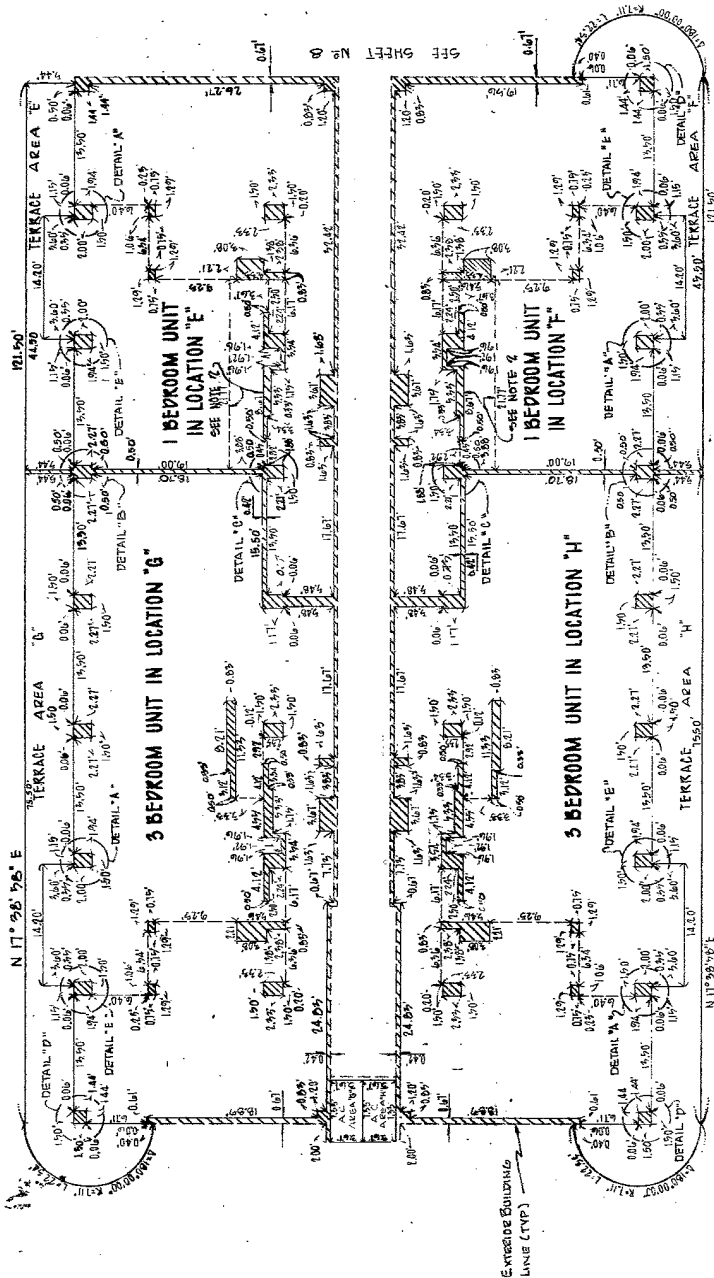
2. VERTICAL LIMITS WITHIN THIS AREA ARE 1.90' FEET ABOVE FINISHED FLOOR ELEVATION WHEREVER A 2 BEDROOM UNIT IS IMMEDIATELY ADJACENT TO A 1 BEDROOM UNIT.



DETAILS NOT TO SCALE

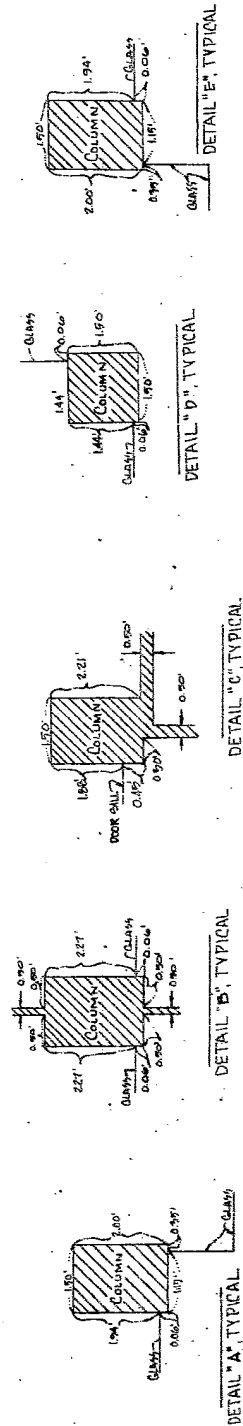
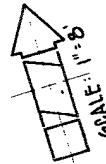
REGENCY TOWERS

BEING A PORTION OF SECTION 10, T.21S., R.61E., M.D.M., COUNTY OF CLARK, STATE OF NEVADA



NOTES

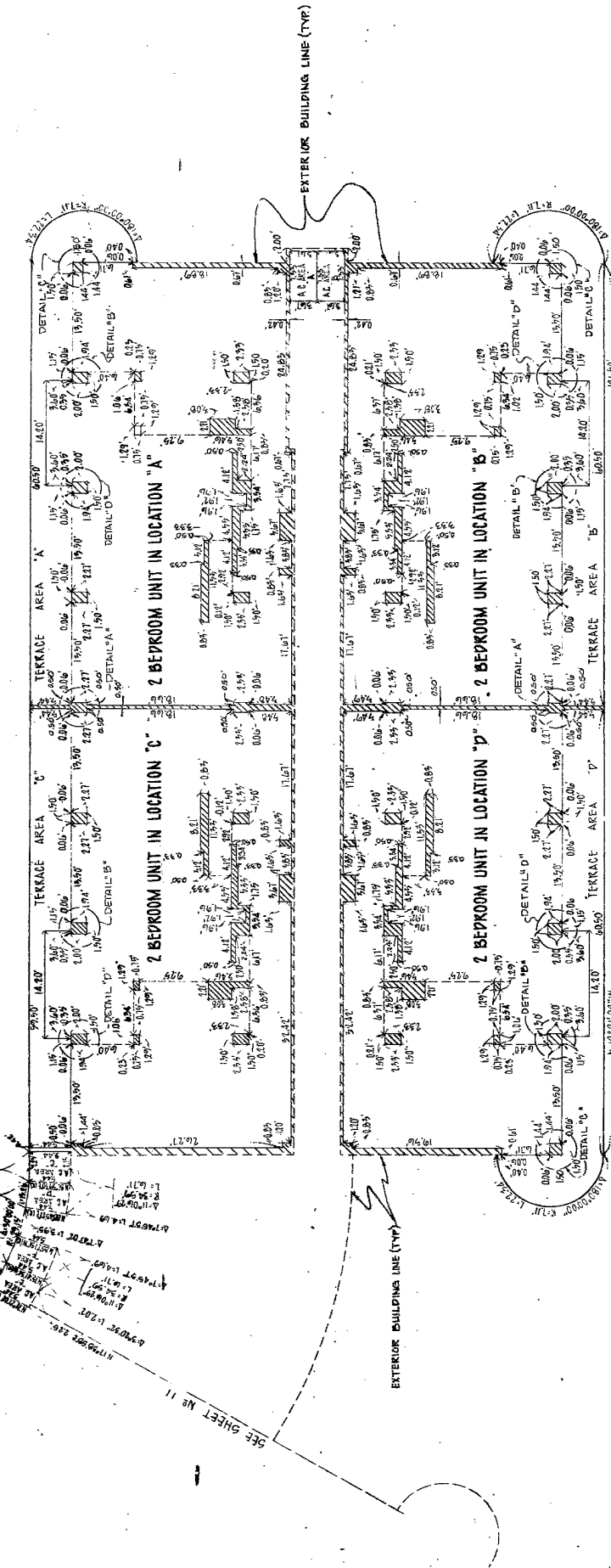
- 1: ALL UNIT AND/OR "AREA" BOUNDARIES SHOWN HEREON ARE PARALLEL WITH OR PERPENDICULAR TO THE LINE SHOWN AS "N 17° 58' 56" E 121.50'" UNLESS SHOWN OTHERWISE.
- 2: VERTICAL LIMITS WITHIN THIS AREA ARE 7.50' FEET ABOVE FINISHED FLOOR ELEVATION UNLESS A 2 BEDROOM UNIT IS IMMEDIATELY ABOVE A 1 BEDROOM UNIT.



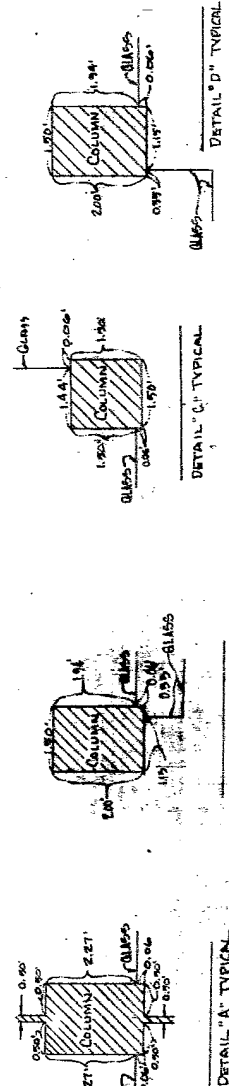
DETAILS NOT TO SCALE

REGENCY TOWERS

BEING A PORTION OF SECTION 10, T.21S, R.61E, M.D.M., COUNTY OF CLARK, STATE OF NEVADA



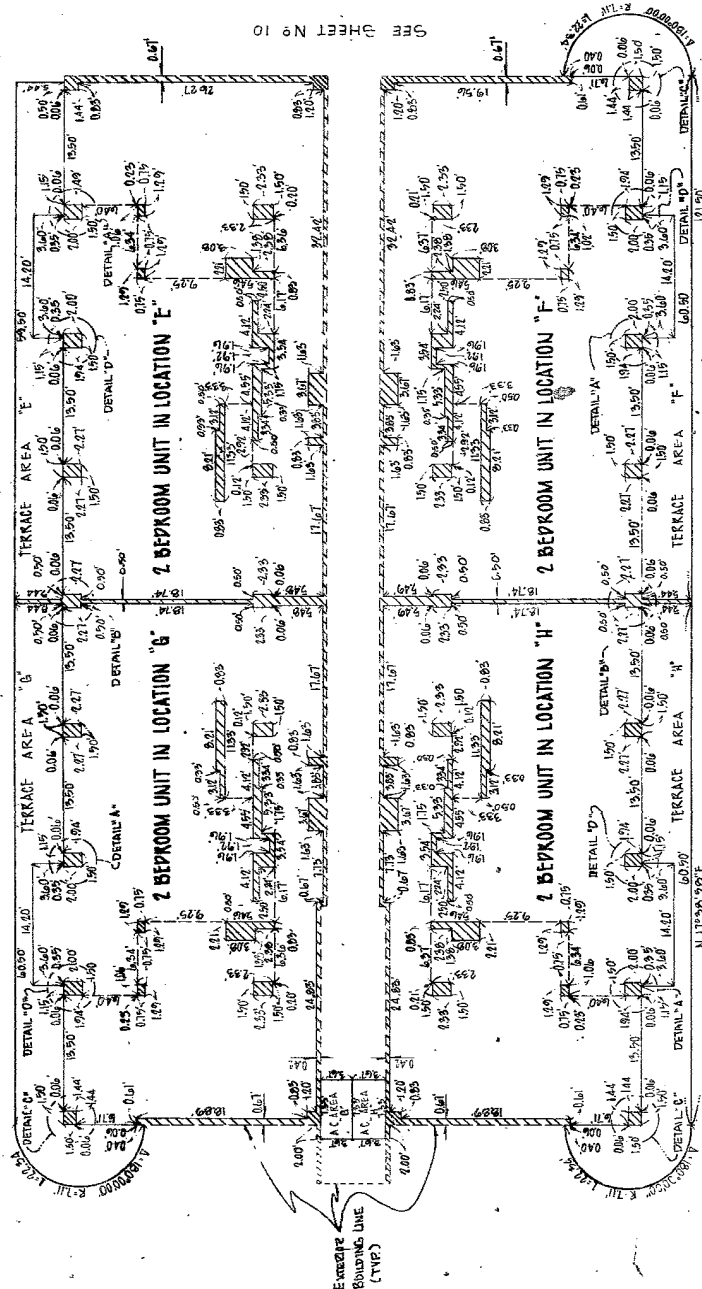
NOTE:
ALL UNIT AND/OR AREA BOUNDARIES SHOWN HEREIN ARE
PARALLEL WITH OR PERPENDICULAR TO THE LINE
SHOWN AS "N 0° 31' 00" W, 0.90" UNLESS
SHOWN OTHERWISE



DETAILS NOT TO SCALE

REGENCY TOWERS

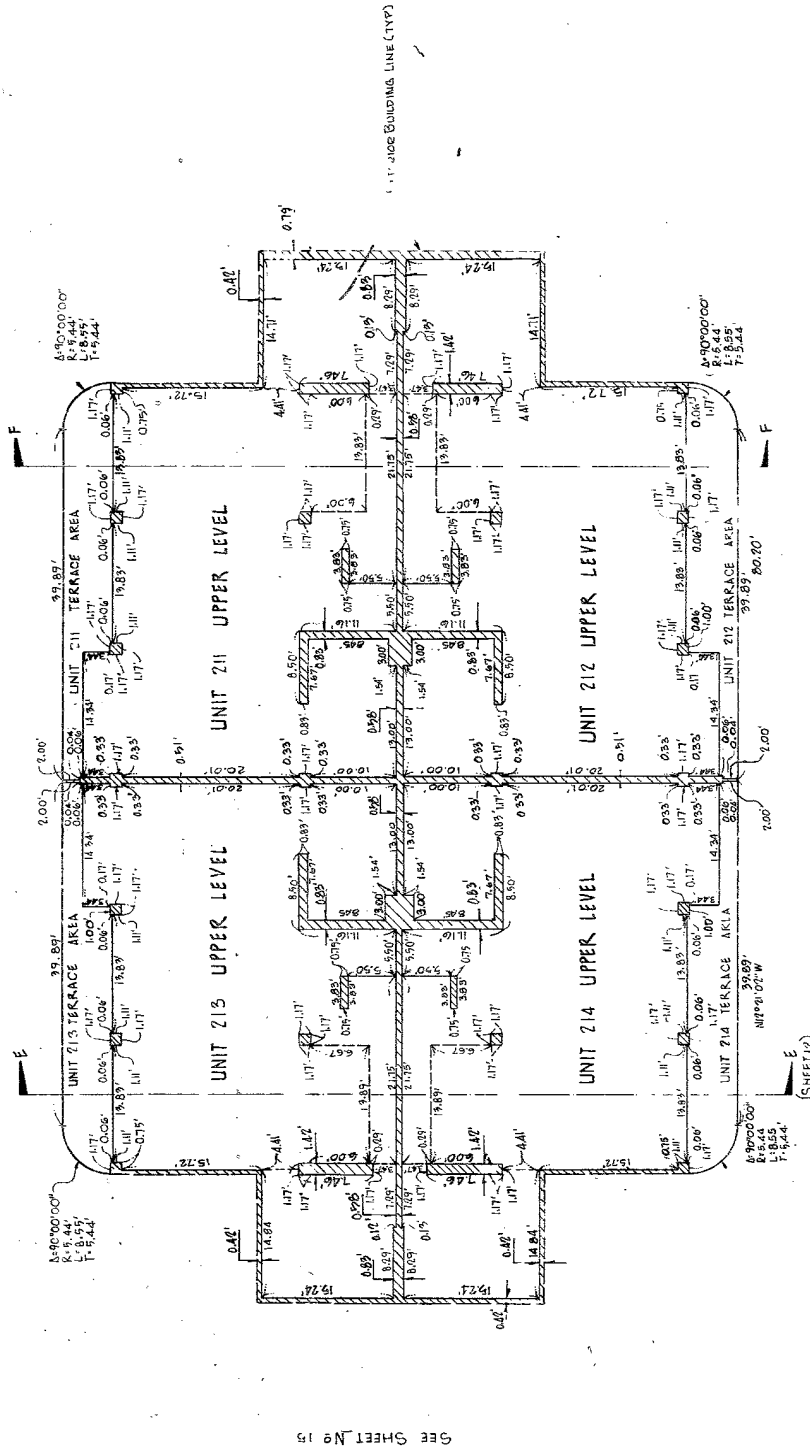
BEING A PORTION OF SECTION 10, T.21S., R.61E., M.D.M., COUNTY OF CLARK, STATE OF NEVADA



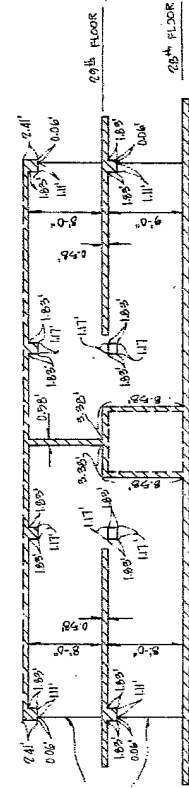
DETAILS NOT TO SCALE

REGENCY TOWERS

BEING A PORTION OF SECTION 10, T.21S, R.61E, M.D.M., COUNTY OF CLARK, STATE OF NEVADA



SCALE: 1"=8'



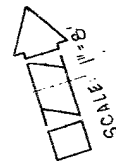
SECTION F-F

REGENCY TOWERS

BEING A PORTION OF SECTION 10, T.21S., R.61E., M.D.M., COUNTY OF CLARK, STATE OF NEVADA

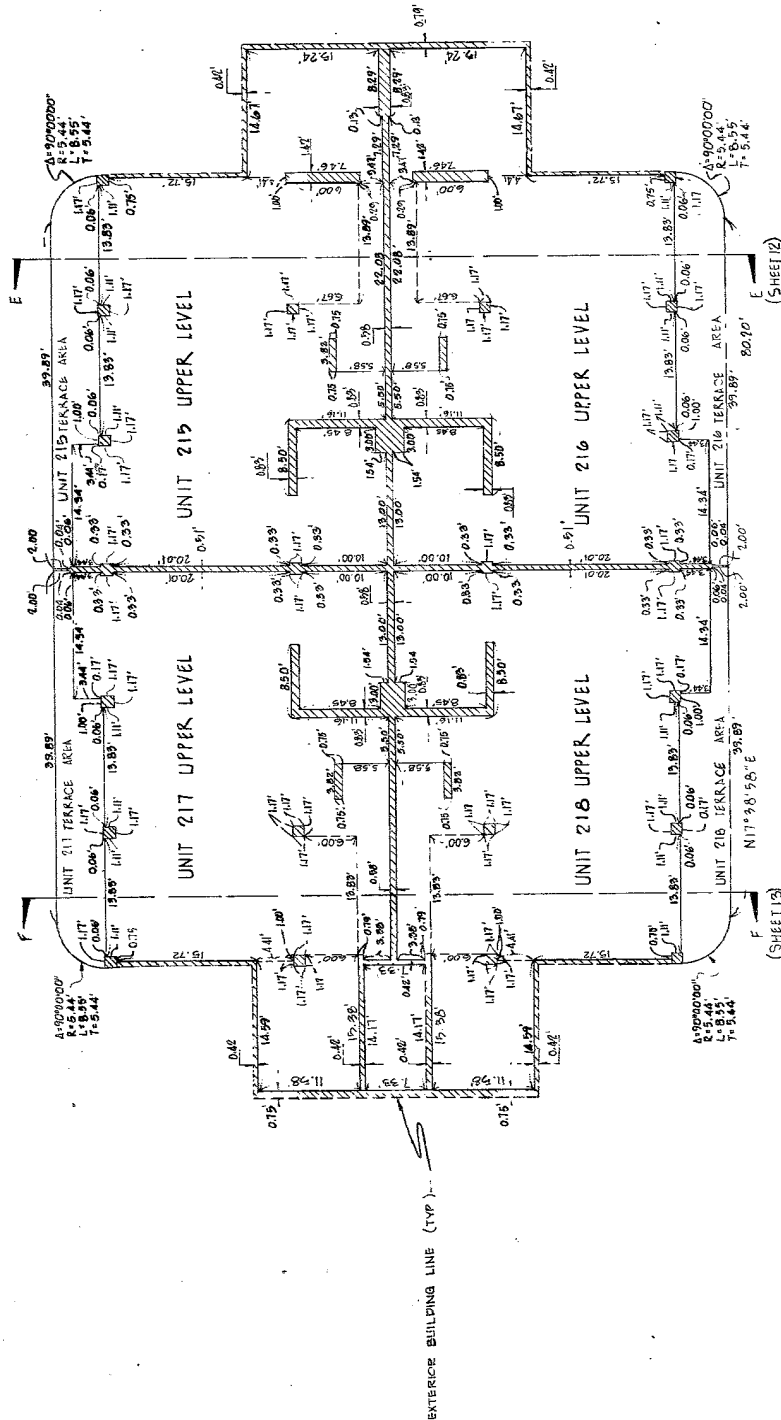


NOTE:
ALL "UNIT" AND/OR "AREA" BOUNDARIES SHOWN HEREON ARE
PARALLEL WITH OR PERPENDICULAR TO THE LINE
SHOWN AS N. 17° 48' 50" E., 125.85', UNLESS
SHOWN OTHERWISE.

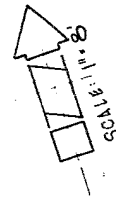


REGENCY TOWERS

BEING A PORTION OF SECTION 10, T.21S., R.61E., M.D.M., COUNTY OF CLARK, STATE OF NEVADA



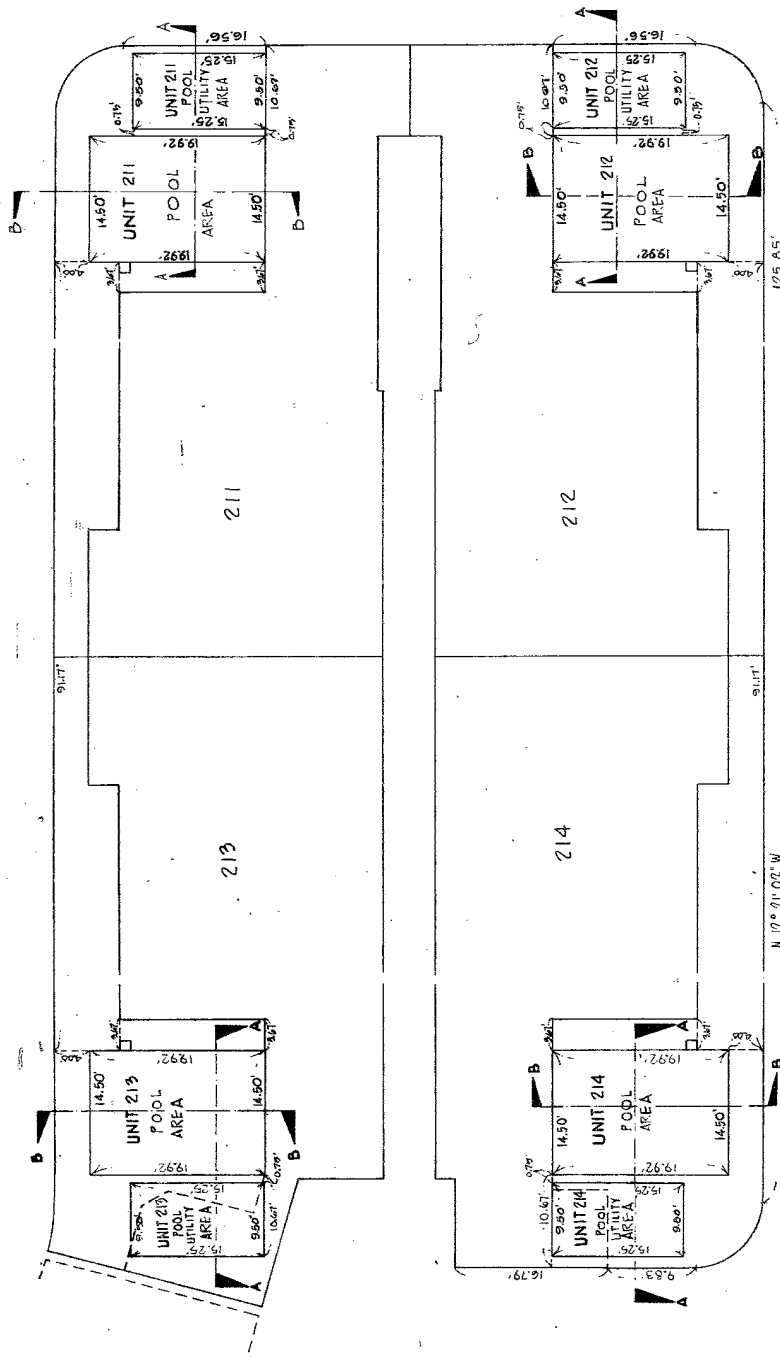
NOTE:
ALL UNIT AND/OR TERRACE AREAS SHOWN HEREIN ARE PARALLEL WITH OR PERPENDICULAR TO THE LINE SHOWN AS 11° 38' 50\"/>



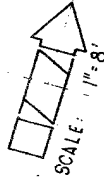
4PA865

REGENCY TOWERS

BEING A PORTION OF SECTION 10, T.21S., R.61E., M.D.M., COUNTY OF CLARK, STATE OF NEVADA

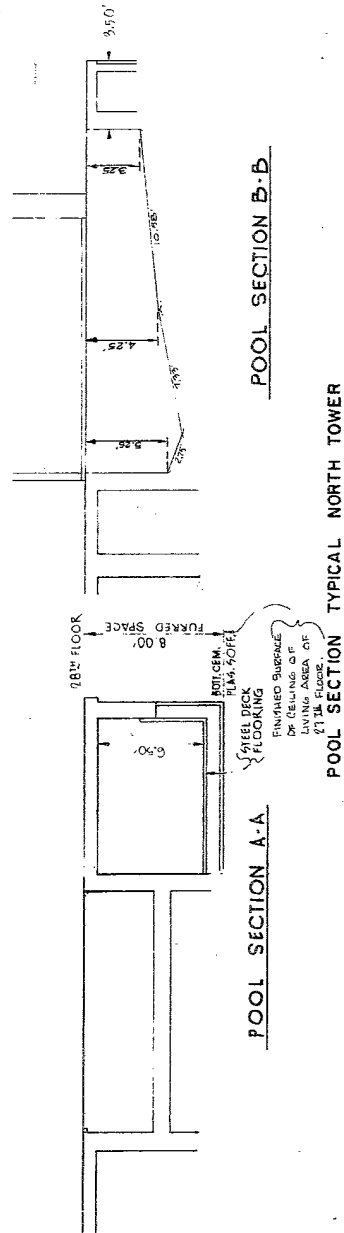


SEE SHEET No 17

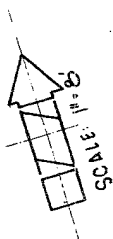
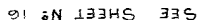


NOTE:
ALL AREA BOUNDARIES SHOWN HEREON ARE
PARALLEL WITH OR PERPENDICULAR TO THE LINES
SHOWN AS "N 12° 21' 02" W, 125.65' UNLESS
SHOWN OTHERWISE.

28TH FLOOR NORTH TOWER



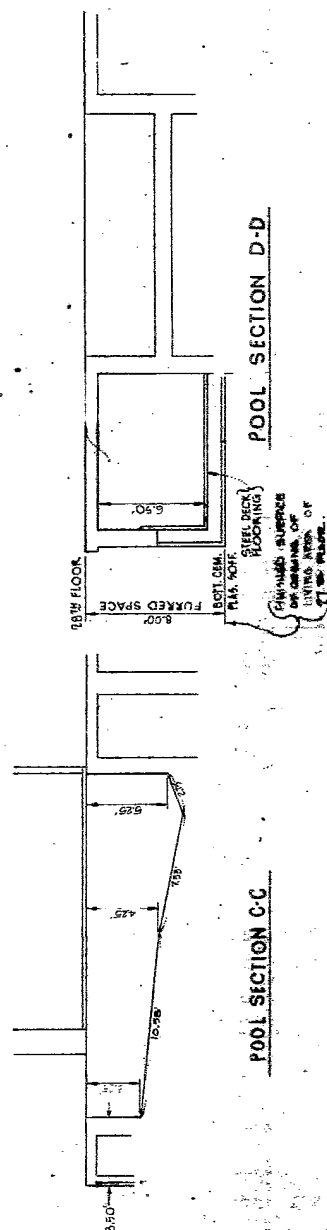
BEING A PORTION OF SECTION 10, T.21S., R.61E., M.D.M., COUNTY OF CLARK, STATE OF NEVADA



NOTE:

ALL AREA BOUNDARIES SHOWN HEREON ARE PARALLEL WITH OR PERPENDICULAR TO THE LINE SHOWN AS "N 17°38'58" E, 125.85' " UNLESS SHOWN OTHERWISE.

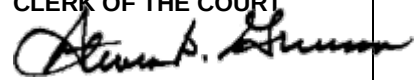
28 TH FLOOR, SOUTH TOWER



POOL SECTION C-C

POOL SECTION D-D

POOL SECTION TYPICAL SOUTH TOWER



OPPM

Kerry Faughnan, Esq.
Nevada Bar No.12204
P.O. Box 335361
North Las Vegas, Nevada 89033
(702) 301-3096
(702) 331-4222- Fax
Kerry.faughnan@gmail.com
Attorney for Defendant, LN Management LLC Series 3111 Bel Air 24G

**EIGHTH JUDICIAL DISTRICT COURT FOR
CLARK COUNTY, NEVADA**

DITECH FINANCIAL LLC F/K/A GREEN
TREE SERVICING LLC,

Plaintiff,

vs.

MICHAEL T. ELLIOTT, an individual; LAS
VEGAS INTERNATIONAL COUNTRY
CLUB ESTATES HOME OWNERS
ASSOCIATION, INC., a Nevada
Corporation; REGENCY TOWERS
ASSOCIATION, INC., a Nevada
Corporation; and DOES I-X INCLUSIVE,

Defendants.

LN MANAGEMENT LLC SERIES 3111
BEL AIR 24G

Plaintiff,

v.

MICHAEL T. ELLIOT, an individual;
DITECH FINANCIAL LLC F/K/A GREEN
TREE SERVICING LLC and DOES 1
through 10, inclusive;

Defendants.

Case No.: A-12-669570-C

Dept. No.: XIII

Consolidated with Case No. A-13-682055-C

**OPPOSITION TO DITECH FINANCIAL
LLC F/K/A GREEN TREE SERVICING
LLC'S MOTION FOR SUMMARY
JUDGMENT**

HEARING REQUESTED

Comes now Defendant, LN Management LLC Series 3111 Bel Air 24G ("LN"), by and
through its attorney, Kerry P. Faughnan, Esq., and opposes Ditech Financial LLC f/k/a Green
Tree Servicing LLC's ("Ditech" or "Plaintiff") Motion for Summary Judgment filed as follows.

1
2 **POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 This is an action to quiet title to real property after a homeowners association foreclosure
5 auction. 3111 Bel Air Drive 24G Trust was the winning bidder at the auction, subsequently
6 taking possession of the unoccupied property upon the December 17, 2012 recording of a
7 Trustee's Deed Upon Sale in its favor. 3111 Bel Air Drive 24G Trust subsequently Quitclaimed
8 the property to LN Management LLC Series 3111 Bel Air 24G without consideration, and since
9 that time, LN Management LLC Series 3111 Bel Air 24G has maintained possession of the
10 property to the present.
11

12 **II. STATEMENT OF FACTS**

13 On or about October 8, 2002, Michael T. Elliot and his wife Regan Dawn Elliot purchased
14 the real property located at 3111 Bel Air Drive #24G, Las Vegas, NV 89109, Parcel No. 162-10-
15 812- 185 (the "Property"). On October 16, 2003, Regan Dawn Elliot deeded her interest to
16 Michael T. Elliot, as his sole and separate property. On October 20, 2004, Michael T. Elliot gave a
17 Deed of Trust to Bank of America in the amount of \$322,100.00, which was subsequently assigned
18 to Green Tree Loan Servicing July 30, 2013, who then substituted in place of Bank of America
19 pursuant to the stipulation and order entered January 23, 2014.
20

21 On June 21, 2012, the Las Vegas International Country Club Estates Association (the
22 "Association") recorded a Notice of Delinquent Assessment Lien against the Property with the
23 Clark County Recorder as Instrument Number 20120621-0001804. See Notice of Delinquent
24 Assessments.
25

26 On July 25, 2012, the Association recorded a Notice of Default and Intent to Sell against
27 the Property with the Clark County Recorder as Instrument Number 20120725-0002134.
28

On November 15, 2012, the Association recorded a Notice of Trustee Sale against the

1 Property with the Clark County Recorder as Instrument Number 20121115-0002365.

2 On December 12, 2012, the Association foreclosed on its lien for delinquent assessments.
3 LN Management, LLC was the highest bidder at the foreclosure sale auction, bidding \$7,001.00,
4 and the resulting foreclosure deed Plaintiff received was recorded on December 17, 2012 with the
5 Clark County Recorder as Instrument Number 20121217-0000834. 3111 Bel Air Drive 24G Trust
6 was the winning bidder at the auction, who subsequently Quitclaimed the property to LN
7 Management LLC Series 3111 Bel Air 24G.
8

9 Upon the recording of the Trustee's Deed upon Sale, possession was taken of the
10 unoccupied Property and possession has been maintained to the present.

11 On May 17, 2013, LN Management LLC Series 3111 Bel Air 24G commenced this action
12 for quiet title and declaratory relief against Michael T. Elliot and Bank of America, N.A., Court
13 Record, May 17, 2013 Complaint, in addition to filing and recording a notice of lis pendens.
14

15 Default Judgment was entered against Michael T. Elliot on December 23, 2014.

16 On October 3, 2012, Bank of America, N.A. ("BANA"), filed a Complaint claiming
17 causes of action for Reformation of the First Deed of Trust, Equitable Lien, Equitable
18 Subrogation to WMB Deed of Trust and Declaratory Relief. The five year rule ran on October 3,
19 2017.

20 On September 9, 2013, BANA filed a Motion to Consolidate the two cases. LN opposed
21 the Motion.
22

23 On October 21, 2013, the Court granted consolidation and an Order was entered on
24 October 29, 2013.

25 On September 29, 2020, Ditech, predecessor-in-interest to BANA, filed a Motion for
26 Summary Judgment.

27 LN now brings this Opposition.
28

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

III. LEGAL ARGUMENT

I. **Pursuant to NRCP 41 this matter must be dismissed**

Nevada Rules of Civil Procedure Rule 41(e)(2)(B) states:

(e)Dismissal for Want of Prosecution.

(2)Dismissing an Action Before Trial.

(B) The court **must dismiss an action** for want of prosecution if a plaintiff fails to bring the action to trial within 5 years after the action was filed. [Emphasis added]

This case was filed on October 3, 2012. The Five Year Rule expired on October 3, 2017. There has never been a request to extend the Five Year Rule and no stipulation and Order has been entered. Plaintiff can offer this Court no good cause why this Court should not dismiss this action for want of prosecution over three years after the five year rule has expired and as such Defendant respectfully requests that this Court dismiss this action and not rule upon the untimely Motion for Summary Judgment.

In the event that the Court does not dismiss this action pursuant to NRCP 41, Defendant will in the alternative oppose this Motion as follows.

II. **Statements by Collections of America are immaterial and Plaintiff failed to show attempted tender would be futile and thus excused**

Plaintiff argues that the DOT was not extinguished based on Collections of America's ("COA") statement that they were not foreclosing on the super-priority portion of the lien because such a portion did not exist until the bank foreclosed. And that even if it did that tender would have been futile.

The Nevada Supreme Court addressed these very arguments in Bank of America, N.A. v. Thomas Jessup, LLC Series VII, 462 P.3d 255 (Table), 2020 WL 2306320 (unpublished). The NVSC held that "Appellants contend that ACS's September 2011 letter demonstrates that it foreclosed on only the subpriority portion of Foxfield's lien. We disagree, as ACS's mistaken belief

1 regarding the foreclosure sale's effect could not alter the sale's actual legal effect, particularly when
2 the superpriority portion of the HOAs lien was still in default at the time of the sale and the sale
3 otherwise complied with NRS Chapter 116s requirements.” That is exactly what Ditech argues
4 here is that COA’s mistaken belief regarding the foreclosure sales effect does not alter the actual
5 legal effect of the sale. COA, whether responding truthfully that it wasn’t claiming a super-priority
6 lien because of the misstatement of law by Jory C. Garabedian, and provides a payoff because it
7 believes it is a super-priority lien, or mistakenly agrees with Jory C. Garabedian’s misstatement of
8 the law, but still provides a payoff, ultimately sold the subject property pursuant to NRS Chapter
9 116.
10

11 There is no evidence before the Court that when the lien was sold, the HOA subtracted
12 from the lien the super-priority portion of the lien.

13 The Notice of Sale estimated the sale amount at \$7,000.

14 Whether the HOA intended to or not, it sold an HOA lien that contained both a super-
15 priority portion of a HOA lien, as well as a non super-priority portion of the lien.

16 The only way to sell a non super priority lien is if the super priority portion has been
17 satisfied. There is no provision in the law for a HOA to simply choose what portion of its lien it
18 is selling, because the super priority portion always exists as a matter of law.

19 Because of the lack of prior satisfaction of the super priority portion of the lien, it sold
20 both liens, and the super priority portion of the lien extinguished Bank of America’s deed of trust.

21 The NVSC went on to hold in Jessup that “While we recognize that *Shadow Canyon*
22 supports appellants argument, *see id.* at 749 n.11, 405 P.3d at 648 n.11 (citing *ZYZZX2 v. Dizon*,
23 No. 2:13-CV-1307, 2016 WL 1181666 (D. Nev. 2016)), the district court found that "Mr. Jung
24 understood that failure to pay the superpriority portion of the lien would result in the loss of his
25 client's interest in the property." The implication behind this factual finding is that the district
26 court determined it was unreasonable for Mr. Jung to abandon Miles Bauer's legal position
27 regarding NRS 116.3116(2) (2009) based solely on ACS's September 2011 letter, and we are not
28

1 persuaded that this finding was clearly erroneous.” Mr. Garabedian, also worked at Miles Bauer
2 with Mr. Jung and there was nothing that precluded him from tendering a check for the nine
3 months of the assessments. Nothing in their communication indicates that COA would have
4 rejected the payment and in fact COA provided Miles Bauer with a payoff statement and adequate
5 information to determine the nine months that would have been necessary to protect BANA’s
6 interest and yet Miles Bauer made no attempt to pay.
7

8 The NVSC, in 7510 Perla Del Mar Ave. Tr. v. Bank of America, N.A., 136 Nev., Adv.
9 Op. 6, 458 P.3d 348, 349 (2020), held “an offer to pay the superpriority amount in the future,
10 once that amount is determined, does not constitute a tender sufficient to preserve the first deed of
11 trust”. The Court in Perla Del Mar held that in order to be excused from making a tender, BANA
12 would have to show that payment would have been futile, which Ditech can not claim because
13 there is no evidence that COA would have rejected the payment and there is no evidence that
14 BANA even attempted and was rejected.
15

16 Based on the foregoing facts, Plaintiff’s arguments fail to rise to a level that warrants
17 summary judgment.

18 **III. Plaintiff failed to raise the defense of Federal Foreclosure Bar and thus the**
19 **same is waived**

20 Plaintiff failed to raise the defense of the Federal Foreclosure Bar until August 28, 2018,
21 almost 6 years after the foreclosure sale and long after the close of discovery when it raised it in
22 their Opposition to LN’s Motion for Summary Judgment.

23 Ditech appeared in the action March 11, 2014.

24 Ditech did not hold an early case conference, make any initial disclosure of documents, or
25 submit any sort of case conference report causing any scheduling in the case.
26
27
28

1 The Court dismissed the consolidated cases May 23, 2018 for lack of bringing the action
2 to trial in 5 years, then subsequently reopened the matter solely to allow LN Management LLC
3 Series 3111 Bel Air 24G to bring a motion for summary judgment.

4 Ditech opposed the Motion for Summary Judgment, raising as defenses tender and
5 Federal Foreclosure Bar. While the opposition referenced numerous documents, none were
6 attached to the opposition.

7
8 In fact, Plaintiff never even made any initial disclosures until June 29, 2019 over 6 and a
9 half years after filing the case and long after discovery closed.

10 In that Ditech, or Bank of America, never disclosed any documents in this case during
11 discovery and within the five year rule pursuant to NRCP 41, LN Management LLC Series
12 3111 Bel Air 24G opposes any attempt by Ditech to introduce documents never disclosed in
13 more than six and a half years, and having not even disclosed a single document up until June
14 29, 2019, Ditech has waived the right to make such defenses after six and a half years and after
15 the case was opened for the sole purpose of LN filing an MSJ, for want of prosecution and/or
16 laches.

17
18 Based on the foregoing, LN respectfully requests that this Court reject Plaintiff's Federal
19 Foreclosure Bar for the reasons stated above.

20 **IV. The HOA sale was valid**

21 Ditech next argues that the HOA foreclosure sale was invalid because it was "oppressive
22 and unfair", and because the property sold for 2% of its value, as a matter of law the sale must be
23 set aside based on Nationstar Mortg. LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon, 405
24 P.3d 641 (Nev. 2017).

25
26 First, any challenge to commercial reasonableness must raise material questions of fact,
27 which precludes summary judgment.

1 Second, there is no duty to obtain a price greater than the amount of the lien being
2 foreclosed upon.

3 Third, there is no commercial reasonableness requirement in NRS Chapter 116 or Chapter
4 107.

5 Fourth, while the NVSC in Shadow Wood Homeowners Ass'n v. New York Cmty.
6 Bancorp, Inc., 366 P.3d 1105, 1116 (Nev. 2016) while discussing a 20% line to determine gross
7 inadequacy of price, does not overrule Long v. Towne, 98 Nev. 11, 639 P.2d 528 (1982) where
8 mere inadequacy of price is not sufficient to justify setting aside a foreclosure sale, absent a
9 showing of fraud, unfairness or oppression, that **accounts for and brings about the inadequacy**
10 **of price** Golden v. Tomiyasu, 79 Nev. 503, 514, 387 P.2d 989 (1963), and the court's requirement
11 to consider the equities of the parties. Thus, price alone still does not justify setting aside a
12 foreclosure sale, and in the motion, nothing has been introduced by Ditech that shows the acts of
13 COA caused the inadequacy of price.
14
15

16 The entire problem with a commercial reasonableness argument is that once a properly
17 noticed foreclosure sale commences, and the opening bid is given, bidders have the option of not
18 bidding. If there is no bidding, the property reverts to the party with the power of sale. Further,
19 there is nothing in the statutes that says to conduct a foreclosure, the auctioneer must first
20 determine the fair market value of the property being auctioned without ever entering into
21 the property, and that thereafter the foreclosure sale must be cancelled, during the sale, if the sale
22 price is less than 20% of fair market value, because otherwise the sale is void for commercial
23 reasonableness, even if the debt owing is a value less than 20% of fair market value, which is
24 what COA effectively wants this court to impose on auctioneers.
25

26 If Ditech had been foreclosing on this property, and its outstanding mortgage had only
27 been \$7,001, the amount LN paid at auction, Ditech would only be foreclosing on the amount
28

1 owed, and could not legally open bidding at more than the amount owed, nor reject a bid over the
2 amount owed and there being no other bidders, under the assertion that its own sale is void as
3 being commercially unreasonable because it's unfair to the homeowner. This entire concept
4 propounded by Ditech is unsupportable.

5 HOA foreclosure sales are no different from property tax sales, in that properties are
6 brought to auction for taxes that are only pennies on the dollar, and such sales extinguish first
7 deeds of trust. NRS Chapter 361. LN is an innocent bona fide purchaser for value who was a
8 winning bidder at a foreclosure auction.

10 Chase Plaza Condominium Association, Inc. and Darcy, LLC, v. JP Morgan Chase Bank,
11 N.A., 13-CV-623 (D.C. 2014) was a HOA non judicial foreclosure case where a \$280,000 first
12 deed of trust was extinguished for a \$10,000 bid, a 3.6% purchase, and the court had no issue with
13 the consideration paid.

15 Again, Ditech knew about the foreclosure being in process, sent one letter asking for a
16 payoff, received a response telling them the payoff, then did nothing, made no more inquiries and
17 took no other action. Ditech has waived its argument regarding commercial reasonableness,
18 oppression and unfairness because it had the ability to prevent property from going to sale. Instead,
19 it sat back and allowed the foreclosure sale to transpire and title to transfer. "[I]t is well established
20 that due process is not offended by requiring a person with actual, timely knowledge of an event
21 that may affect a right to exercise due diligence and take the necessary steps to preserve that right."

23 To request equity, one must do equity. Ditech had the last opportunity to stop the sale, but
24 consciously elected to allow the sale to proceed.

25 By not stopping the sale, Ditech waived its right to object to the value paid at auction, and
26 has limited itself to monetary damages, if any, against the HOA and its foreclosure agent. There is
27 no question that the prior homeowner did not pay their association dues, was foreclosed upon,
28

1 with Plaintiff buying the property at a duly conducted foreclosure sale, and there being no
2 announcement at the time of auction of any payment, or attempted payment, of the super-priority
3 portion of the lien by any entity.

4 Ditech should and could have done something to stop the sale.

5 Questions of fact preclude summary judgment on the issue of commercial
6 unreasonableness, if the court was to find NRS 116.3116 has a commercial reasonableness
7 requirement. However, even if the sale was found to be commercially unreasonable to Ditech, the
8 sale should not be set aside, rather, as Ditech can be made whole by monetary damages from the
9 party causing it harm to compensate it for its loss of its security interest in the property, and
10 therefore any equitable relief should be denied.

11 Ditech next attempts to rely on the Court's holding in Shadow Canyon. Again nothing in
12 Shadow Canyon relieves Ditech from its obligation to show that the fraud, oppression or
13 unfairness brought about or led to the price achieved at the sale.

14 As stated above, the Nevada Supreme Court addressed these very arguments in Bank of
15 America, N.A. v. Thomas Jessup, LLC Series VII, 462 P.3d 255 (Table), 2020 WL 2306320
16 (unpublished). The NVSC held that "Appellants contend that ACS's September 2011 letter
17 demonstrates that it foreclosed on only the subpriority portion of Foxfield's lien. We disagree, as
18 ACS's mistaken belief regarding the foreclosure sale's effect could not alter the sale's actual legal
19 effect, particularly when the superpriority portion of the HOAs lien was still in default at the time
20 of the sale and the sale otherwise complied with NRS Chapter 116s requirements." That is exactly
21 what Ditech argues here is that COA's mistaken belief regarding the foreclosure sales effect does
22 not alter the actual legal effect of the sale. COA, whether responding truthfully that it wasn't
23 claiming a super-priority lien because of the misstatement of law by Jory C. Garabedian, and
24 provides a payoff because it believes it is a super-priority lien, or mistakenly agrees with Jory C.

1 Garabedian's misstatement of the law, but still provides a payoff, ultimately sold the subject
2 property pursuant to NRS Chapter 116.

3 What COA's "opinion" of when and what constituted a superpriority amount is irrelevant
4 because the law was and remains clear regarding when a superpriority is created and what
5 amounts make up the superpriority. None of the disagreements within the COA email with Miles
6 Bauer in any way hindered BANA's ability to tender an amount which they failed to do. COA
7 provided a payoff and BANA failed to even attempt to make a payment. Miles was a
8 sophisticated law firm and clearly portrayed what they believed the law was in their August 16,
9 2012 letter and Ditech offers nothing to show that BANA relied on COA's interpretation of the
10 law.
11

12 The only oppressiveness or unfairness present is BANA's unreasonable belief that it could
13 do nothing to protect its interest and not face the outcome that took place and that is that its deed
14 of trust was extinguished.
15

16 **V. Reformation of the Deed**

17 LN Management LLC Series 3111 Bel Air 24G objects to the reformation of Bank of
18 America's legal description in its Deed of Trust recorded as instrument number 20041020-
19 0001569 in the office of the Clark County, Nevada Recorder and Subsequent Assignment to
20 Ditech recorded as instrument number 20130730-0000199 in the office of the Clark County,
21 Nevada Recorder its to correct the legal description and other defects, as it may only cloud title
22 and is a moot point, since the deed of trust was extinguished after the HOA lien sale, as discussed
23 in this opposition.
24
25
26
27
28

1 **CONCLUSION**

2 Based on the foregoing, there remain genuine issues of material fact precluding the grant
3 of summary judgment to Ditech and as such, this Court must deny Ditech's request for summary
4 judgment.

5 Dated November 11, 2020.

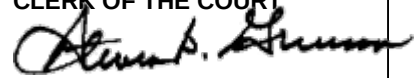
6 /s/Kerry P. Faughnan
7 Kerry P. Faughnan, Esq., NSB #12204
8 P.O. Box 335361
9 North Las Vegas, NV 89033
10 (702) 301-3096
11 (702) 331-4222- Fax
12 Kerry.faughnan@gmail.com
13 Attorney for Defendant, LN Management
14 LLC Series 3111 Bel Air 24G

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on the 11th day of November, 2020, the foregoing **OPPOSITION TO**
17 **DITECH FINANCIAL LLC F/K/A GREEN TREE SERVICING LLC'S MOTION FOR**
18 **SUMMARY JUDGMENT** was served via Electronic Service through the Eighth Judicial
19 District Court's Odyssey E-File and Serve System to:

20 ~ All Parties on E-Service List ~

21 By: /s/ Kerry P. Faughnan
22 Kerry P. Faughnan
23
24
25
26
27
28



RIS

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

NICHOLAS E. BELAY, ESQ.

Nevada Bar No. 15175

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: nicholas.belay@akerman.com

*Attorneys for Bank of America, N.A. and Ditech
Financial LLC f/k/a Green Tree Servicing LLC*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LN MANAGEMENT LLC SERIES 3111 BEL
AIR 24G,

Plaintiff,

v.

MICHAEL T. ELLIOTT, an individual; BANK
OF AMERICA, N.A.; and DOES 1 through 10,
inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No. : A-12-669570-C
Consolidated with: A-13-682055-C

Dept. No.: XIII

**BANK OF AMERICA, N.A. AND DITECH
FINANCIAL LLC F/K/A GREEN TREE
SERVICING LLC'S REPLY
SUPPORTING SUMMARY JUDGMENT
MOTION**

Defendants Ditech Financial LLC f/k/a Green Tree Servicing LLC (**Ditech**) and Bank of
America, N.A. (collectively, **defendants**) reply supporting their summary judgment motion, and in
response to LN Management LLC Series 3111 Bel Air 24G's opposition.

///

///

///

1 **I. INTRODUCTION.**

2 As discussed in defendants' Motion for Summary Judgment, federal law provides that while
3 Fannie Mae is in FHFA conservatorship, none of its property "shall be subject to . . . foreclosure . . .
4 without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3) (the "Federal Foreclosure Bar").¹ The Ninth
5 Circuit and the Nevada supreme court have held that the Federal Foreclosure Bar preempts Nevada's
6 State Foreclosure Statute and protects Fannie Mae's lien from extinguishment in an HOA foreclosure
7 sale. That precedent controls this case: Unrefuted evidence proves that the time of the HOA Sale,
8 Fannie Mae was the owner of the Loan while its contractually authorized servicer—BANA—
9 appeared as the recorded beneficiary of the Deed of Trust. Consequently, the Federal Foreclosure
10 Bar protected Fannie Mae's property interest and precluded LN Management from acquiring free-
11 and-clear title to the Property.

12 LN Management does not contest the merits of this argument, but merely contends that it has
13 been waived because defendants did not raise it until opposing LN Management's 2018 motion for
14 summary judgment. This ignores that LN Management is the plaintiff who has brought claims in
15 this case against defendants, and the 2018 motion was the first time it had made arguments going to
16 the merits of this case. Accordingly, defendants' invocation of the Federal Foreclosure Bar at that
17 time was timely and appropriate.

18 Aside from establishing the Federal Foreclosure Bar applies, defendants have also
19 demonstrated the deed of trust survived because the HOA conducted a subpriority sale, any super-
20 priority tender was excused as futile, and the sale should be equitably set aside as unfair and
21 oppressive. LN Management offers no contrary evidence to rebut these arguments in its opposition.
22 Accordingly, defendants respectfully request the court enter judgment confirming the Deed of Trust
23 remains a valid encumbrance on the property and granting defendants' request for reformation.

24 ///

25 ///

26 ///

27 ¹ Terms not defined herein shall take on the definition in defendants' Motion for Summary
28 Judgment ("MSJ").

1 **II. DEFENDANTS' MATERIAL FACTS ARE NOT IN DISPUTE.**

2 LN Management does not dispute any facts defendants set forth in their summary judgment
3 motion. (See Mot. at 4-8; Opp. at 2-3). Defendants dispute all of LN Management's facts to the
4 extent they imply legal conclusions or else omit procedural history.

5 **III. ARGUMENT.**

6 **A. The Five-Year Rule under NRCP 41(e) Has Not Run.**

7 LN Management contends the court should dismiss this case under NRCP 41(e) because the
8 five-year rule has expired. This argument lacks merit.

9 **1. This action was previously brought to trial.**

10 NRCP 41(e) only applies if an action is not brought to trial within 5 years after the action was
11 filed. See NRCP 41(e)(2)(B). The Nevada supreme court defines "trial" as "the examination before a
12 competent tribunal, according to the law of the land, of questions of fact or of law put in issue
13 by pleadings, for the purpose of determining the rights of the parties." *United Ass'n of Journeymen &*
14 *Apprentices of Plumbing & Pipe Fitting Indus. v. Manson*, 105 Nev. 816, 819–20, 783 P.2d 955, 957
15 (1989). Under this definition, "proceedings leading to a complete grant of summary judgment
16 constitute a trial" for purposes of the five-year rule. *Monroe v. Columbia Sunrise Hosp. & Med. Ctr.*,
17 123 Nev. 96, 100, 158 P.3d 1008, 1010 (2007). This holds true even when third-party claims remain
18 outstanding. *Id.* at 1011.

19 The court granted summary judgment in favor of Ditech on August 13, 2014. See Ex. A. The
20 order granted Ditech's motion "in its entirety" and constituted the "final order/judgment in this
21 matter." *Id.* While the court ultimately granted LN Management's motion to set aside the judgment
22 in September 2014, nothing in either NRCP 41(e) or Nevada case law negates the fact Ditech
23 brought the action "to trial" within the meaning of Rule 41(e). This is only logical. If post-judgment
24 motions could undo a parties' prior compliance with the rule, this would open the door to procedural
25 gamesmanship, as litigants could strategically wait until after the five-year rule has run before
26 moving to set aside or reconsider a judgment. Rule 41(e)'s plain language does not contemplate the
27 five-year rule being reinstated after it has already been satisfied on summary judgment. See
28 *Vanguard Piping v. Eighth Jud. Dist. Ct.*, 129 Nev. 602, 608, 309 P.3d 1017, 1020 (2013) (stating

1 the rules of statutory interpretation apply to procedural rules and noting the court should look to the
2 plain language of the rule); *Thran v. District Ct.*, 79 Nev. 176, 180-81 (1963) (Rule 41(e) is "clear,
3 unambiguous and requires no construction other than its own language."). Because Ditech already
4 satisfied the five-year rule, it is no longer applicable to this action.

5 2. LN Management Stipulated to Forego the Five-Year Rule.

6 NRCP 41(e)(5) provides a party may stipulate in writing to extend the time in which to
7 prosecute an action. This is precisely what LN Management did when it moved for reconsideration
8 of the court's May 2018 order dismissing the action under Rule 41(e). In the motion, LN
9 Management argued the court should set aside the court's five-year rule dismissal and reopen the
10 case so that the parties could obtain "final orders that would determine each of the parties rights as to
11 the property." See Ex. B at 4. No other party filed an opposition to LN Management's motion. See
12 Ex. C. By filing an unopposed motion to disregard the five-year rule dismissal and litigate the
13 matter on the merits, LN Management and the remaining parties stipulated to forego application of
14 the five-year rule to this matter. LN Management cannot now retroactively revive the rule that it
15 already successfully set aside.

16 3. LN Management is judicially estopped from obtaining dismissal under 17 the Five-Year Rule.

18 Even assuming the five-year rule continues to apply, LN Management is judicially estopped
19 from obtaining dismissal. Judicial estoppel has five elements: "(1) the same party has taken two
20 positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3)
21 the party was successful in asserting the first position (i.e., the tribunal adopted the position or
22 accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not
23 taken as a result of ignorance, fraud, or mistake." *Matter of Frei Irrevocable Tr. Dated Oct. 29,*
24 *1996*, 133 Nev. 50, 56, 390 P.3d 646, 652 (2017) (citation omitted). All elements are satisfied to
25 prevent LN Management from now asserting the five-year rule.

26 First, LN Management has taken two positions. In its opposition, LN Management contends
27 the five-year rule expired on October 3, 2017, necessitating dismissal of this action. Opp. at 4. But
28 LN Management previously moved for reconsideration on **June 21, 2018**, of the court's order

1 dismissing the action for want of prosecution under the **very same** rule LN Management now seeks
2 to enforce. *See* Exs. B, C. In the motion, LN Management explicitly represented any delay in
3 resolving the case after the court granted its initial motion to reopen in September 2014 was due to
4 LN Management's **own** "excusable neglect." *See* Ex. B at 4. LN Management further argued
5 reconsideration of the dismissal order was warranted because defendants and LN Management "need
6 this Court to issue final orders that would determine each of the parties rights as to the property." *Id.*

7 *Second*, LN Management's positions were taken in this case, a judicial proceeding.

8 *Third*, LN Management successfully obtained reconsideration of the court's order dismissing
9 the action under Rule 41(e). The court granted LN Management's motion and reopened the case on
10 July 27, 2018.

11 *Fourth*, the positions are inconsistent. LN Management moved for (and obtained)
12 reconsideration of the court's Rule 41(e) dismissal, explicitly arguing such relief was appropriate due
13 to its own wrongful conduct. LN Management now seeks to undo its own motion by arguing the
14 five-year rule somehow expired in October 2017. These positions are entirely irreconcilable. LN
15 Management cannot now argue for dismissal under Rule 41(e) when it previously moved to reopen
16 the case (for the second time) notwithstanding this very rule.

17 *Finally*, LN Management's conduct cannot be found to result from ignorance, fraud or
18 mistake. LN Management moved on its own volition for reconsideration of the court's dismissal
19 order and directly argued the order should be set aside based on excusable neglect. In LN
20 Management's own words, such reconsideration was justified because the parties "need" the court to
21 determine the parties' respective rights in the property. LN Management should not be rewarded for
22 its inconsistent positions just because it now wants to avoid the court granting summary judgment in
23 defendants' favor.

24 **4. LN Management's Five-Year Rule argument is barred by Waiver and**
25 **Equitable Estoppel.**

26 In addition to being judicially estopped from arguing for five-year rule dismissal, LN
27 Management also waived or else should be equitably estopped from raising the issue. Waiver is the
28 intentional relinquishment of a known right. *Nev. Yellow Cab Corp. v. Eighth Judicial Dist. Court ex*

1 *rel. Cty. of Clark*, 152 P.3d 737, 740 (Nev. 2007). Waiver of a right may be inferred when a party
2 engages in conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief
3 that the right has been relinquished. *Id.* Further, a party seeking equity is required to do equity.
4 *Overhead Door Co. of Reno, Inc. v. Overhead Door Corp.*, 734 P.2d 1233, 1235 (Nev. 1987).
5 Equitable estoppel operates to prevent a party from asserting legal rights that, in equity and good
6 conscience, they should not be allowed to assert because of their own conduct. *NGA #2 Liab. Co. v.*
7 *Rains*, 946 P.2d 163, 168 (Nev. 1997).

8 Here, LN Management *twice* moved to reopen this case: First, after Ditech brought the action
9 to trial; and second, after LN Management obtained reconsideration of the court's rule 41(e)
10 dismissal order. To the extent LN Management believed the five-year rule expired in October 2017
11 (which defendants contest), LN Management has intentionally relinquished any such argument. Had
12 LN Management indicated *any* intent to argue for five-year rule dismissal prior to its opposition to
13 the instant motion, defendants could have acted accordingly to either obtain affirmative relief or
14 request an expediated resolution of the matter. Instead, LN Management did the exact opposite,
15 arguing the court should maintain the case notwithstanding any such rule. Defendants reasonably
16 relied on this relinquishment and would be severely prejudiced if the court dismissed the action
17 without resolving the parties' respective interests in the property.

18 **5. Alternatively, the Five-Year Rule has not run due to tolling.**

19 To the extent the court finds the five-year rule was reinstituted based on its September 24,
20 2014 order granting LN Management's post-trial motion to reopen the case, the deadline still would
21 not have run due to tolling. Under this scenario, the earliest the five-year rule could have expired is
22 September 24, 2019, or five-years after the court reinstituted the action. But the Nevada supreme
23 court has explicitly recognized the deadline can be tolled under certain circumstances, such as when
24 the court stays proceedings. *Baker v. Noback*, 112 Nev. 1106, 1110 (1996) (noting it would be
25 "patently unfair" to dismiss an action for failure to bring to trial when a stay prevented the parties
26 from going to trial within the period); *see also Boren v. City of N. Las Vegas*, 98 Nev. 5, 6, 638 P.2d
27 404, 405 (1982) ("**Any** period during which the parties are prevented from bringing an action to trial
28

1 by reason of a stay order shall not be computed in determining the five-year period of [NRCP]
2 41(e).") (emphasis added).

3 Here, this matter was closed between May 23, 2018 and July 27, 2018 before the court
4 granted LN Management's motion to reopen. The matter was then stayed due to Ditech's bankruptcy
5 on March 27, 2019, and it remains stayed to date.² Accounting for these tolling periods, the five-
6 year deadline would be **246 days**³ from when the stay is lifted and/or the case is reopened. There is
7 simply no merit to LN Management's contention the five-year rule deadline has expired.

8 **B. The Federal Foreclosure Bar Protected Fannie Mae's Deed of Trust from**
9 **Extinguishment.**

10 The Nevada Supreme Court has held that an Enterprise has a secured property interest,
11 protected from extinguishment by the Federal Foreclosure Bar, when its contractually authorized
12 servicer appears as record deed-of-trust beneficiary. *Daisy Trust v. Wells Fargo Bank, N.A.*, 445
13 P.3d 846, 849 (Nev. 2019). That ruling mirrored the conclusions of the Ninth Circuit. *See, e.g.,*
14 *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017). *Daisy Trust* confirmed that an Enterprise "did
15 not need to be the [deed of trust's] beneficiary of record to establish its ownership interest," and
16 "Nevada's recording statutes d[o] not require [an Enterprise] to publicly record its ownership interest
17 as a prerequisite for establishing that interest." 445 P.3d at 849. The Nevada Supreme Court also
18 relied on *In re Montierth*, 354 P.3d 648, 650-51 (Nev. 2015), to hold that a deed of trust need not be
19 assigned to an Enterprise for it to "own the secured loan." 445 P.3d at 849; *see also CitiMortgage,*
20 *Inc. v. SFR Invs. Pool 1, LLC*, No. 70237, 2019 WL 289690, at *1 (Nev. Jan. 18, 2019) (holding that
21 the servicer's status as the recorded deed of trust beneficiary does not create a question of material
22 fact regarding whether Fannie Mae owned the loan). The court further confirmed that a publicly
23 recorded document identifying the Enterprise as having an ownership interest is not "a prerequisite
24 for establishing that interest." 445 P.3d at 849.

25 ² Defendants moved to lift the stay and reopen the case from its statistical closure in the underlying
26 motion.

27 ³ There are 65 days between May 23, 2018 and July 27, 2018. There are 181 days between March
28 23, 2019, and September 24, 2019 (the earliest date the five-year rule deadline could expire absent
tolling).

1 The evidence before the Court includes the property records and business records from
2 Fannie Mae and its servicers BANA and Ditech, the sworn declaration of an employee of Fannie
3 Mae, and Fannie Mae's Guide, all of which are admissible under the rules of evidence. That
4 evidence establishes that Fannie Mae purchased the Loan in November 2004 and that Fannie Mae's
5 contractually authorized servicer appeared as beneficiary of record on the date of the HOA Sale. As
6 numerous courts have held, this type of evidence is admissible and sufficient to prove Fannie Mae's
7 ownership of the Loan and its relationship with its servicers. *E.g.*, *Daisy Tr.*, 445 P.3d at 849-51;
8 *Nationstar Mortg., LLC v. Archambault*, No. 78566, 2020 WL 3469882, at *1 (Nev. June 24, 2020)
9 (unpublished disposition); *Berezovsky*, 869 F.3d at 933; *Fannie Mae v. BFP Invs. 4 LLC*, 812 F.
10 App'x 522, 522 (9th Cir. 2020).

11 LN Management neither disputes the controlling case law on this issue nor contests that the
12 evidence supporting Fannie Mae's ownership of the Loan. Rather, LN Management's only
13 purported shield against the Federal Foreclosure Bar argument is to dispute whether it was timely
14 asserted. LN Management's explanation of its position, only a page long, lacks clarity, but it appears
15 LN Management contends both that defendants untimely raised the argument, and also that the
16 evidence supporting that argument was not made timely. Neither is accurate.

17 *First*, defendants timely raised the Federal Foreclosure Bar in this action in opposition to LN
18 Management's Motion for Summary Judgment in August 2018. While defendants served as
19 plaintiffs in one of the two cases consolidated into this one, it did not assert claims against LN
20 Management in that case. Rather, LN Management, the plaintiff in the other case consolidated here,
21 is the party who brought claims against defendants. And prior to its 2018 Motion for Summary
22 Judgment, LN Management had not made any effort to seek resolution of the merits of its claims.
23 Accordingly, it made sense for defendants to raise an argument at that time that would defeat LN
24 Management's claims.

25 Insofar as LN Management means to argue that defendants should have asserted the Federal
26 Foreclosure Bar as an affirmative defense, that position has no support in the case law: the Federal
27 Foreclosure Bar is not an independent cause of action or an affirmative defense, but is instead a legal
28 theory upon which parties like defendants can rely to defeat the cause of action in this case: LN

1 Management's quiet-title claim. Thus, it is irrelevant whether defendants' answer references the
2 Federal Foreclosure Bar itself because "[s]pecific legal theories need not be pleaded." *Fontana v.*
3 *Haskin*, 262 F.3d 871, 877 (9th Cir. 2001). Here, LN Management pleaded a quiet-title claim and
4 defendants are entitled to assert any legal theory to defend against that claim. The Federal
5 Foreclosure Bar is the rule of decision that prevents LN Management from achieving the quiet-title
6 relief that it seeks.

7 Relatedly, the Nevada Supreme Court rejected the argument that a servicer's invocation of
8 the Federal Foreclosure Bar as a defense was equivalent to asserting a standalone claim. *Nationstar*
9 *Mortg., LLC v. SFR Invs. Pool 1, LLC*, 396 P.3d 754, 757 (Nev. 2017). "Rather, SFR asserted a
10 quiet title claim against Nationstar, and Nationstar has merely argued that [Fannie Mae]'s property is
11 not subject to foreclosure while it is in conservatorship under federal law." *Id.* Because SFR's quiet-
12 title claim was properly before the court, there was no question that the court could evaluate the
13 merits of the argument that the Federal Foreclosure Bar provided the rule of decision in resolving
14 that claim. *Id.* That is the precise situation here. LN Management has asserted a timely quiet-title
15 claim against defendants, and defendants are permitted to rely upon the Federal Foreclosure Bar as
16 the rule of decision to defeat LN Management's claim of superior title without having to plead it as a
17 counterclaim or affirmative defense.

18 Even if one might consider the Federal Foreclosure Bar to be a claim or affirmative defense,
19 which it is not, "[f]ailure to amend does not affect the outcome because a judgment may be upheld
20 on any theory supported by the facts proved, even if not set forth in the pleadings." *In re Kemmer*,
21 265 B.R. 224, 230 (Bankr. E.D. Cal. 2001) (citing *Gilbane Bldg. Co. v. Fed. Reserve Bank of*
22 *Richmond, Charlotte Branch*, 80 F.3d 895, 900 (4th Cir. 1996)). Here that is the case; the
23 undisputed facts support Fannie Mae's ownership of the Loan on the date of the HOA Sale. The
24 Nevada supreme court addressed this same issue in *Guberland*, holding that even to the extent the
25 Federal Foreclosure Bar were an affirmative defense, the lender could maintain the defense at
26 summary judgment irrespective of the pleadings where the purchaser "had reasonable notice and an
27 opportunity to respond." *Nationstar Mortg., LLC v. Guberland LLC-Series 3*, 420 P.3d 556 (Nev.
28 2018) (unpublished). LN Management has known of defendants' Federal Foreclosure Bar defense

1 for *years* and had ample opportunity to conduct discovery if it so desired. LN Management cannot
2 now rely on its own inaction to preclude this court from resolving the case on the merits.

3 *Second*, defendants' evidence supporting their reliance on the Federal Foreclosure Bar—*i.e.*,
4 that evidence supporting both Fannie Mae's ownership of the Loan and its relationship with its
5 servicer at the time of the HOA Sale—was timely disclosed. On June 24, 2019, BANA and Ditech
6 served their Initial Disclosures and, on September 30, 2020, BANA and Ditech served a First
7 Supplemental Disclosure of Witnesses and Documents. *See* Ex. D. Those disclosures contained both
8 a corporate designee for Fannie Mae and the Fannie Mae business records discussed above. *See id.*
9 Accordingly, just as was the case in *Daisy Trust*, a Fannie Mae representative and supporting
10 documentation were properly disclosed and should be relied upon to grant summary judgment in
11 favor of Ditech and BANA.

12 LN Management's argument that this evidence was untimely, Opp. at 6-7, materially
13 misrepresents the posture of this case. LN Management, the plaintiff in the case, did not initiate
14 discovery or submit a scheduling order setting the timeframes and terms of discovery in this case.
15 Thus, there was never a deadline beyond which defendants' disclosure of evidence would have been
16 untimely. Defendants' evidence was disclosed well before its filing of the motion for summary
17 judgment, and LN Management has had every right to pursue discovery to challenge that evidence
18 but declined to do so. Accordingly, it cannot claim to have been prejudiced by the timing of
19 defendants' disclosures.

20 **C. Tender Was Excused as Futile.**

21 This case also falls firmly under the excused tender framework. Just as in *Perla Del Mar*,
22 BANA and Miles Bauer offered to pay the HOA, through Collections of America, the superpriority
23 amount "actually due" with no impermissible conditions attached. *See 7510 Perla Del Mar Ave.*
24 *Trust v. Bank of America*, N.A., 458 P.3d 348, 349 (Nev. 2020) (noting "[a]n actual tender is
25 unnecessary where it is apparent the other party will not accept it."). In response to BANA's letter, a
26 representative from Collections of America and Miles Bauer had a telephone conversation.
27 Following the call, Miles Bauer recounted the telephone call in an email to Collections of America.
28 *See* MSJ at Exhibit H-4. Collections of America then responded and confirmed it was not

1 "foreclosing on a super-priority lien pursuant to NRS 116.3116" and that the HOA did not claim "to
2 have a super-priority lien since the first mortgage [had] not [been] foreclosed." *Id.* BANA stood
3 ready, willing, and able to tender the full statutory super-priority amount to protect the Deed of
4 Trust, but the HOA obstructed BANA's ability to tender the superpriority portion of the HOA's lien
5 through its false representations and assurances. *Id.* The HOA sale thus did not extinguish the Deed
6 of Trust because Bank of America was excused from formal tender.

7 LN Management does not substantively oppose defendants' excuse of tender argument.
8 Instead, LN Management superficially contends "there is no evidence that [Collections of America]
9 would have rejected the [superpriority] payment." Opp. at 6. But this is simply false. Defendants
10 provided an email conversation memorializing the HOA's representation that the foreclosure sale
11 would not extinguish the deed of trust because no super-priority lien existed until after the first
12 mortgage had been foreclosed upon. This evidence is undisputed. In analyzing materially similar
13 representations from an HOA trustee, the Nevada supreme court confirmed "[t]he necessary
14 implication of these statements is that [the HOA trustee] would not have accepted a superpriority
15 tender before the first deed of trust was foreclosed." *See U.S. Bank N.A. v. SFR Invs. Pool 1 LLC*,
16 No. 78003, 2020 WL 3003017, at *1 (Nev. June 4, 2020) (unpublished) (directing judgment in the
17 bank's favor based on futility). The court should thus reject LN Management's meritless argument
18 and find defendants' deed of trust survived as a matter of law because formal tender was excused.

19 **D. The HOA Conducted a Sub-priority Sale.**

20 Even if defendants' tender were not excused as futile, summary judgment would still be
21 proper because the HOA, by its **own representation**, only foreclosed on the subpriority portion of its
22 lien. *See* MSJ at 8-9. Despite this fact, LN Management contends the HOA somehow foreclosed on
23 both portions of its lien because the entire lien amount remained due and owing. Opp. at 4-6. LN
24 Management ignores that an HOA may choose to foreclose on **either** the subpriority or superpriority
25 portion of its lien. *See Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 366 P.3d
26 1105, 1116 (Nev. 2016) ("And **if** the association forecloses on its superpriority lien portion, the sale
27 also would extinguish other subordinate interests in the property.") (emphasis added). It is thus
28 immaterial whether the superpriority portion (which the HOA through Collections of America did

1 not even believe existed) remained outstanding. The HOA clearly chose to only foreclose on its
2 subpriority portion, rendering the deed of trust valid. *See Nationstar Mortgage, LLC v. SFR Invs.*
3 *Pool 1, LLC*, 184 F.Supp. 3d 853, 859 (D. Nev. 2016) ("[A] subsequent HOA sale based only on the
4 subpriority amounts transfers title subject to the first mortgage.").

5 **E. Alternatively, The Sale Should be Set Aside under *Shadow Canyon*.**

6 Contrary to LN Management's assertion, nowhere in defendants' motion do they ask the court
7 to set aside the sale based on price alone. *See* Mot. at 19-20. Rather, defendants fully detailed each
8 and every relevant factor under the *Shadow Canyon* analysis and provided ample evidence of
9 irregularities rising to the level of unfairness. These include: (1) the HOA selling the property for
10 less than 2% of its fair market value; (2) Collections of America explicitly misrepresenting the effect
11 of the sale by indicating it would not extinguish the deed of trust; and (3) Collections of America
12 stating the superpriority lien did not exist until after foreclosure on the first mortgage. *Id.* This
13 deprivation of BANA's opportunity to protect its interest establishes more than the slight evidence of
14 unfairness required to set aside the sale under equitable grounds.

15 LN Management fails to meaningfully address these points in its opposition. Instead, LN
16 Management devotes the majority of its opposition to arguing against a "commercial
17 reasonableness" argument defendants never even made. *See* Opp. at 7-10. This is plainly insufficient
18 to counter defendants' evidence of unfairness.

19 **F. The Deed of Trust and Subsequent Assignment Should be Reformed.**

20 Defendants provided ample evidence in the underlying motion to support reformation of the
21 deed of trust and subsequent assignment. *See* MSJ at 20-22. LN Management's only argument in
22 opposition is that such reformation "may" cloud title and is "a moot point" because the deed of trust
23 was purportedly extinguished. As demonstrated above, the deed of trust continues to encumber the
24 property. Further, the notion that reformation may "cloud" title is nonsensical, as the reformation
25 has the exact opposite effect and only serves to clarify accurate information. The court should grant
26 defendants' request for reformation.

27 ///

28 ///

1 **IV. CONCLUSION.**

2 As demonstrated above and in the underlying motion, the court should grant defendants'
3 motion for summary judgment and enter a declaration that the interest LN Management acquired at
4 the HOA Sale is subject to the Deed of Trust. Defendants also respectfully request the Court reform
5 the Deed of Trust and Assignment as requested above.

6 DATED: November 30, 2020.

7 Respectfully submitted,

8 /s/ Nicholas E. Belay

9 ARIEL E. STERN, ESQ.

10 Nevada Bar No. 8276

11 NATALIE L. WINSLOW, ESQ.

12 Nevada Bar No. 12125

13 NICHOLAS E. BELAY, ESQ.

14 Nevada Bar No. 15175

15 **AKERMAN LLP**

16 1635 Village Center Circle, Suite 200

17 Las Vegas, Nevada 89134

18 *Attorneys for Bank of America, N.A. and Ditech*
19 *Financial LLC f/k/a Green Tree Servicing LLC*
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 30th day of September, 2020, I caused to be served a true and correct copy of the foregoing **BANK OF AMERICA, N.A. AND DITECH FINANCIAL LLC F/K/A GREEN TREE SERVICING LLC'S REPLY SUPPORTING SUMMARY JUDGMENT MOTION**, 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:

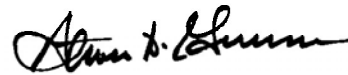
Kerry P. Faughnan, Esq.	kerry.faughnan@gmail.com
DocPrep	filings@docprep.info
Jory Garabedian	jgarabedian@mileslegal.com

I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Carla Llarena
An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A



CLERK OF THE COURT

1 **NOE**
2 Jory C. Garabedian, Esq.
3 jgarabedian@mileslegal.com
4 Nevada Bar No. 10352
5 **MILES, BAUER, BERGSTROM & WINTERS, LLP**
6 2200 Paseo Verde Pkwy., Ste. 250
7 Henderson, NV 89052
8 (702) 369-5960 / FAX: (702) 382-9452
9 MBBW File No. 13-L0121

7 Attorneys for Plaintiff
8 **GREEN TREE SERVICING LLC**

9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

11 GREEN TREE SERVICING LLC,)
12) Case No.: A-12-669570-C
13 Plaintiff,) Dept. No.: XIII
14)

14 vs.)
15)

15 MICHAEL T. ELLIOTT, an individual; LAS)
16 VEGAS INTERNATIONAL COUNTRY)
17 CLUB ESTATES HOME OWNERS)
18 ASSOCIATION, INC., a Nevada Corporation;)
19 REGENCY TOWERS ASSOCIATION, INC.,)
20 a Nevada Corporation; and DOES I-X)
21 INCLUSIVE,)
22 Defendants.)

NOTICE OF ENTRY OF ORDER
GRANTING MOTION FOR SUMMARY
JUDGMENT

22 **TO: ALL PARTIES:**

23 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an **ORDER**

24 //

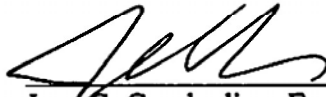
25 //

26 //

1 was entered in the above-referenced matter on the 12th day of August 2014, a copy of which is
2 attached hereto.

3 DATED this 12th day of August, 2014.

4 **MILES, BAUER, BERGSTROM & WINTERS, LLP**

5 

6
7 Jory C. Garabedian, Esq.

8 Nevada Bar No. 10352

9 **MILES, BAUER, BERGSTROM & WINTERS, LLP**

10 2200 Paseo Verde Pkwy, Suite 250

11 Henderson, NV 89052

12 (702) 369-5960 / FAX (702) 369-4955

1 **CERTIFICATE OF MAILING**

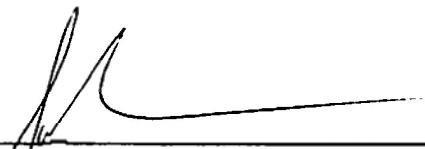
2 IT IS HEREBY CERTIFIED that on the 13th day of August, 2014, a true and correct
3 copy of the foregoing was mailed by placing in the United States Mail, postage pre-paid, to the
4 parties addressed below:
5

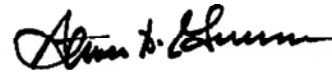
6 Kerry Faughnan, Esq.
7 P.O. Box 335361
8 North Las Vegas, NV 89086
9 *Attorney for LN Management LLC Series 3111 Bel Air 24G*

10 Michael T. Elliott
11 1623 Filaree Court
12 Carlsbad, CA 92011
13 *Defendant, pro se*

14 Gregory Kerr, Esq.
15 WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
16 3556 East Russell Road, 2nd Floor
17 Las Vegas, NV 89120
18 *Attorney for Regency Towers Association, Inc.*

19 Michael R. Mushkin, Esq.
20 MICHAEL R. MUSHKIN & ASSOCIATES
21 4475 South Pecos Road
22 Las Vegas, NV 89121
23 *Attorney for Las Vegas International Country Club Estates Homeowners Assoc., Inc.*

24 
an employee of MILES, BAUER, BERGSTROM &
25 WINTERS, LLP
26
27
28



CLERK OF THE COURT

1 **ORDR**

2 Jory C. Garabedian, Esq.

3 jgarabedian@mileslegal.com

4 Nevada Bar No. 10352

5 **MILES, BAUER, BERGSTROM & WINTERS, LLP**

6 2200 Paseo Verde Pkwy., Ste. 250

7 Henderson, NV 89052

8 (702) 369-5960 / FAX: (702) 382-9452

9 MBBW File No. 13-L0121

10 Attorneys for Plaintiff

11 **GREEN TREE SERVICING LLC**

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **GREEN TREE SERVICING LLC,**

15 Plaintiff,

16 vs.

Case No.: A-12-669570-C

Dept. No.: XIII

17 **MICHAEL T. ELLIOTT, an individual; LAS**
18 **VEGAS INTERNATIONAL COUNTRY CLUB**
19 **ESTATES HOME OWNERS ASSOCIATION,**
20 **INC., a Nevada Corporation; REGENCY**
21 **TOWERS ASSOCIATION, INC., a Nevada**
22 **Corporation; and DOES I-X INCLUSIVE,**

23 Defendants.

24 **ORDER GRANTING MOTION FOR**
25 **SUMMARY JUDGMENT**

26 In this action, after review and consideration of GREEN TREE SERVICING LLC's
27 (hereinafter "GREEN TREE") Motion for Summary Judgment, and no opposition having been
28 filed and served after proper service of said Motion and Notice of Hearing, the Court hereby
finds as follows:

29 **UNDISPUTED FACTS**

30 1. The instant action concerns the reformation of a first Deed of Trust to correct the
31 legal description therein and to declare the first Deed of Trust a valid lien on that real property

32 **RECEIVED**

33 **AUG 05 2014**

-1-

1 located at 3111 Bel Air Drive, Unit 24-G, Las Vegas, NV 89109 (hereinafter the "Subject
2 Property).

3 2. The Subject Property has the following legal description:

4 PARCEL 1:

5
6 UNIT ONE HUNDRED EIGHTY-FIVE (185) AS AMENDED PLAT OF
7 REGENCY TOWERS, AS THE SAME IS ESTABLISHED AND IDENTIFIED
8 IN THE PLAN OF CONDOMINIUM FILES PURSUANT TO THE
9 PROVISIONS OF NRS 117.020 ON APRIL 12, 1972 IN BOOK 14 OF PLATS,
10 PAGE 37, AS CLARIFIED BY AFFIDAVITS RECORDED SEPTEMBER 5,
11 1972, DOCUMENT NO. 220126 AND MAY 10, 1973, DOCUMENT NO.
12 285994, AND AS AMENDED ON AUGUST 10, 1973 IN BOOK 16 OF PLATS,
13 PAGE 27, IN THE OFFICIAL RECORDS OF CLARK COUNTY, NEVADA
14 ("PLAN"), AND AMENDED HERETO.

15 PARCEL 2:

16 AN UNDIVIDED .549% INTEREST IN THE COMMON AREAS INCLUDED
17 IN THE PLAN.

18 PARCEL 3:

19 AN UNDIVIDED .549% INTEREST IN THE ESTATE FOR YEARS
20 CREATED BY THAT CERTAIN LEASE DATED JANUARY 1, 1971
21 BETWEEN CHAININ NEVADA PROPERTIES, INC., AS LANDLORD AND
22 REGENCY HOLDING CORP. AS TENANT, RECORDED ON JANUARY 7,
23 1971 AS INSTRUMENT NO. 72485, BOOK NO. 91, IN OFFICIAL RECORDS
24 OF CLARK COUNTY NEVADA.

25 3. On or about October 8, 2002, MICHAEL T. ELLIOTT ("ELLIOTT") and his
26 wife Regan Dawn Elliott, purchased and acquired title to the Subject Property as community
27 property with rights of survivorship by way of a "Grant, Bargain, Sale Deed."

28 4. On or about October 9, 2003, Regan Dawn Elliott conveyed her interest in the
Subject Property to ELLIOTT by way of a Grant Deed.

1 5. Shortly before, on or around October 2, 2003, ELLIOTT took out a mortgage loan
2 with Washington Mutual Bank, F.A. for \$315,000.00. The loan was secured by a deed of trust
3 (hereinafter the "WMB Deed of Trust") and recorded against the Subject Property.

4 6. The WMB Deed of Trust was intended to be a first security interest in senior
5 position against the Subject Property.

6 7. On or about October 6, 2004, ELLIOTT took out a mortgage loan with Bank of
7 America, N.A. ("BANA") for \$322,100.00 to refinance the WMB Deed of Trust and associated
8 loan. The loan is secured by a deed of trust and was recorded against the Subject Property on
9 October 20, 2004 in the Office of the Clark County Recorder as document/instrument 20041020-
10 0001569. (hereinafter the "Deed of Trust").

11 8. The Deed of Trust contains the Subject Property's common address and the
12 assessor's parcel number ("APN") and was recorded and indexed with the Clark County
13 Recorder under the Subject Property's APN with ELLIOTT as grantor and BANA as grantee.

14 9. However, the Deed of Trust does not contain the legal description of the Subject
15 Property.

16 10. When the mortgage loan associated with the Deed of Trust was funded, a HUD
17 Settlement Statement was executed by ELLIOTT listing the Subject Property address and further
18 directing \$313,615.59 of the loaned funds to be distributed to Washington Mutual to satisfy the
19 WMB Deed of Trust.

20 11. The WMB Deed of Trust was paid off and on or around October 23, 2004, and a
21 Substitution of Trustee and Full Reconveyance of the WMB Deed of Trust was executed and
22 recorded by Washington Mutual.

1 12. On or around June 21, 2012, Defendant LAS VEGAS INTERNATIONAL
2 COUNTRY CLUB ESTATES HOME OWNERS ASSOCIATION, INC. (hereinafter "LVIC")
3 caused to be recorded a Notice of Claim of Lien-Delinquent Homeowners Assessment in the
4 amount of \$4,366.00, which purports to encumber the Subject Property.
5

6 13. On or around July 25, 2012, LVIC caused to be recorded a Notice of Default and
7 Election to Sell as to the June 21, 2012 Notice of Claim of Lien-Delinquent Homeowners
8 Assessment.
9

10 14. On October 3, 2012, GREEN TREE's predecessor BANA, commenced the
11 instant action seeking among other things to reform the Deed of Trust to include the correct legal
12 description of the Subject Property, and further to declare the Deed of Trust as a first security
13 interest with priority over defendants REGENCY and LVIC's lien interests on the Subject
14 Property.
15

16 15. On October 10, 2012, counsel for BANA and GREEN TREE recorded a Notice of
17 Lis Pendens of the instant action.
18

19 16. On November 15, 2012, LVIC caused to be recorded a Notice of Trustee Sale
20 concerning its Notice of Claim of Lien-Delinquent Homeowners Assessment.
21

22 17. The Notice of Trustee Sale states that the Subject Property is being sold subject to
23 a first security interest on the Subject Property.
24

25 18. On December 7, 2012, counsel for BANA contacted LVIC's foreclosure
26 trustee/agent Collections of America, Inc. for any super-priority amounts that might have had
27 priority over the Deed of Trust; however, no such amounts were provided or claimed to be part
28 of the Notice of Claim of Lien-Delinquent Homeowners Assessment.

1 19. On December 17, 2012, a Trustee's Deed Upon Sale Nevada was recorded
2 wherein LVIC through its trustee/agent Collections of America, Inc. purportedly sold and
3 conveyed, without warranty, the Subject Property to 3111 Bel Air Drive 24G Trust (hereinafter
4 the "Bel Air Trust") for \$7,001.00 to satisfy the Notice of Claim of Lien-Delinquent
5 Homeowners Assessment.
6

7 20. On April 26, 2013, a Quitclaim Deed was recorded wherein the Bel Air Trust
8 conveyed the Subject Property for zero consideration to LN MANAGEMENT LLC SERIES
9 3111 BEL AIR 24G (hereinafter "LN MANAGEMENT").
10

11 21. On May 7, 2013, a Stipulation and Order Regarding the Status of LVIC was filed
12 and entered wherein LVIC expressly acknowledged that it did not have, or foreclose on, a super-
13 priority lien, and that the foreclosure sale did not affect the or extinguish the Deed of Trust.
14

15 22. On May 17, 2013, LN MANAGEMENT filed a complaint in a separate action
16 which sought to, among other things, quiet or vest title to the Subject Property in LN
17 MANAGEMENT free and clear of all claims of BANA and its successor GREEN TREE as a
18 result of LVIC's foreclosure sale.
19

20 23. On October 29, 2013, this Court consolidated the two cases into the prior case
21 initially filed by BANA.
22

23 24. On January 23, 2014, a Stipulation and Order was entered in this Court wherein
24 GREEN TREE was substituted in for BANA¹.
25

26 ¹ A Stipulation and Order Regarding Status of REGENCY TOWERS ASSOCIATION, INC. was also entered on
27 December 26, 2012, which also acknowledged BANA's first lien rights. Factual background concerning
28 REGENCY TOWERS ASSOCIATION, INC. is omitted since it did not foreclose on the Subject Property and
agreed to be bound by a final non-monetary order or judgment in this matter. Further, it appears from the public
records that it has subsequently released its Delinquent Assessment Lien from record.

LEGAL DETERMINATIONS

THE COURT FINDS that no opposition was filed or served to contest the aforesaid undisputed facts, or the legal arguments asserted by GREEN TREE in the Motion for Summary Judgment, and on that basis, grants GREEN TREE's Motion for Summary Judgment pursuant to EDCR 2.20(e) and EDCR 2.23(c).

THE COURT FURTHER FINDS that good cause exists to reform the Deed of Trust under the doctrine of mutual mistake to correct and include the legal description as set forth in paragraph 2 above.

THE COURT FURTHER FINDS that good cause exists to support GREEN TREE's statutory interpretation of NRS 116.3116 that a super-priority interest is a mere payment priority and not a separate lien that operates to eliminate a first deed of trust/security interest. Such interpretation avoids absurd results, is supported by Nevada's legislative history, is read in harmony with other NRS 116 provisions, and avoids offending due process.

THE COURT FURTHER FINDS that good cause appearing, LVIC did not have or claim to have had a super-priority interest within its foreclosed lien and that LN MANAGEMENT had constructive notice of the lack of super-priority interest through LVIC's Notice of Sale. Further, LN MANAGEMENT took title with a recorded Lis Pendens and its title is subject to the outcome of this matter.

NOW WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that GREEN TREE's Motion for Summary Judgment is GRANTED in its entirety and this shall be a final order/judgment in this matter including case number A-13-682055-C.

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Deed of Trust is
2 hereby reformed to include the correct legal description of the Subject Property as set forth in
3 paragraph 2 of the Undisputed Facts above.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Deed of Trust
5 remains a valid first security interest and lien on the Subject Property despite LVIC's foreclosure
6 sale.
7

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that any title or interest in
9 the Subject Property acquired by LN MANAGEMENT, including its predecessors and
10 successors, is subject to the Deed of Trust.
11

12 IT IS SO ORDERED, ADJUDGED AND DECREED.

13
14 DATED: Aug 28, 2014


DISTRICT COURT JUDGE

15
16
17 Respectfully submitted by:

18 MILES, BAUER, BERGSTROM &
19 WINTERS, LLP

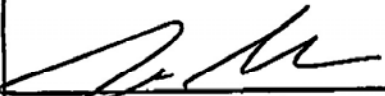
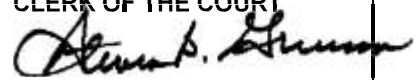
20 
21 Jory C. Garabedian, Esq.
22 Nevada Bar No. 10352
23 2200 Paseo Verde Pkwy., Ste. 250
24 Henderson, NV 89052
25 Attorney for Green Tree Servicing LLC
26
27
28

EXHIBIT B

EXHIBIT B



MOT

Kerry Faughnan, Esq.
Nevada Bar No.12204
P.O. Box 335361
North Las Vegas, NV 89033
(702) 301-3096
(702) 331-4222- Fax
Kerry.faughnan@gmail.com
Attorney for LN Management LLC Series 3111 Bel Air 24G

**EIGHTH JUDICIAL DISTRICT COURT FOR
CLARK COUNTY, NEVADA**

BANK OF AMERICA, N.A, a national
banking association,

Plaintiff,

vs.

MICHAEL T. ELLIOTT, an individual; LAS
VEGAS INTERNATIONAL COUNTRY
CLUB ESTATES HOME OWNERS
ASSOCIATION, INC., a Nevada
Corporation; REGENCY TOWERS
ASSOCIATION, INC., a Nevada
Corporation; and DOES I-X INCLUSIVE,

Defendants.

LN MANAGEMENT LLC SERIES 3111
BEL AIR 24G

Plaintiff,

v.

MICHAEL T. ELLIOT, an individual;
BANK OF AMERICA, N.A.; and DOES 1
through 10, inclusive;

Defendants.

Case No.: A-12-669570-C

Dept. No.: XIII

Consolidated with Case No. A-13-682055-C

MOTION TO REOPEN CASE

Pursuant to Rule 60(b) of the Nevada Rules of Civil Procedure, Consolidated Plaintiff, LN
Management LLC Series 3111 Bel Air 24G (LN), by and through its counsel of record, Kerry P.
Faughnan, Esq., hereby moves to reopen this case that was dismissed by this Court based on
Counsel's inadvertence in filing a Motion for Summary Judgement. This Motion is made and

1 based on the following Memorandum of Points and Authorities, the pleadings and papers on file
2 herein, and any oral argument the Court may consider on this Motion.

3 Dated: June 21, 2018

4
5 /s/ Kerry P. Faughnan
6 Kerry P. Faughnan, Esq.
7 *Attorney for Plaintiff*

8
9 **NOTICE OF MOTION**

10 PLEASE TAKE NOTICE that the undersigned will bring the above Motion on for hearing
11 before the Eighth Judicial District Court, located at the Regional Justice Center, 200 Lewis
12 Avenue, Las Vegas, Nevada 89155, on the 23 day of July, 2018 at 9:00: A m. in
13 Department XIII of the above-entitled Court.

14 Dated: June 21, 2018.

15
16 /s/ Kerry P. Faughnan
17 Kerry P. Faughnan, Esq.

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **INTRODUCTION.**

20 This lawsuit arises from a foreclosure sale by a homeowners' association. The subject real
21 property is located at 3111 Bel Air Drive, #24G, Las Vegas, Nevada 89109 (the **Property**). On
22 or about April 26, 2013, Plaintiff acquired by deed that certain real property commonly known as
23 3111 Bel Air Drive, #24G, Las Vegas, Nevada 89109 (the "Property") from the 3111 Bel Air
24 Drive 24G Trust. The 3111 Bel Air Drive 24G Trust acquired the Property at a properly noticed
25 foreclosure sale in accordance with NRS 116.3116 through 116.31168, inclusive.

26 Through its quiet title complaint filed May 17, 2013 as District Court case A-13-682055-
27 C, LN sought to determine the rights and interests of Bank of America, N.A. (**BANA**) and the
28 other named defendants interests as they pertain to the property. As explained below, the issue is

1 whether BANA's First Deed of Trust survived the HOA foreclosure or was extinguished as a
2 result of the HOA sale.

3 On September 9, 2013, BANA filed a Motion to consolidate that case with the instant case
4 which was granted on October 21, 2013.

5 On January 23, 2014, the parties entered a Stipulation and Order substituting Green Tree
6 Servicing LLC ("Green Tree") in place of BANA.

7
8 On March 11, 2014, Green Tree answered LN's Third Party Complaint.

9 On February 21, 2017, the Court held a status check in this matter which resulted in the
10 Court dismissing all the claims of Green Tree without prejudice which left only LN's claims in
11 the matter.

12 Following the February 21, 2017 hearing Counsel for LN tried repeatedly to contact
13 Counsel for Green Tree in order to resolve the remaining issues. Counsel for Green Tree failed to
14 return any calls from LN's Counsel.

15
16 On October 19, 2017 and January 18, 2018, the Court held status checks regarding the
17 status of the matter. At these hearings Counsel indicated that he had been diligently attempting to
18 contact opposing counsel to no avail and would be filing a Motion for Summary Judgment to
19 conclude this matter.

20 Counsel for LN admittedly failed to file the Motion.

21 On May 23, 2018, this Court issued an Order of Dismissal.

22 LN now brings the instant Motion.

23
24 **LEGAL STANDARD.**

25 Under NRCP 60(b), this Court has broad discretion to relieve the parties of a final
26 judgment or order based on mistake. NRCP 60(b) states:

27 **On motion and upon such terms as are just, the court may relieve a**
28 **party or a party's legal representative from a final judgment, order,**

1 **or proceeding for the following reasons: (1) mistake, inadvertence,**
2 **surprise, or excusable neglect;** (2) newly discovered evidence which by
3 due diligence could not have been discovered in time to move for a new
4 trial under Rule 59(b); (3) fraud (whether heretofore denominated
5 intrinsic or extrinsic), misrepresentation or other misconduct of an
6 adverse party; (4) the judgment is void; or, (5) the judgment has been
7 satisfied, released, or discharged, or a prior judgment upon which it is
8 based has been reversed or otherwise vacated, or it is no longer equitable
9 that an injunction should have prospective application. The motion shall
10 be made within a reasonable time, and for reasons (1), (2), and (3) not
11 more than 6 months after the proceeding was taken or the date that
12 written notice of entry of the judgment or order was served. A motion
13 under this subdivision (b) does not affect the finality of a judgment or
14 suspend its operation. This rule does not limit the power of a court to
15 entertain an independent action to relieve a party from a judgment, order,
16 or proceeding, or to set aside a judgment for fraud upon the court. Writs
17 of coram nobis, coram vobis, audita querela, and bills of review and bills
18 in the nature of a bill of review, are abolished, and the procedure for
19 obtaining any relief from a judgment shall be by motion as prescribed in
20 these rules or by an independent action. [Emphasis added]

12 In the case, the Counsel admittedly failed to file the appropriate motion. LN, as this Court knows,
13 has a number of these cases. In a perfect world, each case would receive the appropriate amount of
14 attention, which clearly did not happen in this matter. LN acknowledges its excusable neglect and
15 would ask the Court to view this failure on LN's part as the type of excusable neglect that NRC
16 60(b) was designed to address and not force the LN to re-file this matter in order to have their
17 issues addressed by the Court when this matter will be easily resolved with a Motion for Summary
18 Judgment which LN is prepared file immediately upon the Court setting aside the dismissal.

20 **ARGUMENT.**

21 In this matter, the case had, and continues to have, 2 active parties, BANA and LN who
22 need this Court to issue final orders that would determine each of the parties rights as to the
23 property. LN was errant in its failure to timely file the Motion that it indicated to the Court it
24 would be filing in this matter and that failure resulted in the dismissal of the case. LN requests
25 that the Court reverse the dismissal of the case so that LN may immediately file its Motion for
26 Summary Judgment, once the matter is reopened, which will resolve this matter. LN realizes that
27 this case has lingered and is dedicated to getting this case resolved in an expeditious manner.

1 These facts indicate that the Order of Dismissal without Prejudice was entered by virtue of LN's
2 own error and therefore should be vacated and the matter re-opened.

3 All that remains at this time is that the Court re-instate the matter and the Court rule on
4 LN's Motion for Summary Judgement which will be immediately filed and will resolve this
5 matter.

6
7 **CONCLUSION.**

8 For the foregoing reasons, LN respectfully requests that the Court vacate the Order of
9 Dismissal without Prejudice, reopen the instant case and allow LN to file its Motion for Summary
10 Judgement which will finally resolve this matter.

11 Dated: June 21, 2018.

12
13 /s/ Kerry P. Faughnan
14 Kerry P. Faughnan, Esq.
15 Nevada Bar No.12204
16 P.O. Box 335361
17 North Las Vegas, NV 89033
18 (702) 301-3096
19 (702) 331-4222- Fax
20 *Attorney for LN Management LLC Series 3111 Bel Air 24G*
21
22
23
24
25
26
27
28

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

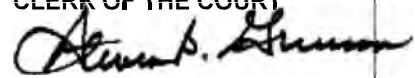
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 21, 2018, I allowed the Court’s ECF system to serve a true and correct copy of the foregoing documents to be e-filed and e-served through the Eighth Judicial District to all parties listed on the ECF system.

/s/Kerry P. Faughnan
Kerry P. Faughnan, Esq.

EXHIBIT C

EXHIBIT C



ORDR

Kerry Faughnan, Esq.
Nevada Bar No.12204
P.O. Box 335361
North Las Vegas, NV 89033
(702) 301-3096
(702) 331-4222- Fax
Kerry.faughnan@gmail.com
Attorney for LN Management LLC Series 3111 Bel Air 24G

**EIGHTH JUDICIAL DISTRICT COURT FOR
CLARK COUNTY, NEVADA**

BANK OF AMERICA, N.A, a national
banking association,

Plaintiff,

vs.

MICHAEL T. ELLIOTT, an individual; LAS
VEGAS INTERNATIONAL COUNTRY
CLUB ESTATES HOME OWNERS
ASSOCIATION, INC., a Nevada
Corporation; REGENCY TOWERS
ASSOCIATION, INC., a Nevada
Corporation; and DOES I-X INCLUSIVE,

Defendants.

LN MANAGEMENT LLC SERIES 3111
BEL AIR 24G

Plaintiff,

v.

MICHAEL T. ELLIOT, an individual;
BANK OF AMERICA, N.A.; and DOES 1
through 10, inclusive;

Defendants.

Case No.: A-12-669570-C

Dept. No.: XIII

Consolidated with Case No. A-13-682055-C

**ORDER GRANTING LN
MANAGEMENT LLC SERIES 3111
BEL AIR 24G'S MOTION TO REOPEN
CASE**

This case came on regularly in before the above-entitled Court on July 23, 2018 for
hearing on LN Management LLC Series 3111 Bel Air 24G's Motion to Reopen Case; Movant
appearing by and through its attorney, Kerry P. Faughnan, Esq, and no other parties appearing.

1 The Court having examined all documents and pleadings on file herein, there being no Opposition
2 filed with the Court, pursuant to EDCR 2.20 and 2.23 and good cause appearing finds as follows:

3 **THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** that LN
4 Management LLC Series 3111 Bel Air 24G's, Motion to Reopen Case is GRANTED.

5 DATED this 25th day of July, 2018.

6
7
8 
DISTRICT COURT JUDGE

9 Submitted by:

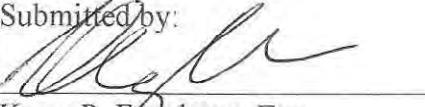
10 
11 Kerry P. Faughnan, Esq.
12 Nevada Bar No. 12204
13 P.O. Box 335361
14 North Las Vegas, NV 89033
15 Phone: (702) 301-3096
16 Fax: (702) 331-4222
17 Attorney for Plaintiff
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT D

EXHIBIT D

AKERMAN LLP

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

DDW

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

JARED M. SECHRIST, ESQ.

Nevada Bar No. 10439

AKERMAN LLP

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: darren.brenner@akerman.com

Email: jared.sechrist@akerman.com

*Attorneys for Bank of America, N.A. and Ditech
Financial LLC f/k/a Green Tree Servicing LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

LN MANAGEMENT LLC SERIES 3111 BEL
AIR 24G,

Plaintiff,

v.

MICHAEL T. ELLIOTT, an individual; BANK
OF AMERICA, N.A.; and DOES 1 through 10,
inclusive,

Defendants.

Case No. : A-12-669570-C
Consolidated with: A-13-682055-C
Dept. No.: XIII

**BANK OF AMERICA, N.A. AND
DITECH FINANCIAL LLC F/K/A
GREEN TREE SERVICING LLC'S
INITIAL DISCLOSURES**

AND ALL RELATED CLAIMS

Pursuant to Nevada Rule of Civil Procedure 16.1, defendants Bank of America, N.A., successor by merger to BAC Home Loans Servicing, L.P. fka Countrywide Home Loans Servicing, LP and Ditech Financial LLC f/k/a Green Tree Servicing LLC (collectively **defendants**) hereby submit their initial disclosure of witnesses and documents.

I. LIST OF WITNESSES

The following persons are known or reasonably believed to have knowledge of facts relevant to the allegations of any pleading filed by any party to this action, including persons having knowledge of rebuttal or impeachment evidence. Defendants disclose the following list of witnesses, specifically reserving the right to supplement this initial disclosure to add the names of persons who may have

1 relevant information, including expert witnesses, if subsequent information and investigation
2 so warrant.

- 3 1. Corporate Representative of Bank of America, N.A.¹. (BANA)
4 800 Samoset Drive
5 Mail Code DE5-024-02-08
6 Newark, Delaware 19713

7 This witness will testify regarding relevant facts and information relating to the deed of trust
8 on the subject property.

- 9 2. Corporate Representative of Ditech Financial LLC f/k/a Green
10 Tree Servicing LLC (Ditech)
11 1100 Virginia Drive, Suite 100A
12 Fort Washington, PA 19034

13 This witness will testify regarding relevant facts and information relating to the deed of trust
14 on the subject property.

- 15 3. Las Vegas International Country Club Estate Homeowners Association, Inc. (HOA)
16 c/o Registered Agent: Natalie Bowers
17 2854 Geary Place, Ste. 3809
18 Las Vegas, Nevada 89109

19 This witness is/are expected to testify regarding the status of Michael T. Elliott's (borrower's)
20 account with HOA; its assessment lien, notices of default and notices of trustee's sale; the non-judicial
21 sale of property; its relation to Collections of America, Inc. (NAS), or any other party to this action;
22 any additional relevant facts, information and circumstances relating to the HOA's foreclosure of the
23 property and surrounding the claims asserted in the pleadings surrounding the real property subject to
24 this lawsuit.

- 25 4. Collections of America, Inc.
26 c/o Registered Agent: Carol Salmon
27 1500 East Tropicana Ave., #108
28 Las Vegas, Nevada 89119

29 This witness is/are expected to testify concerning the borrowers' account; HOA's assessment
30 lien, notices of default and notices of trustee's sale; LN Management LLC Series 3111 Bel Air 24G
31 Trust's purchase of the property; its relation to HOA or any other party to this action; and additional

¹ No party is to engage in ex parte communications without Akerman's consent.

1 relevant facts, information and circumstances relating to HOA's foreclosure of the property and
2 surrounding the claims asserted in the pleadings surrounding the real property subject to this lawsuit.

- 3 5. Iyad "Eddie" Haddad and/or another Corporate representative(s) for LN Management
4 LLC Series 3111 Bel Air 24G
5 c/o Kerry P. Faughnan, Esq.
6 Law Office of Kerry P. Faughnan
7 P.O. Box 335361
8 North Las Vegas, NV 89033

9 This witness is/are expected to testify regarding relevant facts and information relating to the
10 non-judicial foreclosure sale relevant to this litigation; its interest in the property, if any; and the
11 disposition of the property from the time of HOA's foreclosure sale.

- 12 6. Corporate representative(s) for 3111 Bel Air 24G Trust
13 c/o Kerry P. Faughnan, Esq.
14 Law Office of Kerry P. Faughnan
15 6408 Casamar Street
16 North Las Vegas, Nevada 89086

17 This witness is/are expected to testify regarding relevant facts and information relating to the
18 non-judicial foreclosure sale relevant to this litigation; its interest in the property, if any; and the
19 disposition of the property from the time of HOA's foreclosure sale.

- 20 7. Michael T. Elliott
21 Current contact information unknown

22 This witness is expected to testify regarding relevant facts and information relating to BANA's
23 lien on the subject property, as well as the efforts of the HOA to foreclose on the property, to the extent
24 known to the witness.

- 25 8. Rock K. Jung, Esq.
26 WRIGHT FINLAY & ZAK, LLP
27 7785 West Sahara Avenue, Suite 200
28 Las Vegas, Nevada 89117

Mr. Jung may testify regarding the records maintained by Miles Bauer Bergstrom & Winters
LLP, the facts and circumstances surrounding BANA's attempted payment to Collections of America
and its communications with the borrower, if any. Mr. Jung is former counsel for BANA and all
parties are expressly instructed that they may not attempt to make any contact that would violate the
attorney-client privilege without express consent.

- 1 9. Corporate Representative of Miles, Bauer, Bergstrom & Winters, LLP
2 c/o Doug E. Miles, Esq.
3 555 Anton Boulevard, Suite 150
4 Costa Mesa, CA 92626

5 This witness is/are expected to testify regarding Miles Bauer's knowledge of HOA's
6 foreclosure and all facts related thereto, including, without limitation, the payment of the super-priority
7 Miles Bauer attempted on BANA's behalf. On information and belief, Doug Miles is likely to testify
8 as the corporate representative, person most knowledgeable, and Rule 30(b)(6) witness for Miles
9 Bauer, and his address is provided in this disclosure. BANA reserves the right to call other corporate
10 representatives, persons most knowledgeable, and Rule 30(b)(6) witnesses for Miles Bauer on the
11 topics stated herein, including, without limitation, Rock K. Jung. These witnesses are former counsel
12 for BANA, and all parties are expressly instructed that they may not attempt to make any contact that
13 would violate the attorney-client privilege without express consent.

- 14 10. Doug E. Miles, Esq.
15 MILES BAUER & WINTERS LLP
16 f/k/a MILES, BAUER, BERGSTROM & WINTERS LLP
17 555 Anton Boulevard, Suite 150
18 Costa Mesa, CA 92626

19 Mr. Miles is expected to testify regarding Miles Bauer's knowledge of HOA's foreclosure and
20 all facts related thereto, including, without limitation, the payment of the super-priority Miles Bauer
21 attempted on BANA's behalf. Mr. Miles is former counsel for BANA, and all parties are expressly
22 instructed that they may not attempt to make any contact that would violate the attorney-client
23 privilege without express consent.

- 24 11. Corporate Representative of Federal National Mortgage Association (Fannie Mae)
25 3900 Wisconsin Ave. NW
26 Washington, DC 20016

27 This person is expected to testify regarding Fannie Mae's ownership of the note and Deed of
28 Trust associated with the purchase of the property at issue in this litigation.

- 29 12. Any and all witnesses identified by any other party to this litigation.

30 **II. LIST OF DOCUMENTS**

31 Defendants disclose the following documents contained within the range of bates stamp
32 numbers GTS(Elliott)0001 through GTS(Elliott)1189. Redacted portions of these documents contain
33 personally identifiable information such as dates of birth, banking information, and social security

numbers. Defendants reserve the right to supplement its list of documents as the identity of additional documents becomes known during the course of discovery, through and including the time of trial.

<u>BATES NUMBER</u>	<u>DOCUMENT</u>	<u>INSTRUMENT NUMBER</u>
GTS(Elliott)0001-0029	Deed of Trust	20041020-0001569
GTS(Elliott)0030-0040	Revolving Credit Deed of Trust	20050329-0001931
GTS(Elliott)0041-0043	Lis Pendens	20050209-0000731
GTS(Elliott)0044	Notice of Claim of Lien of Delinquent Homeowners Association (Las Hadas)	201103280002335
GTS(Elliott)0045-0046	Notice of Default and Election to Sell under HOA Lien	201112010002276
GTS(Elliott)0047	Notice of Claim of Lien of Delinquent Homeowners Association (Las Hadas)	201206210001804
GTS(Elliott)0048-0049	Notice of Default and Election to Sell under HOA Lien	201207250002134
GTS(Elliott)0050-0053	Notice of Lis Pendens	201210100002912
GTS(Elliott)0054-0055	Substitution of Trustee and Full Reconveyance	201211190003659
GTS(Elliott)0056-0057	Notice of Trustee Sale's Sale under HOA Lien	201211150002365
GTS(Elliott)0058-0059	Substitution of Trustee under DOT	201301090000704
GTS(Elliott)00600-062-	Trustee's Deed Upon Sale	201212170000834
GTS(Elliott)0063-0065	Quitclaim Deed from 3111 Bel Air Drive 24G Trust to LN Management LLC, Series 3111 Bel Air 24G	201304260003246
GTS(Elliott)0066-0068	Notice of Lis Pendens	201305230004321
GTS(Elliott)0069-0070	Assignment of Deed of Trust from Bank of America to Green Tree Servicing LLC	201307300000199
GTS(Elliott)0071-0074	Bank of America's Business Records showing Fannie Mae ownership of loan	N/A

1	GTS(Elliott)0075	Fannie Mae Lender Letter LL-2015-04 dated September 16, 2015	N/A
2	GTS(Elliott)0076	August 28, 2015 Statement on Servicer Reliance on the Housing and Economic Recovery Act of 2008 in Foreclosures Involving Homeownership Associations from the Federal Housing Finance Agency	N/A
3	GTS(Elliott)0077	April 21, 2015 Statement on HOA Super-Priority Lien Foreclosures from the Federal Housing Finance Agency	N/A
4	GTS(Elliott)0078-0083	Promissory Note	N/A
5	GTS(Elliott)0084-0086	Notice of Servicing Transfer from Bank of America to Ditech	N/A
6	GTS(Elliott)0087-0089	Payoff Quote dated January 8, 2019	N/A
7	GTS(Elliott)0090	Ditech screenshot showing Fannie Mae ownership of loan	N/A
8	GTS(Elliott)0091-0092	Correspondence received from HOA relating to notice of foreclosure sale	N/A
9	GTS(Elliott)0093-0116	Miles Bauer Tender Affidavit	N/A
10	GTS(Elliott)0117-0126	Miles Bauer Borrower Affidavit	N/A
11	GTS(Elliott)0127-0186	Declaration of Graham Babin	N/A
12	GTS(Elliott)0187-0240	Relevant portions of Fannie Mae Seller and Servicer Guides in effect at time of HOA sale	N/A
13	GTS(Elliott)0241-0375	Fannie Mae MBS Processed Schedule of Mortgages	N/A
14	GTS(Elliott)0376-0394	Declaration of Covenants, Conditions, and Restrictions for Las Vegas International Country Club Estates Homeowners Association, Inc.	755358
15	GTS(Elliott)0395-0408	Declaration of Covenants, Conditions, and Restrictions for Regency Towers	313538
16	GTS(Elliott)0409-0410	Amendment to Declaration of Covenants, Conditions, and Restrictions for Regency Towers Association, Inc.	310747
17	GTS(Elliott)0411-0412	Second Amendment to Declaration of Covenants, Conditions, and Restrictions for Regency Towers Association, Inc.	01078
18	GTS(Elliott)0413-0439	Standards for New Homes and Improvements to Existing Homes	00826

1	GTS(Elliott)0440-0463	Rules and Regulations for Las Vegas Country Club Master Association	00887
2	GTS(Elliott)0464-0538	Declaration of Covenants, Conditions, and Restrictions of Regency Towers Association, Inc.	01384
3			
4	GTS(Elliott)0539-0543	Amendment to Notice of Community Association Charges of Las Vegas International Country Club Estates Homeowner's Association	20030812.01467
5	GTS(Elliott)0544-0565	Amendment to Declaration of Covenants, Conditions, and Restrictions for Las Vegas International Country Club Estates Homeowners Association, Inc.	20060501-0005216
6			
7	GTS(Elliott)0566-0569	Amendment to Notice of Community Association Charges for Las Vegas International Country Club Estates Home Owners Association, Inc.	20060523-0004988
8	GTS(Elliott)0570-0592	Minutes of the Senate Committee on Commerce and Labor, February 20, 2003	N/A
9			
10	GTS(Elliott)0593-0635	Deposition of Eddie Haddad from <i>U.S. Bank National Association, as Trustee v. Caparola at Southern Highlands Homeowners Association et al.</i> , case no. 2:16-cv-03009-RFB-CWH	N/A
11			
12	GTS(Elliott)0636-0873	Transcript of Bench Trial from <i>Paradise Harbor Trust Place v. US National Bank Association</i> , case number A707392	N/A
13			
14	GTS(Elliott)0874-1098	Trial transcript from <i>Saticoy Bay LLC Series 10371 Calypso Cave v. Amalgamated Bank et al.</i> , case number A-13-679171-C	N/A
15	GTS(Elliott)1099-1139	Bankruptcy Petition of Paradise Harbor Place Trust, case no. 12-20213-btb	N/A
16			
17	GTS(Elliott)1140-1148	Motion to Use Cash Collateral <i>Nunc Pro Tunc</i> and Proposed Order from <i>In re: Paradise Harbor Place Trust</i> , case number 12-20213-btb	N/A
18	GTS(Elliott)1149-1183	Deposition of Eddie Haddad from <i>Carrington Mortgage Services, LLC v. Saticoy Bay LLC Series 6709 Brick House et al.</i> , case number 2:15-cv-01852 APG-PAL	N/A
19			
20	GTS(Elliott)1184	Payment Request for HOA fees	N/A
21			
22	GTS(Elliott)1185-1189	Bank of America Payment History	N/A
23			
24	///		
25	///		
26	///		
27	///		
28	///		

Fannie Mae Servicing Guides, <https://www.fanniemae.com/content/guide/servicing/index.html>.²
A static, PDF copy of the most recent version of the Servicing Guide is available at <https://www.fanniemae.com/content/guide/svc061219.pdf>, and a static, PDF copy of the version of the March 2012 Servicing Guide in effect at the time of the HOA sale is available at <https://www.fanniemae.com/content/guide/svc031412.pdf>.

Fannie Mae Selling Guide, an interactive version of which is publicly available at: <https://www.fanniemae.com/content/guide/selling/index.html>.³

III. COMPUTATION OF DAMAGES

If the Court enters an order finding that the HOA foreclosure sale extinguished the Deed of Trust, Defendants seek all damages proximately caused by the wrongful foreclosure of the Property include including, but not limited to, the entire principal and interest secured by the Deed of Trust and all attorneys' fees and costs pursuant to the terms of the Note and Deed of Trust, including post-judgment attorneys' fees and costs. Defendants may also seek damages for taxes, insurance and association dues it has paid since Plaintiff acquired its interest, if any, in the Property. These damages cannot be computed until after entry of an order, if so entered, determining that the Deed of Trust was extinguished by the HOA Sale.

Defendants also seeks any unjust enrichment of the HOA in an amount at least equal to the difference between the true super-priority portion of its lien and the amount the HOA actually recovered from the foreclosure proceeds, which can be calculated by deducting nine months of assessments from the amount the HOA collected as a result of the HOA foreclosure sale. If the Court enters an order finding that the HOA foreclosure sale did not extinguish the Deed of Trust, Defendants seek damages for neglect and waste during the pendency of this action and also seeks to recover any rents to which Defendants would be entitled. These amounts cannot be computed at present because they are ongoing.

///

///

² There are two places to find the prior versions of the servicing guide: (1) Go to the link in the above footnote and click "Show All" on the left side of the page under "PDF Version." (2) Go to <https://www.fanniemae.com/singlefamily/guides>, click on "Allregs.com" on right side of page under "Fannie Mae Single-Family Guides via AllRegs."

³ To access prior versions of the Selling Guide, go to <https://www.fanniemae.com/singlefamily/guides>, and click on "Allregs.com" on right side of page under "Fannie Mae Single-Family Guides via AllRegs."

1 **IV. INSURANCE AGREEMENTS**

2 Defendants are not aware of any insurance agreements at this time, and reserves the right to
3 supplement this initial disclosure to add relevant information, if subsequent information and
4 investigation so warrant.

5 DATED: June 24, 2019.

6 **AKERMAN LLP**

7 /s/ Jared M. Sechrist

8 DARREN T. BRENNER, ESQ.

9 Nevada Bar No. 8386

10 JARED M. SECHRIST, ESQ.

11 Nevada Bar No. 104396

12 1635 Village Center Circle, Suite 200

13 Las Vegas, Nevada 89134

14 *Attorneys for Bank of America, N.A. and Ditech*
15 *Financial LLC f/k/a Green Tree Servicing LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 24th day of June, 2019 I caused to be served a true and correct copy of foregoing **BANK OF AMERICA, N.A. AND DITECH FINANCIAL LLC F/K/A GREEN TREE SERVICING LLC'S INITIAL DISCLOSURES**, 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.

Kerry P. Faughnan, Esq. kerry.faughnan@gmail.com

DocPrep filings@docprep.info

Gregory P Kerr gkerr@wrslawyers.com

Jory Garabedian jgarabedian@mileslegal.com

Nina Miller nmiller@wrslawyers.com

/s/ Patricia Larsen

An employee of AKERMAN LLP

AKERMAN LLP

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

1 ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
2 NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
3 NICHOLAS E. BELAY, ESQ.
Nevada Bar No. 15175
4 **AKERMAN LLP**
1635 Village Center Circle, Suite 200
5 Las Vegas, Nevada 89134
Telephone: (702) 634-5000
6 Facsimile: (702) 380-8572
Email: ariel.stern@akerman.com
7 Email: natalie.winslow@akerman.com
Email: nicholas.belay@akerman.com

8
9 *Attorneys for Bank of America, N.A. and Ditech
Financial LLC f/k/a Green Tree Servicing LLC*

10 **EIGHTH JUDICIAL DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 LN MANAGEMENT LLC SERIES 3111 BEL
13 AIR 24G,

14 Plaintiff,

15 v.

16 MICHAEL T. ELLIOTT, an individual; BANK
OF AMERICA, N.A.; and DOES 1 through 10,
17 inclusive,

18 Defendants.

19
20 AND ALL RELATED CLAIMS

Case No. : A-12-669570-C
Consolidated with: A-13-682055-C
Dept. No.: XIII

**BANK OF AMERICA, N.A. AND DITECH
FINANCIAL LLC F/K/A GREEN TREE
SERVICING LLC'S FIRST
SUPPLEMENT TO INITIAL
DISCLOSURES**

21 Pursuant to Nevada Rule of Civil Procedure 16.1, defendants Bank of America, N.A.,
22 successor by merger to BAC Home Loans Servicing, L.P. fka Countrywide Home Loans Servicing,
23 LP and Ditech Financial LLC f/k/a Green Tree Servicing LLC (collectively **defendants**) hereby
24 submit their first supplement to initial disclosure of witnesses and documents. **All supplemental**
25 **information will be identified by bold typeface.**

26 **I. LIST OF WITNESSES**

27 The following persons are known or reasonably believed to have knowledge of facts relevant
28

to the allegations of any pleading filed by any party to this action, including persons having knowledge of rebuttal or impeachment evidence. Defendants disclose the following list of witnesses, specifically reserving the right to supplement this disclosure to add the names of persons who may have relevant information, including expert witnesses, if subsequent information and investigation so warrant.

1. Corporate Representative of Bank of America, N.A.¹. (BANA)
800 Samoset Drive
Mail Code DE5-024-02-08
Newark, Delaware 19713

This witness will testify regarding relevant facts and information relating to the deed of trust on the subject property.

2. Corporate Representative of Ditech Financial LLC f/k/a Green
Tree Servicing LLC (Ditech)
1100 Virginia Drive, Suite 100A
Fort Washington, PA 19034

This witness will testify regarding relevant facts and information relating to the deed of trust on the subject property.

3. Las Vegas International Country Club Estate Homeowners Association, Inc. (HOA)
c/o Registered Agent: Natalie Bowers
2854 Geary Place, Ste. 3809
Las Vegas, Nevada 89109

This witness is/are expected to testify regarding the status of Michael T. Elliott's (borrower's) account with HOA; its assessment lien, notices of default and notices of trustee's sale; the non-judicial sale of property; its relation to Collections of America, Inc. (NAS), or any other party to this action; any additional relevant facts, information and circumstances relating to the HOA's foreclosure of the property and surrounding the claims asserted in the pleadings surrounding the real property subject to this lawsuit.

4. Collections of America, Inc.
c/o Registered Agent: Carol Salmon
1500 East Tropicana Ave., #108
Las Vegas, Nevada 89119

¹ No party is to engage in ex parte communications without Akerman's consent.

1 This witness is/are expected to testify concerning the borrowers' account; HOA's assessment
2 lien, notices of default and notices of trustee's sale; LN Management LLC Series 3111 Bel Air 24G
3 Trust's purchase of the property; its relation to HOA or any other party to this action; and additional
4 relevant facts, information and circumstances relating to HOA's foreclosure of the property and
5 surrounding the claims asserted in the pleadings surrounding the real property subject to this lawsuit.

- 6 5. Iyad "Eddie" Haddad and/or another Corporate representative(s) for LN Management
7 LLC Series 3111 Bel Air 24G
8 c/o Kerry P. Faughnan, Esq.
9 Law Office of Kerry P. Faughnan
P.O. Box 335361
North Las Vegas, NV 89033

10 This witness is/are expected to testify regarding relevant facts and information relating to the
11 non-judicial foreclosure sale relevant to this litigation; its interest in the property, if any; and the
12 disposition of the property from the time of HOA's foreclosure sale.

- 13 6. Corporate representative(s) for 3111 Bel Air 24G Trust
14 c/o Kerry P. Faughnan, Esq.
15 Law Office of Kerry P. Faughnan
6408 Casamar Street
North Las Vegas, Nevada 89086

16 This witness is/are expected to testify regarding relevant facts and information relating to the
17 non-judicial foreclosure sale relevant to this litigation; its interest in the property, if any; and the
18 disposition of the property from the time of HOA's foreclosure sale.

- 19 7. Michael T. Elliott
20 Current contact information unknown

21 This witness is expected to testify regarding relevant facts and information relating to BANA's
22 lien on the subject property, as well as the efforts of the HOA to foreclose on the property, to the extent
23 known to the witness.

- 24 8. Rock K. Jung, Esq.
25 WRIGHT FINLAY & ZAK, LLP
26 7785 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117

27 Mr. Jung may testify regarding the records maintained by Miles Bauer Bergstrom & Winters
28 LLP, the facts and circumstances surrounding BANA's attempted payment to Collections of America

1 and its communications with the borrower, if any. Mr. Jung is former counsel for BANA and all
2 parties are expressly instructed that they may not attempt to make any contact that would violate the
3 attorney-client privilege without express consent.

- 4 9. Corporate Representative of Miles, Bauer, Bergstrom & Winters, LLP
5 c/o Doug E. Miles, Esq.
6 555 Anton Boulevard, Suite 150
7 Costa Mesa, CA 92626

8 This witness is/are expected to testify regarding Miles Bauer's knowledge of HOA's
9 foreclosure and all facts related thereto, including, without limitation, the payment of the super-priority
10 Miles Bauer attempted on BANA's behalf. On information and belief, Doug Miles is likely to testify
11 as the corporate representative, person most knowledgeable, and Rule 30(b)(6) witness for Miles
12 Bauer, and his address is provided in this disclosure. BANA reserves the right to call other corporate
13 representatives, persons most knowledgeable, and Rule 30(b)(6) witnesses for Miles Bauer on the
14 topics stated herein, including, without limitation, Rock K. Jung. These witnesses are former counsel
15 for BANA, and all parties are expressly instructed that they may not attempt to make any contact that
16 would violate the attorney-client privilege without express consent.

- 17 10. Doug E. Miles, Esq.
18 MILES BAUER & WINTERS LLP
19 f/k/a MILES, BAUER, BERGSTROM & WINTERS LLP
20 555 Anton Boulevard, Suite 150
21 Costa Mesa, CA 92626

22 Mr. Miles is expected to testify regarding Miles Bauer's knowledge of HOA's foreclosure and
23 all facts related thereto, including, without limitation, the payment of the super-priority Miles Bauer
24 attempted on BANA's behalf. Mr. Miles is former counsel for BANA, and all parties are expressly
25 instructed that they may not attempt to make any contact that would violate the attorney-client
26 privilege without express consent.

- 27 11. Corporate Representative of Federal National Mortgage Association (Fannie Mae)
28 3900 Wisconsin Ave. NW
Washington, DC 20016

This person is expected to testify regarding Fannie Mae's ownership of the note and Deed of
Trust associated with the purchase of the property at issue in this litigation.

12. Any and all witnesses identified by any other party to this litigation.

II. LIST OF DOCUMENTS

Defendants disclose the following documents contained within the range of bates stamp numbers GTS(Elliott)0001 through **GTS(Elliott)1324**. Redacted portions of these documents contain personally identifiable information such as dates of birth, banking information, and social security numbers. Defendants reserve the right to supplement its list of documents as the identity of additional documents becomes known during the course of discovery, through and including the time of trial.

<u>BATES NUMBER</u>	<u>DOCUMENT</u>	<u>INSTRUMENT NUMBER</u>
GTS(Elliott)0001-0029	Deed of Trust	20041020-0001569
GTS(Elliott)0030-0040	Revolving Credit Deed of Trust	20050329-0001931
GTS(Elliott)0041-0043	Lis Pendens	20050209-0000731
GTS(Elliott)0044	Notice of Claim of Lien of Delinquent Homeowners Association (Las Hadas)	201103280002335
GTS(Elliott)0045-0046	Notice of Default and Election to Sell under HOA Lien	201112010002276
GTS(Elliott)0047	Notice of Claim of Lien of Delinquent Homeowners Association (Las Hadas)	201206210001804
GTS(Elliott)0048-0049	Notice of Default and Election to Sell under HOA Lien	201207250002134
GTS(Elliott)0050-0053	Notice of Lis Pendens	201210100002912
GTS(Elliott)0054-0055	Substitution of Trustee and Full Reconveyance	201211190003659
GTS(Elliott)0056-0057	Notice of Trustee Sale's Sale under HOA Lien	201211150002365
GTS(Elliott)0058-0059	Substitution of Trustee under DOT	201301090000704
GTS(Elliott)00600-062-	Trustee's Deed Upon Sale	201212170000834
GTS(Elliott)0063-0065	Quitclaim Deed from 3111 Bel Air Drive 24G Trust to LN Management LLC, Series 3111 Bel Air 24G	201304260003246

1	GTS(Elliott)0066-0068	Notice of Lis Pendens	201305230004321
2	GTS(Elliott)0069-0070	Assignment of Deed of Trust from Bank of America to Green Tree Servicing LLC	201307300000199
3			
4	GTS(Elliott)0071-0074	Bank of America's Business Records showing Fannie Mae ownership of loan	N/A
5	GTS(Elliott)0075	Fannie Mae Lender Letter LL-2015-04 dated September 16, 2015	N/A
6			
7	GTS(Elliott)0076	August 28, 2015 Statement on Servicer Reliance on the Housing and Economic Recovery Act of 2008 in Foreclosures Involving Homeownership Associations from the Federal Housing Finance Agency	N/A
8			
9	GTS(Elliott)0077	April 21, 2015 Statement on HOA Super-Priority Lien Foreclosures from the Federal Housing Finance Agency	N/A
10	GTS(Elliott)0078-0083	Promissory Note	N/A
11			
12	GTS(Elliott)0084-0086	Notice of Servicing Transfer from Bank of America to Ditech	N/A
13			
14	GTS(Elliott)0087-0089	Payoff Quote dated January 8, 2019	N/A
15	GTS(Elliott)0090	Ditech screenshot showing Fannie Mae ownership of loan	N/A
16			
17	GTS(Elliott)0091-0092	Correspondence received from HOA relating to notice of foreclosure sale	N/A
18	GTS(Elliott)0093-0116	Miles Bauer Tender Affidavit	N/A
19			
20	GTS(Elliott)0117-0126	Miles Bauer Borrower Affidavit	N/A
21	GTS(Elliott)0127-0186	Declaration of Graham Babin	N/A
22			
23	GTS(Elliott)0187-0240	Relevant portions of Fannie Mae Seller and Servicer Guides in effect at time of HOA sale	N/A
24	GTS(Elliott)0241-0375	Fannie Mae MBS Processed Schedule of Mortgages	N/A
25			
26	GTS(Elliott)0376-0394	Declaration of Covenants, Conditions, and Restrictions for Las Vegas International Country Club Estates Homeowners Association, Inc.	755358
27	GTS(Elliott)0395-0408	Declaration of Covenants, Conditions, and Restrictions for Regency Towers	313538
28			

1	GTS(Elliott)0409-0410	Amendment to Declaration of Covenants, Conditions, and Restrictions for Regency Towers Association, Inc.	310747
2	GTS(Elliott)0411-0412	Second Amendment to Declaration of Covenants, Conditions, and Restrictions for Regency Towers Association, Inc.	01078
3	GTS(Elliott)0413-0439	Standards for New Homes and Improvements to Existing Homes	00826
4	GTS(Elliott)0440-0463	Rules and Regulations for Las Vegas Country Club Master Association	00887
5	GTS(Elliott)0464-0538	Declaration of Covenants, Conditions, and Restrictions of Regency Towers Association, Inc.	01384
6	GTS(Elliott)0539-0543	Amendment to Notice of Community Association Charges of Las Vegas International Country Club Estates Homeowner's Association	20030812.01467
7	GTS(Elliott)0544-0565	Amendment to Declaration of Covenants, Conditions, and Restrictions for Las Vegas International Country Club Estates Homeowners Association, Inc.	20060501-0005216
8	GTS(Elliott)0566-0569	Amendment to Notice of Community Association Charges for Las Vegas International Country Club Estates Home Owners Association, Inc.	20060523-0004988
9	GTS(Elliott)0570-0592	Minutes of the Senate Committee on Commerce and Labor, February 20, 2003	N/A
10	GTS(Elliott)0593-0635	Deposition of Eddie Haddad from <i>U.S. Bank National Association, as Trustee v. Caparola at Southern Highlands Homeowners Association et al.</i> , case no. 2:16-cv-03009-RFB-CWH	N/A
11	GTS(Elliott)0636-0873	Transcript of Bench Trial from <i>Paradise Harbor Trust Place v. US National Bank Association</i> , case number A707392	N/A
12	GTS(Elliott)0874-1098	Trial transcript from <i>Saticoy Bay LLC Series 10371 Calypso Cave v. Amalgamated Bank et al.</i> , case number A-13-679171-C	N/A
13	GTS(Elliott)1099-1139	Bankruptcy Petition of Paradise Harbor Place Trust, case no. 12-20213-btb	N/A
14	GTS(Elliott)1140-1148	Motion to Use Cash Collateral <i>Nunc Pro Tunc</i> and Proposed Order from <i>In re: Paradise Harbor Place Trust</i> , case number 12-20213-btb	N/A
15	GTS(Elliott)1149-1183	Deposition of Eddie Haddad from <i>Carrington Mortgage Services, LLC v. Saticoy Bay LLC Series 6709 Brick House et al.</i> , case number 2:15-cv-01852 APG-PAL	N/A
16	GTS(Elliott)1184	Payment Request for HOA fees	N/A
17	GTS(Elliott)1185-1189	Bank of America Payment History	N/A

Fannie Mae Servicing Guides, <https://www.fanniemae.com/content/guide/servicing/index.html>.²
A static, PDF copy of the most recent version of the Servicing Guide is available at <https://www.fanniemae.com/content/guide/svc061219.pdf>, and a static, PDF copy of the version of the March 2012 Servicing Guide in effect at the time of the HOA sale is available at <https://www.fanniemae.com/content/guide/svc031412.pdf>.

Fannie Mae Selling Guide, an interactive version of which is publicly available at: <https://www.fanniemae.com/content/guide/selling/index.html>.³

GTS(Elliott)1190 -1324	Schedule of Mortgages	
-----------------------------------	------------------------------	--

III. COMPUTATION OF DAMAGES

If the Court enters an order finding that the HOA foreclosure sale extinguished the Deed of Trust, Defendants seek all damages proximately caused by the wrongful foreclosure of the Property include including, but not limited to, the entire principal and interest secured by the Deed of Trust and all attorneys' fees and costs pursuant to the terms of the Note and Deed of Trust, including post-judgment attorneys' fees and costs. Defendants may also seek damages for taxes, insurance and association dues it has paid since Plaintiff acquired its interest, if any, in the Property. These damages cannot be computed until after entry of an order, if so entered, determining that the Deed of Trust was extinguished by the HOA Sale.

Defendants also seeks any unjust enrichment of the HOA in an amount at least equal to the difference between the true super-priority portion of its lien and the amount the HOA actually recovered from the foreclosure proceeds, which can be calculated by deducting nine months of assessments from the amount the HOA collected as a result of the HOA foreclosure sale. If the Court enters an order finding that the HOA foreclosure sale did not extinguish the Deed of Trust, Defendants seek damages for neglect and waste during the pendency of this action and also seeks to recover any rents to which Defendants would be entitled. These amounts cannot be computed at present because they are ongoing.

///

² There are two places to find the prior versions of the servicing guide: (1) Go to the link in the above footnote and click "Show All" on the left side of the page under "PDF Version." (2) Go to <https://www.fanniemae.com/singlefamily/guides>, click on "Allregs.com" on right side of page under "Fannie Mae Single-Family Guides via AllRegs."

³ To access prior versions of the Selling Guide, go to <https://www.fanniemae.com/singlefamily/guides>, and click on "Allregs.com" on right side of page under "Fannie Mae Single-Family Guides via AllRegs."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th 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 **BANK OF AMERICA, N.A. AND DITECH FINANCIAL LLC F/K/A GREEN TREE SERVICING LLC'S FIRST SUPPLEMENT TO INITIAL DISCLOSURES**, addressed to:

Law Office of Kerry P. Faughnan

Kerry P. Faughnan, Esq. kerry.faughnan@gmail.com
DocPrep filings@docprep.info

Miles Legal

Jory Garabedian jgarabedian@mileslegal.com

/s/ Doug J. Layne

An employee of AKERMAN LLP

REGISTER OF ACTIONS

CASE NO. A-12-669570-C

Bank of America, Plaintiff(s) vs. Michael Elliott, Defendant(s)

§
§
§
§
§
§
§

Case Type: **Title to Property**
Subtype: **Liens**
Date Filed: **10/03/2012**
Location: **Department 13**
Cross-Reference Case Number: **A669570**
Supreme Court No.: **82534**

RELATED CASE INFORMATION

Related Cases

A-13-682055-C (Consolidated)

PARTY INFORMATION

Defendant Elliott, Michael T

Lead Attorneys

Plaintiff Bank of America

Jeremy T. Bergstrom
Retained
702-333-0007(W)

Plaintiff **Green Tree Now Known As Green Tree Servicing LLC**

Darren T. Brenner
Retained
702-634-5000(W)

EVENTS & ORDERS OF THE COURT

12/14/2020 **Minute Order** (7:15 AM) (Judicial Officer Denton, Mark R.)
Re: Bank of America, N.A. and Ditech Financial LLC f/k/a Green Tree Servicing LLC's Motion For Summary Judgment

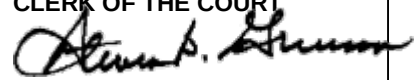
Minutes

12/14/2020 7:15 AM

- HAVING further reviewed and considered the parties' filings and the argument of counsel pertaining to the Bank of America/Ditech Financial moving parties' Motion for Summary Judgment, heard and taken under advisement on December 3, 2020, and being now fully advised in the premises, and being persuaded by the procedural and substantive contentions of the moving parties, the Court GRANTS the subject Motion in its entirety. Counsel for the moving parties is directed to submit a proposed order consistent herewith and with supportive briefing and argument after providing the same to opposing counsel for signification of approval/disapproval. IT IS SO ORDERED.
- CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 12/14/20

[Return to Register of Actions](#)

4PA936



1 **FFCL**

2 ARIEL E. STERN, ESQ.

3 Nevada Bar No. 8276

4 NATALIE L. WINSLOW, ESQ.

5 Nevada Bar No. 12125

6 NICHOLAS E. BELAY, ESQ.

7 Nevada Bar No. 15175

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: nicholas.belay@akerman.com

16 *Attorneys for Bank of America, N.A. and Ditech*
17 *Financial LLC f/k/a Green Tree Servicing LLC*

18 **DISTRICT COURT**
19 **CLARK COUNTY, NEVADA**

20 LN MANAGEMENT LLC SERIES 3111 BEL
21 AIR 24G,

22 Plaintiff,

23 v.

24 MICHAEL T. ELLIOTT, an individual; BANK
25 OF AMERICA, N.A.; and DOES 1 through 10,
26 inclusive,

27 Defendants.

28 AND ALL RELATED CLAIMS.

Case No. : A-12-669570-C
Consolidated with: A-13-682055-C

Dept. No.: XIII

**~~PROPOSED~~ FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
JUDGMENT**

29 Ditech Financial LLC f/k/a Green Tree Servicing LLC (**Ditech**) and Bank of America, N.A.
30 (collectively, **defendants**) filed a summary judgment motion on September 29, 2020. LN
31 Management LLC Series 3111 Bel Air 24G filed an opposition on November 11, 2020, and
32 defendants filed reply on November 20, 2020. The court held a hearing on the motion on December
33 3, 2020. Following the hearing, the court took the matter under advisement.

1 On December 14, 2020, the court entered a minute order granting defendants' summary
2 judgment motion. The court now enters the following findings of fact and conclusions of law.

3 **FINDINGS OF FACT**

4 ***The Subject Property, Note, and Deed of Trust***

5 1. A deed of trust listing Michael T. Elliott as the borrower (**Borrower**) and Bank of
6 America as the lender and beneficiary was executed on October 6, 2004 and recorded on October 20,
7 2004 (**Deed of Trust**). The Deed of Trust granted Lender a security interest in real property known
8 as 3111 Bel Air Dr., Unit 24G, Las Vegas, Nevada 89109 (the **Property**) to secure the repayment of
9 a promissory note (the **Note**) in the original amount of \$322,100.00 to the Borrower (the Note and
10 Deed of Trust together are the **Loan**). The Deed of Trust listed the APN number as 162-10-812-185.

11 2. In November 2004, Fannie Mae purchased the Loan, thereby acquiring ownership of
12 the Deed of Trust. Fannie Mae maintained that ownership at the time of the HOA Sale on December
13 12, 2012.

14 3. In September 2008, Federal Housing Finance Agency (**FHFA**) placed Fannie Mae
15 into conservatorship "for the purpose of reorganizing, rehabilitating, or winding up [its] affairs." 12
16 U.S.C. § 4617(a)(2). Fannie Mae remains in conservatorship today.

17 4. At the time of the HOA Sale, Bank of America was the servicer of the Loan for
18 Fannie Mae.

19 5. Bank of America serviced the Loan for Fannie Mae up until on or about April 30,
20 2013, when the servicing rights were transferred to Ditech.

21 6. On July 30, 2013, Bank of America recorded an assignment of the Deed of Trust to
22 Ditech.

23 7. On December 20, 2019, Ditech recorded an assignment of the Deed of Trust to New
24 Residential Mortgage, LLC.

25 8. On March 17, 2020, New Residential Mortgage, LLC recorded an assignment of the
26 Deed of Trust to NewRez LLC d/b/a Shellpoint Mortgage Servicing (**NewRez**).

27 ...

28 ...

1 ***Fannie Mae's Contract with Its Servicers, Including Bank of America, Ditech, and NewRez***

2 9. The relationship between Bank of America, Ditech, and NewRez, as the servicers of
3 the Loan, and Fannie Mae, as owner of the Loan, is governed by the Fannie Mae's Single-Family
4 Selling Guide at A2-1-01 and Fannie Mae's Single-Family Servicing Guide (**Guide**), a central
5 governing document for Fannie Mae's relationship with servicers nationwide. Among other things,
6 the Guide provides that Fannie Mae's servicers may act as record beneficiaries for the deeds of trust
7 owned by Fannie Mae and requires that servicers assign these deeds of trust to Fannie Mae upon
8 Fannie Mae's demand. Selling Guide at A2-1-01, Servicing Guide F-1-11.

9 10. The Guide provides that:

10 The servicer ordinarily appears in the land records as the mortgagee to
11 facilitate performance of the servicer's contractual responsibilities, including
12 (but not limited to) the receipt of legal notices that may impact Fannie Mae's
13 lien, such as notices of foreclosure, tax, and other liens. However, *Fannie*
14 *Mae may take any and all action with respect to the mortgage loan it deems*
15 *necessary to protect its ... ownership of the mortgage loan, including*
16 *recordation of a mortgage assignment, or its legal equivalent, from the*
17 *servicer to Fannie Mae or its designee.* In the event that Fannie Mae
18 determines it necessary to record such an instrument, the servicer must assist
19 Fannie Mae by

- 16 • preparing and recording any required documentation, such as
17 mortgage assignments, powers of attorney, or affidavits; and
- 18 • providing recordation information for the affected mortgage loans.

19 Selling Guide at A2-1-03 (emphasis added).

20 11. The Guide also provides for a temporary transfer of possession of the note when
21 necessary for servicing, such as managing litigation on behalf of Fannie Mae:

22 In order to ensure that a servicer is able to perform the services and duties
23 incident to the servicing of the mortgage loan, Fannie Mae temporarily
24 gives the servicer possession of the mortgage note whenever the servicer,
25 acting in its own name, represents the interests of Fannie Mae in
26 foreclosure actions, bankruptcy cases, probate proceedings, or other legal
27 proceedings.

28 This temporary transfer of possession occurs automatically and
immediately upon the commencement of the servicer's representation, in

its name, of Fannie Mae's interests in the foreclosure, bankruptcy, probate, or other legal proceeding.

Selling Guide at A2-1-04.

11. The Guide includes a chapter describing how and when servicers should pursue foreclosure. *See generally* Guide at E-3 (Managing Foreclosure Proceedings). The chapter includes detailed provisions for how servicers may foreclose on properties when either Fannie Mae, MERS, or the servicer itself is the beneficiary of record of the relevant deed of trust. Guide at E-3.2-09.

12. The Guide also includes a chapter that explains how servicers should manage litigation on behalf of Fannie Mae. *See generally* Guide at E-1 (Referring Default-Related Legal Matters and Non-Routine Litigation to Law Firms).

13. The Guide states that "Fannie Mae is at all times the owner of the mortgage note," and "[a]t the conclusion of the servicer's representation of Fannie Mae's interests in the foreclosure . . . possession automatically reverts to Fannie Mae." Guide at A2-1-04.

14. Pursuant to the Guide, a servicer is required to "maintain in the individual mortgage loan file all documents and system records that preserve Fannie Mae's ownership interest in the individual mortgage loan." Guide at A2-4-01.

15. Any servicer retaining documents related to a particular loan, such as a deed of trust, has "no right to possess these documents and records except under the conditions specified by Fannie Mae." Guide at A2-5.1-02.

The HOA Foreclosure Sale and LN Management's Purported Acquisition of the Property

16. On June 21, 2012, Collections, as agent for the HOA, recorded a Notice of Claim – Delinquent Assessment Notice.

17. On July 25, 2012, Collections, as agent for the HOA, recorded a Notice of Default and Election to Sell.

18. After the Notice of Default was recorded, on or about August 16, 2012, Bank of America, through counsel at Miles, Bauer, Bergstrom, & Winters, LLP (**Miles Bauer**), contacted the HOA through Collections and requested the super-priority amount.

...

1 19. Collections responded on or about November 27, 2012, and provided a Statement of
2 Account.

3 20. Following receipt of the Statement of Account, Miles Bauer and Collections
4 discussed the HOA Sale via telephone. In email correspondence recounting the details of the
5 telephone conversation, Collections confirmed that neither it nor the HOA was "foreclosing on a
6 super-priority lien pursuant to NRS 116.3116."

7 21. Collections further confirmed that it and the HOA were "not claiming to have a
8 super-priority lien since the first mortgage [had] not been foreclosed on the property."

9 22. Miles Bauer advised Collections that if the HOA and Collections were to conduct a
10 super-priority sale, "Bank of America would like to payoff any potential senior lien, should one
11 exist, to protect its first mortgage security interest."

12 23. Collections, on behalf of the HOA, then recorded a Notice of Trustee Sale on
13 November 15, 2012.

14 24. On December 17, 2012, a foreclosure deed was recorded against the Property. The
15 foreclosure deed states that the Property was sold at an HOA foreclosure sale on December 12, 2012,
16 to 3111 Bel Air Drive 24G Trust for \$7,001.00.

17 25. 3111 Bel Air Drive 24G Trust subsequently conveyed the Property to LN
18 Management via a Quitclaim Deed recorded on April 26, 2013.

19 26. At no time did the Conservator consent to the HOA Sale extinguishing or foreclosing
20 Fannie Mae's interest in the Property. (FHFA's Statement on HOA Super-Priority Lien Foreclosures
21 (Apr. 21, 2015), [www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)
22 Foreclosures.aspx).

23 27. The fair market value of the Property at the time of the HOA Sale was \$360,000. The
24 purchase price at the HOA Sale was less than 2% of the fair market value.

25 ***Procedural History***

26 28. LN Management initiated an action for quiet title/declaratory relief on May 17, 2013.
27 See Case No. A-13-682055-C. The court consolidated the case with the above-captioned action on
28 October 29, 2013.

1 3. NRS 30.010 *et seq.* gives courts "power to declare rights, status and other legal
2 relations." LN Management and defendants both seek declaratory relief under that statute.

3 4. Here, defendants request declaratory relief and quiet title. LN Management contends
4 that it bought the property and the first deed of trust was extinguished. Defendants assert the sale
5 did not extinguish the deed of trust because: (1) Fannie Mae owned the loan, and Bank of America
6 was the beneficiary of record of the deed of trust in its capacity as the servicer of the loan for Fannie
7 Mae at the time of the HOA foreclosure sale in December 2012, and thus, the Federal Foreclosure
8 Bar applies; (2) the HOA foreclosed on only the sub-priority portion of its statutory lien; (3) the deed
9 of trust survived as a matter of equity.

10 5. In an action such as the present one, the parties must prove their claims and
11 affirmative defenses by a preponderance of the evidence. *See* Nev. J.I. 2EV.1. Under Nevada law,
12 "[t]he term 'preponderance of the evidence' means such evidence as, when weighed with that
13 opposed to it, has more convincing force, and from which it appears that the greater probability of
14 truth lies therein." Nev. J.I. 2EV.1; *Corbin v. State*, 111 Nev. 378, 892 P.2d 580 (1995) (regarding
15 entrapment, "[p]reponderance of the evidence means such evidence as, when weighed with that
16 opposed to it, has more convincing force and the greater probability of truth.").

17 6. Nevada law draws no distinction between circumstantial and direct evidence.
18 *Deveroux v. State*, 96 Nev. 388, 391 (1980); Nev. J.I. 2EV.3 ("The law makes no distinction
19 between the weight to be given either direct or circumstantial evidence. Therefore, all of the
20 evidence in the case, including circumstantial evidence, should be considered...").

21 ***B. The Five-Year Rule under NRCP 41(e) Has Not Run***

22 7. LN Management contends the court should dismiss this case under NRCP 41(e)
23 because the five-year rule has expired. The court rejects this argument.

24 **The Action was Brought to Trial**

25 8. NRCP 41(e) only applies if an action is not brought to trial within 5 years after the
26 action was filed. *See* NRCP 41(e)(2)(B). The Nevada supreme court defines "trial" as "the
27 examination before a competent tribunal, according to the law of the land, of questions of fact or of
28 law put in issue by pleadings, for the purpose of determining the rights of the parties." *United Ass'n*

1 of *Journeyman & Apprentices of Plumbing & Pipe Fitting Indus. v. Manson*, 105 Nev. 816, 819–20,
2 783 P.2d 955, 957 (1989). Under this definition, "proceedings leading to a complete grant of
3 summary judgment constitute a trial" for purposes of the five-year rule. *Monroe v. Columbia Sunrise*
4 *Hosp. & Med. Ctr.*, 123 Nev. 96, 100, 158 P.3d 1008, 1010 (2007). This holds true even when third-
5 party claims remain outstanding. *Id.* at 1011.

6 9. The court granted summary judgment in favor of Ditech on August 13, 2014. The
7 order granted Ditech's motion "in its entirety" and constituted the "final order/judgment in this
8 matter." While the court ultimately granted LN Management's motion to set aside the judgment in
9 September 2014, nothing in either NRCP 41(e) or Nevada case law negates the fact Ditech brought
10 the action "to trial" within the meaning of Rule 41(e).

11 10. Rule 41(e)'s plain language does not contemplate the five-year rule being reinstated
12 after it has already been satisfied on summary judgment. *See Vanguard Piping v. Eighth Jud. Dist.*
13 *Ct.*, 129 Nev. 602, 608, 309 P.3d 1017, 1020 (2013) (stating the rules of statutory interpretation
14 apply to procedural rules and noting the court should look to the plain language of the rule); *Thran v.*
15 *District Ct.*, 79 Nev. 176, 180-81 (1963) (Rule 41(e) is "clear, unambiguous and requires no
16 construction other than its own language.").

17 11. Because Ditech already satisfied the five-year rule, it is no longer applicable to this
18 action.

19 LN Management Stipulated to Forego the Five-Year Rule

20 12. Even if the five-year rule had not already been satisfied, the court finds the parties
21 have stipulated to waive it.

22 13. NRCP 41(e)(5) provides a party may stipulate in writing to extend the time in which
23 to prosecute an action.

24 14. The court finds this is precisely what LN Management did when it moved for
25 reconsideration of the court's May 2018 order dismissing the action under Rule 41(e).

26 15. In the motion, LN Management argued the court should set aside the court's five-year
27 rule dismissal and reopen the case so that the parties could obtain "final orders that would determine
28

1 each of the parties rights as to the property." No other party filed an opposition to LN Management's
2 motion.

3 16. By filing an unopposed motion to disregard the five-year rule dismissal and litigate
4 the matter on the merits, the court finds LN Management and the remaining parties stipulated to
5 forego application of the five-year rule to this matter.

6 **LN Management is judicially estopped from obtaining dismissal under the Five-Year**
7 **Rule.**

8 17. Even assuming the five-year rule continues to apply, the court finds LN Management
9 is judicially estopped from obtaining dismissal.

10 18. Judicial estoppel has five elements: "(1) the same party has taken two positions; (2)
11 the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was
12 successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true);
13 (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of
14 ignorance, fraud, or mistake." *Matter of Frei Irrevocable Tr. Dated Oct. 29, 1996*, 133 Nev. 50, 56,
15 390 P.3d 646, 652 (2017) (citation omitted). All elements are satisfied to prevent LN Management
16 from now asserting the five-year rule.

17 19. *First*, LN Management has taken two positions. In its opposition, LN Management
18 contends the five-year rule expired on October 3, 2017, necessitating dismissal of this action. But
19 LN Management previously moved for reconsideration on June 21, 2018, of the court's order
20 dismissing the action for want of prosecution under the very same rule LN Management now seeks
21 to enforce.

22 20. *Second*, LN Management's positions were taken in this case, a judicial proceeding.

23 21. *Third*, LN Management successfully obtained reconsideration of the court's order
24 dismissing the action under Rule 41(e). The court granted LN Management's motion and reopened
25 the case on July 27, 2018.

26 22. *Fourth*, the positions are inconsistent. LN Management moved for (and obtained)
27 reconsideration of the court's Rule 41(e) dismissal, explicitly arguing such relief was appropriate due
28 to its own wrongful conduct. LN Management now seeks to undo its own motion by arguing the

1 five-year rule somehow expired in October 2017. These positions are entirely irreconcilable. LN
2 Management cannot now argue for dismissal under Rule 41(e) when it previously moved to reopen
3 the case (for the second time) notwithstanding this very rule.

4 23. *Finally*, LN Management's conduct cannot be found to result from ignorance, fraud or
5 mistake. LN Management moved on its own volition for reconsideration of the court's dismissal
6 order and directly argued the order should be set aside based on excusable neglect. In LN
7 Management's own words, such reconsideration was justified because the parties "need" the court to
8 determine the parties' respective rights in the property.

9 **LN Management's Five-Year Rule argument is barred by Waiver and Equitable**
10 **Estoppel.**

11 24. In addition to being judicially estopped from arguing for five-year rule dismissal, LN
12 Management also waived or else should be equitably estopped from raising the issue.

13 25. Waiver is the intentional relinquishment of a known right. *Nev. Yellow Cab Corp. v.*
14 *Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 152 P.3d 737, 740 (Nev. 2007). Waiver of a right
15 may be inferred when a party engages in conduct so inconsistent with an intent to enforce the right
16 as to induce a reasonable belief that the right has been relinquished. *Id.* Further, a party seeking
17 equity is required to do equity. *Overhead Door Co. of Reno, Inc. v. Overhead Door Corp.*, 734 P.2d
18 1233, 1235 (Nev. 1987). Equitable estoppel operates to prevent a party from asserting legal rights
19 that, in equity and good conscience, they should not be allowed to assert because of their own
20 conduct. *NGA #2 Liab. Co. v. Rains*, 946 P.2d 163, 168 (Nev. 1997).

21 26. Here, the court finds LN Management *twice* moved to reopen this case: First, after
22 Ditech brought the action to trial; and second, after LN Management obtained reconsideration of the
23 court's rule 41(e) dismissal order.

24 27. To the extent LN Management believed the five-year rule expired in October 2017,
25 LN Management has intentionally relinquished any such argument.

26 28. Had LN Management indicated any intent to argue for five-year rule dismissal prior
27 to its opposition to the instant motion, defendants could have acted accordingly to either obtain
28

1 affirmative relief or request an expediated resolution of the matter. Instead, LN Management did the
2 exact opposite, arguing the court should maintain the case notwithstanding any such rule.

3 29. Defendants reasonably relied on this relinquishment and would be severely
4 prejudiced if the court dismissed the action without resolving the parties' respective interests in the
5 property.

6 **Alternatively, the Five-Year Rule has not run due to tolling.**

7 30. To the extent the five-year rule was reinstituted based on its September 24, 2014
8 order granting LN Management's post-trial motion to reopen the case, the court finds the deadline
9 still would not have run due to tolling.

10 31. Under this scenario, the earliest the five-year rule could have expired is September
11 24, 2019, or five-years after the court reinstituted the action.

12 32. But the Nevada supreme court has explicitly recognized the deadline can be tolled
13 under certain circumstances, such as when the court stays proceedings. *Baker v. Noback*, 112 Nev.
14 1106, 1110 (1996) (noting it would be "patently unfair" to dismiss an action for failure to bring to
15 trial when a stay prevented the parties from going to trial within the period); *see also Boren v. City of*
16 *N. Las Vegas*, 98 Nev. 5, 6, 638 P.2d 404, 405 (1982) ("**Any** period during which the parties are
17 prevented from bringing an action to trial by reason of a stay order shall not be computed in
18 determining the five-year period of [NRCP] 41(e).") (emphasis added).

19 33. Here, this matter was closed between May 23, 2018 and July 27, 2018 before the
20 court granted LN Management's motion to reopen. The matter was then stayed due to Ditech's
21 bankruptcy on March 27, 2019, and it remains stayed to date.

22 34. Accounting for these tolling periods, the five-year deadline would be at least **246**
23 **days** from when the stay is lifted and/or the case is reopened. Accordingly, the court finds there is
24 no merit to LN Management's contention the five-year rule deadline has expired.

25 **C. Federal Foreclosure Bar – 12 U.S.C. § 4617(j)(3)**

26 Pursuant to the Housing and Economic Recovery Act of 2008 ("HERA"), Congress granted
27 FHFA an array of powers, privileges, and exemptions from otherwise applicable laws to enable
28 FHFA to carry out its statutory functions when acting as Conservator of Fannie Mae and Freddie

1 Mac (together, the "enterprises"). Among these is a broad statutory "exemption" captioned
2 "property protection" that provides when the enterprises are under the conservatorship of the FHFA,
3 none of their property "shall be subject to ... foreclosure ... without the consent of [FHFA]." 12
4 U.S.C. § 4617(j)(3) (the "Federal Foreclosure Bar").

5 35. The Federal Foreclosure Bar contains no conditions precedent to effectiveness of its
6 statutory protections. Unless and until FHFA gives its consent, the federal protection "shall" be
7 given full effect, which includes preemption of state law. *SFR Invs. Pool 1, LLC v. Green Tree*
8 *Servicing, LLC*, No. A-13-680704 (Nev. Dist. Ct. Nov. 17, 2016) (citing 12 U.S.C. § 4617(j)(3)). A
9 contrary interpretation would invert the default rule provided in the statutory text on its head, as if
10 Congress decreed that FHFA's property interests are subject to extinguishment by foreclosure unless
11 FHFA affirmatively declares that it will not grant consent to the extinguishment of a specific
12 property interest. This is not what the statute says, and courts should not rewrite a statute's text. *See*
13 *Lamie v. United States Trustee*, 540 U.S. 526, 538 (2004) (rejecting argument that "would result not
14 [in] a construction of [the] statute, but, in effect, an enlargement of it by the court" (quoting *Iselin v.*
15 *United States*, 270 U. S. 245, 251 (1926))); *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54
16 (1992) ("[I]n interpreting a statute a court should always turn first to one, cardinal canon before all
17 others . . . that a legislature says in a statute what it means and means in a statute what it says.").
18 Here, there is no evidence FHFA consented to extinguishment of the deed of trust.

19 36. The Nevada supreme court and the Ninth Circuit have both held unequivocally that
20 the Federal Foreclosure Bar, 12 U.S.C. § 4617(j)(3), protects Fannie Mae's property interests while it
21 under the conservatorship of the FHFA by preempting the NRS 116.3116 (the **State Foreclosure**
22 **Statute**), which would otherwise permit an HOA's foreclosure of its superpriority lien to extinguish
23 Fannie Mae's deed of trust. *See Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, 417
24 P.3d 363 (Nev. 2018); *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017); *FHFA v. SFR Invs. Pool*
25 *1, LLC*, 893 F.3d 1136 (9th Cir. 2018); *Elmer v. JPMorgan Chase & Co.*, 707 F. App'x 426 (9th Cir.
26 2017); *Saticoy Bay, LLC v. Flagstar Bank, FSB*, 699 F. App'x 658 (9th Cir. 2017).

27 37. In *Christine View*, the Nevada supreme court held that "according to the plain
28 language of the statute, Fannie Mae's property interest effectively becomes the FHFA's while the

1 conservatorship exists. Thus, the Federal Foreclosure Bar protects Fannie Mae's deed of trust while
2 Fannie Mae is under the conservatorship." *Christine View*, 417 P.3d at 367. *Christine View* is
3 published precedent that forecloses any argument suggesting that the Federal Foreclosure Bar does
4 not preempt the State Foreclosure Statute or does not protect Fannie Mae's property interest from
5 extinguishment. *See id.* at 365 (holding that "the Federal Foreclosure Bar invalidates any purported
6 extinguishment of a regulated entity's property interest while under the FHFA's conservatorship
7 unless the FHFA affirmatively consents.").

8 38. Three other recent decisions from the Nevada supreme court, four Ninth Circuit
9 decisions, and dozens of decisions from federal and state district courts in Nevada agree with the
10 Nevada Supreme Court's decision in *Christine View*—an HOA foreclosure sale cannot extinguish
11 property interests of the Enterprises while they are in conservatorship. *See, e.g., Guberland*, 2018
12 WL 3025919, at *2; *A&I Series 3, LLC v. Fannie Mae*, No. 71124, 2018 WL 3387787 (Nev. July 10,
13 2018) (unpublished disposition); *5312 La Quinta Hills, LLC v. BAC Home Loans Servicing, LP*, No.
14 71069, 2018 WL 3025927, at *1 (Nev. June 15, 2018) (unpublished disposition); *Berezovsky*, 869
15 F.3d 923; *FHFA v. SFR*, 893 F.3d 1136; *Elmer*, 707 F. App'x 426; *Flagstar Bank, FSB*, 699 F. App'x
16 658; *see also* CMI's Motion for Summary Judgment at (citing dozens of state and federal district
17 court cases in Nevada).

18 39. The preemption doctrine, which provides that federal law supersedes conflicting state
19 law, arises from the Supremacy Clause of the U.S. Constitution. Here, the text of the Federal
20 Foreclosure Bar declares that "[n]o property of the Agency shall be subject to levy, attachment,
21 garnishment, foreclosure, or sale." 12 U.S.C. § 4617(j)(3).

22 40. The Federal Foreclosure Bar preempts the State Foreclosure Statute under a theory of
23 conflict preemption because "state law is naturally preempted to the extent of any conflict with a
24 federal statute." *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby v. Nat'l Foreign Trade Council*,
25 530 U.S. 363, 372 (2000)).

26 41. Congress's clear and manifest purpose in enacting Section 4617(j)(3) was to protect
27 FHFA conservatorships from actions, such as the HOA Sale, that otherwise would deprive them of
28 their property interests. "[T]he [State Foreclosure Statute] is in direct conflict with Congress's clear

1 and manifest goal to protect Fannie Mae's property interest while under the FHFA's conservatorship
2 from threats arising from state foreclosure law." *Christine View*, 417 P.3d at 367; *Berezovsky*, 869
3 F.3d at 930 ("[T]he Federal Foreclosure Bar implicitly demonstrates a clear intent to preempt [the
4 State Foreclosure Statute]."); *FHFA v. SFR Invs. Pool 1, LLC*, 893 F.3d at 1146-47 (following
5 *Berezovsky*); *Elmer*, 707 F. App'x at 427-28 (same); *Flagstar*, 699 F. App'x at 658-59 (same).

6 42. Accordingly, the Federal Foreclosure Bar preempts the State Foreclosure Statute to
7 the extent a homeowner association's foreclosure of its super-priority lien cannot extinguish a Fannie
8 Mae property interest while it is under FHFA's conservatorship, without the consent of FHFA.

9 43. At the time of the HOA foreclosure sale, Bank of America was the Deed of Trust
10 beneficiary of record in its capacity as the servicer for Fannie Mae. The evidence, which includes a
11 Fannie Mae employee declaration and supporting business records, proves Fannie Mae owned the
12 note and deed of trust at the time of the HOA sale and was in a contractual relationship with Bank of
13 America as the loan servicer. Fannie Mae maintained a property interest in the underlying collateral.
14 *See Daisy Trust*, 135 Nev. at 233-34, 445 P.3d at 849; *In re Montierth*, 131 Nev. 543, 354 P.3d 648
15 (2015); *CitiMortgage, Inc. v. SFR Invs. Pool 1, LLC*, No. 70237, 2019 WL 289690 (Nev. Jan. 18,
16 2019) (unpublished disposition); *CitiMortgage, Inc. v. TRP Fund VI, LLC*, No. 71318, 2019 WL
17 1245886, at *1 (Nev. Mar. 14, 2019); *Guberland*, 2018 WL 3025919 at *2-3 (citing *Montierth*);
18 Restatement (Third) of Property: Mortgages § 5.4 (1997). In citing *Montierth* and the Nevada
19 Supreme Court's adoption of the Restatement (Third) of Property: Mortgages, the Ninth Circuit held
20 that a loan-owner servicer relationship "preserves the note owner's power to enforce its interest
21 under the security instrument, because the note owner can direct the beneficiary to foreclose on its
22 behalf." *Berezovsky*, 869 F.3d at 931. Under these circumstances, the loan owner maintains a
23 secured property interest. *Id.* Therefore, an enterprise's "property interest is valid and enforceable
24 under Nevada law even if the recorded document omits [the Enterprise's] name, if the recorded
25 beneficiary of the deed of trust is a party acting on [the Enterprise's] behalf." *Elmer*, 2017 WL
26 3822061, at *1.

27 44. The Nevada Supreme Court has held materially identical "business records and
28 testimony" constitute "ample evidence" to demonstrate an Enterprise's ownership of a loan and the

1 contractual relationship between an Enterprise and its servicer. *See M&T Bank v. Wild Calla St. Tr.*,
2 No. 74715, 2019 WL 1423107, at *2 (Nev. Mar. 28, 2019) (unpublished disposition); *see also*
3 *CitiMortgage v. SFR*, 2019 WL 289690, at *1 & n.1 ("Although respondent contends that appellant's
4 evidence[—"deposition testimony of appellant's NRCP 30(b)(6) witness, affidavit, and relied-upon
5 business records"—] does not establish that Fannie Mae owned the loan at the time of the HOA
6 foreclosure sale, we disagree."); *CitiMortgage v. TRP*, 2019 WL 1245886, at *1; *SFR Invs. Pool 1,*
7 *LLC v. Green Tree Servicing, LLC*, No. 72010, 2018 WL 6721370, at *1 (Dec. 17, 2018)
8 (unpublished disposition).

9 45. The Ninth Circuit agrees and has held materially the same evidence was admissible
10 and sufficient to establish an Enterprise's property interest for the purposes of summary judgment.
11 *See, e.g., Berezovsky*, 869 F.3d at 933; *Elmer*, 707 F. App'x at 428; *Williston*, 736 F. App'x at 169;
12 *G&P Investments*, 740 F. App'x at 564.

13 46. Nevada law does not require Fannie Mae's ownership interest to be recorded in its
14 own name. *Daisy Trust*, 445 P.3d at 849; *JPMorgan Chase Bank, N.A. v. Guberland LLC-Series 2*,
15 No. 73196, 2019 WL 2339537, at *1 (Nev. May 31, 2019) ("*Guberland II*"). The protection of the
16 Federal Foreclosure Bar is not limited to the interest Fannie Mae might have if it were *record*
17 *beneficiary* of the deed of trust at the time of the HOA sale. Rather, it extends to the property
18 interest that Fannie Mae has as the *owner* of the note and deed of trust while its contractually
19 authorized servicer appears as record beneficiary of that deed of trust, a property interest that Nevada
20 law recognizes. *See Montierth*, 131 Nev. 543, 354 P.3d 648 (holding that a loan owner has a secured
21 property interest when a contractually authorized servicer is the record beneficiary of a deed of
22 trust); *see also Guberland*, 2018 WL 3025919, at *2-3 (applying the Federal Foreclosure Bar where
23 an enterprise "was not the beneficiary of the deed of trust" and its servicer appeared as record
24 beneficiary); *CitiMortgage v. SFR*, 2019 WL 289690 at *2 (relying on *Montierth* and holding the
25 loan servicer's status as record beneficiary of the deed of trust "does not create a question of material
26 fact regarding whether Fannie Mae owns the subject loan"); *CitiMortgage v. TRP*, 2019 WL
27 1245886, at *1 (reversing the district court's finding that the Federal Foreclosure Bar did not prevent
28 the extinguishment of Fannie Mae's deed of trust because it was not publicly recorded in Fannie

1 Mae's name and confirming, under *Montierth*, that "the record beneficiary need not be the actual
2 owner of the loan").

3 47. LN Management bears the burden of proof to establish that FHFA expressly
4 consented to extinguish Fannie Mae's ownership interest in the deed of trust. FHFA's April 21, 2015
5 statement confirms that FHFA did not provide express consent here. In the absence of express
6 consent, the Court cannot imply FHFA's consent, as doing so would ignore the plain text of the
7 Federal Foreclosure Bar. *See Berezovsky*, 869 F.3d 923 (holding that FHFA's consent can only be
8 manifested affirmatively); *see also Alessi & Koenig, LLC v. Dolan, Jr.*, No. 2:15-cv-00805-JCM-
9 CWH, 2017 WL 773827, at *3 (D. Nev. Feb. 27, 2017) (citing and relying on cases in which
10 FHFA's statement was sufficient to show FHFA's lack of consent). Although the federal law
11 controls, it is consistent with Nevada's policy against requiring a party to prove a negative, such as
12 proving a lack of consent. *Andrews v. Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092,
13 1096-97 (1990) (even where a plaintiff bears the burden of proving his or her strict liability claim, "it
14 is unfair to force the plaintiff consumer to prove a negative, i.e., that the product was not altered.");
15 *see also State v. Haskell*, 14 Nev. 209, 209-210 (1879) (in a forfeiture case, once the defendant
16 establishes good title to the property the burden shifts to the state – "not upon the defendants to
17 prove a negative", i.e. that the property was not abandoned or forfeited).

18 48. LN Management has not shown it obtained such consent. To the contrary, FHFA has
19 publicly announced that it "has not consented, and will not consent in the future, to the foreclosure or
20 other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection
21 with HOA foreclosures of super-priority liens." Therefore, the Federal Foreclosure Bar applies.

22 49. Having found that the Federal Foreclosure Bar applies, the next step is to determine if
23 defendants have standing, as the servicer and beneficiary of record at the time of the HOA
24 foreclosure sale and during the applicable periods of this action, to represent Fannie Mae's Mac
25 interest in the loan. The Court finds that defendants were Fannie Mae's contractually authorized
26 servicers of the loan, with standing to represent and defend Fannie Mae's interests in this action. *See*
27 *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754 (Nev. 2017); *Flagstar*,
28 699 F. App'x at 658.

1 50. The Nevada Supreme Court confirmed that "the servicer of a loan owned by [Fannie
2 Mae] may argue that the Federal Foreclosure Bar preempts NRS 116.3116, and that neither [Freddie
3 Mac] nor the FHFA need be joined as a party." *Nationstar*, 396 P.3d at 758.

4 51. Furthermore, there is no bar against private parties like defendants raising a federal
5 preemption argument. *Id.* at 757. To the contrary, in cases state and federal law clash, "*judges are*
6 *bound by federal law.*" *Id.* (quoting *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378,
7 1384 (2015)) (emphasis in original); *See Saticoy Bay LLC Series Christine View v. Federal National*
8 *Mortgage Association*, 134 Nev. Adv. Op. 36 (2018).

9 52. LN Management offers no evidence conflicting with Fannie Mae's ownership of the
10 loan or defendants' right to represent Fannie Mae's interest in the loan.

11 53. Since no party has refuted evidence of Fannie Mae's ownership, the Federal
12 Foreclosure Bar defeats LN Management's contention it took title to the property free and clear of
13 the deed of trust.

14 ***D. Tender Was Excused as Futile.***

15 54. Even if the Federal Foreclosure Bar did not apply, Fannie Mae's deed of trust would
16 still have survived because Bank of America's tender was excused under the Nevada supreme court's
17 decision in *Perla del Mar. 7510 Perla Del Mar Ave Trust v. Bank of Am. N.A.*, 458 P.3d 348, 349
18 (Nev. 2020). That case held the obligation to tender is excused for futility where the evidence shows
19 that the HOA or its foreclosure agent "had a known policy of rejecting such payments." *Id.* at 351
20 (citing cases from other jurisdictions endorsing the general proposition that a tender is excused when
21 the party entitled to payment demonstrates by words or conduct it will not accept the tender).

22 55. Just as in *Perla Del Mar*, Bank of America and Miles Bauer offered to pay the HOA,
23 through Collections of America, the superpriority amount "actually due" with no impermissible
24 conditions attached. *See 7510 Perla Del Mar Ave. Trust v. Bank of America, N.A.*, 458 P.3d 348,
25 349 (Nev. 2020) (noting "[a]n actual tender is unnecessary where it is apparent the other party will
26 not accept it."). The HOA, through its agent, stated no superpriority lien existed until Bank of
27 America completed its own foreclosure.

28 ...

1 56. In analyzing materially similar representations from an HOA trustee, the Nevada
2 supreme court confirmed "[t]he necessary implication of these statements is that [the HOA trustee]
3 would not have accepted a superpriority tender before the first deed of trust was foreclosed." *See*
4 *U.S. Bank N.A. v. SFR Invs. Pool 1 LLC*, No. 78003, 2020 WL 3003017, at *1 (Nev. June 4, 2020)
5 (unpublished) (directing judgment in the bank's favor based on futility).

6 57. Bank of America stood ready, willing, and able to tender the full statutory super-
7 priority amount to protect the deed of trust, but the HOA obstructed Bank of America's ability to
8 tender the superpriority portion of the HOA's lien through its false representations and assurances.
9 *Id.* The HOA sale thus did not extinguish the deed of trust because Bank of America was excused
10 from formal tender.

11 ***E. The HOA Conducted a Sub-Priority Sale.***

12 58. Irrespective of Bank of America's superpriority offer, the HOA foreclosed on only the
13 subpriority portion of its lien because that is what the HOA and its agent chose to do.

14 59. The Nevada Supreme Court in *SFR Investments*, applying the plain language of the
15 statute, explained that "[a]s to first deeds of trust, NRS 116.3116(2) thus splits an HOA lien into two
16 pieces, a superpriority piece and a subpriority piece." *SFR Investments Pool 1 v. U.S. Bank*, 334
17 P.3d 408, 411 (Nev. 2014). Only "[t]he superpriority piece" is "prior to a first deed of trust." *Id.*
18 "The subpriority piece, consisting of all other HOA fees or assessments, is subordinate to a first deed
19 of trust." *Id.* An association can choose to foreclose on either the sub-priority or super-priority
20 portion of its lien. *See Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132
21 Nev. Adv. Op. 5, 366 P.3d 1105, 1116 (2016) ("And if the association forecloses on its superpriority
22 lien portion, the sale also would extinguish other subordinate interests in the property."). *See also*
23 *River Glider Ave. Tr. v. The Bank of N.Y. Mellon*, No. 79808 (Nev. Sup. Ct. Sept. 18, 2020)
24 (unpublished disposition) (finding representations of purchaser in judicial proceeding determinative
25 for whether a sale was a subpriority or super-priority sale).

26 60. This comports with long-standing Nevada law that the foreclosing party's intent
27 determines what is transferred at auction. *See, e.g., Dayton Valley Investors, LLC v. Union Pac. R.*
28 *Co.*, 664 F.Supp. 2d 1174, 1185 (D. Nev. 2009) ("[I]t is the intent of the parties to the deed which ...

1 must determine the nature and extent of the interest conveyed.") (quoting *City Motel, Inc. v. Nevada*
2 *ex. rel. State Dep't of Highways*, 75 Nev. 137, 140, 336 P.2d 375, 377 (1959)). The foreclosing
3 party's intent "is determined from 'all the circumstances surrounding the transaction[.]'" *See Dayton*
4 *Valley*, 664 F.Supp. 2d at 1185 (quoting *Kartheiser v. Hawkins*, 98 Nev. 237, 239, 645 P.2d 967, 968
5 (1982)).

6 61. Here, the undisputed evidence shows the HOA's agent, Collections of America,
7 explicitly informed Bank of America it was not "foreclosing on a super-priority lien pursuant to NRS
8 116.3116" and that the HOA did not claim "to have a super-priority lien since the first mortgage
9 [had] not [been] foreclosed."

10 62. "Because the HOA foreclosed on only its sub-priority lien, [LN Management] cannot
11 meet its burden of showing it has title superior to [the Deed of Trust]." *7912 Limbwood Court Trust*
12 *v. Wells Fargo Bank, N.A.*, 2015 WL 5123317 at *4 (D. Nev. Aug. 31, 2015); *see also MacDonald v.*
13 *Krause*, 77 Nev. 312, 315, 362 P.2d 724, 727 (1961) ("In a quiet title action, the only issue is
14 whether plaintiff has an interest or estate in the property superior to the adverse claim.").
15 Accordingly, defendants are entitled to summary judgment on this alternative basis.

16 ***F. Alternatively, The Court Finds the Deed of Trust Survived as a Matter of Equity***

17 63. The court need not reach the equities in this matter because Fannie Mae's deed of
18 trust survived as a matter of law. *Bank of America, N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113
19 (Nev. 2018). But even if the court balanced the equities in this case, they tip strongly in defendants'
20 favor.

21 64. If an association sells a property for a price that is "palpabl[y] and great[ly]"
22 inadequate," all that is needed to show the deed of trust survived as a matter of equity is "very slight
23 additional evidence of unfairness." *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227*
24 *Shadow Canyon*, 405 P.3d 641, 642 (Nev. 2017). To determine if an association's foreclosure-sale
25 price is inadequate, courts must compare that price to the foreclosed property's fair market value at
26 the time of the sale. *See id.*, at 649 (comparing the \$35,000.00 association-foreclosure-sale price to
27 an appraisal showing the fair-market value of free and clear title was \$335,000.00 to determine the
28 association sold the property "for roughly 11 percent of [its] fair market value"). A foreclosure-sale

1 price below 20% of fair market value is "obviously inadequate." *See Shadow Wood*, 366 P.3d at
2 1116.

3 65. The Nevada supreme court has provided a non-exhaustive list of "irregularities that
4 may rise to the level of fraud, unfairness, or oppression" required to set aside an association sale or
5 hold that it did not extinguish a senior deed of trust, including: (1) "failure to mail a deed of trust
6 beneficiary the statutorily required notices"; (2) "***an HOA's representation that the foreclosure sale***
7 ***will not extinguish the first deed of trust***"; (3) "collusion between the winning bidder and the entity
8 selling the property"; (4) "a foreclosure trustee's refusal to accept a higher bid"; and (5) "a
9 foreclosure trustee's misrepresentation of the sale date." *Id.* at n.11 (emphasis added).

10 66. Here, the HOA sold the Property for less than 2% of its fair market value. In light of
11 this "palpabl[y] and great[ly]" inadequate sales price, only slight evidence of unfairness is needed to
12 set aside the foreclosure sale. *See Nationstar*, 405 P.3d at 648. Prior to the HOA Sale, Bank of
13 America contacted Collections to offer to pay the full statutory super-priority amount, as it has done
14 in hundreds – if not thousands – of other cases. Collections subsequently assured Bank of America
15 that it was not foreclosing on a "super-priority lien pursuant to NRS 116.3116" and that the HOA did
16 not claim to "have a super-priority lien." Miles Bauer, on behalf of Bank of America, asked
17 Collections to let them know if the circumstances of the HOA Sale changed, as "Bank of America
18 would like to payoff any potential senior lien, should one exist, to protect [the Deed of Trust]." *Id.*
19 Again, in response to Bank of America's willingness to tender the full statutory super-priority
20 amount, Collections advised that no such lien existed, and it would notify Bank of America if
21 anything changed. *Id.*

22 67. Bank of America attempted to pay the superpriority amount of the HOA's lien here to
23 ensure Fannie Mae's deed of trust was protected, and the HOA prevented it from doing so. This is
24 another example of unfairness the supreme court explicitly identified in *Shadow Canyon*. *See* 405
25 P.3d at 650 (explaining that whether a senior lender "tried to tender payment" to an association
26 before the sale is "significant[]" to determine whether the lender's deed of trust survived as an
27 equitable matter).

28 . . .

1 68. In light of the HOA and its agents' representations to Bank of America and Miles
2 Bauer, coupled with the HOA's efforts to thwart Bank of America's superpriority payment, holding
3 that the deed of trust was extinguished would be much more than "very slight[ly] unfair," and
4 "[v]ery slight additional evidence of unfairness or oppression" is all that is needed in light of the
5 "palpabl[y] and great[ly]" inadequate sale price to hold the deed of trust was not extinguished on
6 equitable grounds. *See Shadow Canyon*, 405 P.3d at 648.

7 69. Even if LN Management was a bona fide purchaser, it is but one factor of many when
8 balancing the equities between it and defendants and does not change the above result. Further, the
9 court finds LN Management was not a bona fide purchaser.

10 70. To be a bona fide purchaser, one must take property "for a valuable consideration and
11 without notice of the prior equity, and without notice of facts which upon diligent inquiry would be
12 indicated and from which notice would be imputed to him, if he failed to make such inquiry."
13 *Shadow Wood*, 366 P.3d at 1115 (citing *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947)).

14 71. A putative bona fide purchaser has the burden to prove it is a bona fide purchaser.
15 *See, e.g., Berge v. Fredericks*, 95 Nev. 183, 185, 591 P.2d 246, 248 (1979) (explaining that the
16 putative bona fide purchaser "was required to show that legal title had been transferred to her before
17 she had notice of the prior conveyance to appellant"). Here, LN Management cannot satisfy its
18 burden to show that it was a bona fide purchaser.

19 72. First, and most obvious, LN Management put forth no evidence that it was a bona
20 fide purchaser.

21 73. Second, LN Management cannot be a bona fide purchaser because it had inquiry
22 notice of Miles Bauer's superpriority offer. A party cannot qualify as a bona fide purchaser if it was
23 under a duty of inquiry that it failed to discharge before purchasing the property at issue. *Berge*, 95
24 Nev. at 189. The *Berge* Court explained that this duty arises:

25 when the circumstances are such that a purchaser is in possession of
26 facts which would lead a reasonable man in his position to make an
27 investigation that would advise him of the existence of prior
28 unrecorded rights. He is said to have constructive notice of their
existence whether he does or does not make the investigation. The
authorities are unanimous in holding that he has notice of whatever the
search would disclose.

1 *Id.*

2 74. A purchaser "put upon inquiry may rebut the presumption of notice by showing that
3 he made due investigation without discovering the prior right or title he was bound to investigate."

4 *Id.*, at 185. LN Management has produced no evidence it conducted such an investigation.

5 75. The bona fide purchaser doctrine does not protect against willful ignorance—
6 plaintiff's decision to purchase a lawsuit cannot transform the encumbered interest it purchased into
7 free and clear title. *See Allison Steel*, 86 Nev. at 497.

8 76. As such, the deed of trust survived the HOA's foreclosure sale as a matter of equity
9 and continues to encumber plaintiff's title to the property.

10 **G. The Court Reforms the Deed of Trust and Subsequent Assignment.**

11 77. Deeds and other instruments, like an assignment, can be "reformed in accordance
12 with the intention of parties when that intention is frustrated by a mutual mistake." *Grappo v.*
13 *Mauch*, 110 Nev. 1396, 1398, 887 P.2d 740, 741 (1994). Reformation should be utilized "when a
14 written instrument fails to conform to the parties' previous understanding or agreement." *Id.*

15 78. Borrower purchased two units in the same condominium development. First,
16 Borrower obtained a loan in the amount of \$322,100.00 to purchase the Property (3111 Bel Air Dr.,
17 Unit 24G), repayment of which was secured by a Deed of Trust recorded on October 20, 2004. The
18 Property was conveyed to Borrower by the previous owner through a Grant Deed recorded on
19 October 16, 2003 as instrument number 20031016-01640. The Deed of Trust lists the APN as 162-
20 10-812-185.

21 79. Borrower subsequently obtained a second loan to purchase another unit in the same
22 condominium complex. Specifically, Borrower obtained a loan in the amount of \$149,000 to
23 purchase real property commonly known as 3111 Bel Air Dr. #216, Las Vegas, NV 89109 (**216**
24 **Property**), repayment of which was secured by a Deed of Trust recorded on December 31, 2007
25 (**216 Deed of Trust**). The 216 Deed of Trust, like the Deed of Trust, lists Bank of America as the
26 Lender. The 216 Property's APN number as 162-10-812-003.

27 80. While the property address and the APN on the Deed of Trust are correct, the Court
28 finds the legal description is incorrect. The Grant Deed conveying the Property to Borrower

1 specifies that Unit 24G is designated Unit 185 in the original Regency Towers plat. Due to a mutual
2 mistake, however, the legal description in the Deed of Trust states that Unit 24G is designated as
3 Unit 3 in the Regency Towers plat. In reality, Unit 3 is the correct legal description for the 216
4 Property. The property records, the Regency Towers plat, and defendants' expert report make clear
5 that the Property's legal description should list Unit 185, as opposed to Unit 3.

6 81. Based on the uncontroverted evidence, the Court reforms the legal description in the
7 Deed of Trust to list Unit 185, as opposed to Unit 3.

8 82. The second instrument requiring reformation is an Assignment of the Deed of Trust
9 recorded on July 30, 2013. Due to a mutual mistake and confusion, the Assignment was
10 inadvertently recorded against APN #162-10-812-003, which is the 216 Property. The Assignment
11 correctly states that it is assigning the Deed of Trust (not the 216 Deed of Trust) but does not appear
12 in the property records for the Property when conducting an assessor's parcel no. search on account
13 of the incorrect APN. The language in the Assignment makes it clear that the Assignment should
14 have been recorded against APN 162-10-812-185.

15 83. Based on the uncontroverted evidence, the Court reforms the Assignment to reflect
16 the correct APN (162-10-812-185) and orders that the Assignment's effective date as to the subject
17 property was the date it was recorded against the incorrect parcel number (July 30, 2013).

18 **ORDER AND JUDGMENT**

19 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the deed of trust,
20 instrument number 20041020-0001569 with the Clark County Recorder, was not extinguished by the
21 HOA's foreclosure sale that is reflected in the trustee's deed upon sale, instrument number
22 201212170000834 with the Clark County Recorder.

23 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the deed of trust,
24 instrument number 20041020-0001569 with the Clark County Recorder, remains a valid, first-
25 position lien encumbering the property located at as 3111 Bel Air Dr., Unit 24G, Las Vegas, Nevada
26 89109, assessor's parcel no. 162-10-812-185.

27 . . .

28 . . .

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the legal description of the property in the deed of trust, instrument number 20041020-0001569 with the Clark County Recorder, is reformed to list Unit 185, as opposed to Unit 3.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Assignment of the deed of trust, recorded on July 30, 2013 as instrument number 201307300000199 with the Clark County Recorder, is reformed to reflect the assessor's parcel no. 162-10-812-185. The assignment's effective date remains the date it was recorded against the incorrect parcel number, or July 30, 2013. The court intends this judgment to correct any alleged deficiencies in the at-issue deed of trust and subsequent assignment.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants' motion for summary judgment is **GRANTED in its entirety**. Judgment is entered in favor of defendants and against LN Management. This is a final judgment.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED the court lifts the stay and reopens this case for the purpose of granting defendants' summary judgment motion and entering the court's judgment.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that all remaining claims are **DISMISSED** as moot.

DATED this 20th day of January, 2021.



DISTRICT JUDGE

Submitted by:

AKERMAN LLP

/s/ Nicholas E. Belay

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

NICHOLAS E. BELAY, ESQ.

Nevada Bar No. 15175

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Bank of America, N.A. and Ditech

Financial LLC f/k/a Green Tree Servicing LLC

Approved as to form and content by:

/s/ Kerry P. Faughnan

KERRY P. FAUGHNAN, ESQ.

Nevada Bar No. 12204

P.O. Box 335361

N. Las Vegas, Nevada 89033

Telephone: (702) 301-3096

Facsimile: (702) 331-4222

Email: kerry.faughnan@gmail.com

Attorneys for LN Management LLC Series 3111

Bel Air 24G

AKERMAN LLP

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

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

Llarena, Carla (LAA-Las)

From: Belay, Nicholas (Assoc-Las)
Sent: Wednesday, January 6, 2021 2:00 PM
To: Belay, Nicholas (Assoc-Las)
Subject: FW: A-12-669570-C (Elliott, Michael) - proposed order

From: Kerry Faughnan
Sent: Wednesday, January 6, 2021 8:45 AM
To: Belay, Nicholas (Assoc-Las)
Subject: Re: A-12-669570-C (Elliott, Michael) - proposed order

You may add my electronic signature.

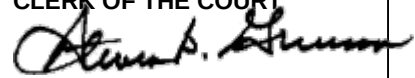
On Tue, Jan 5, 2021 at 4:16 PM <nicholas.belay@akerman.com> wrote:

Hi Kerry,

Just following up. Think you could let me know by tomorrow?

Nicholas Belay

Associate
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134
D: 702 634 5029
nicholas.belay@akerman.com



NEFF

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

NICHOLAS E. BELAY, ESQ.

Nevada Bar No. 15175

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: nicholas.belay@akerman.com

*Attorneys for Bank of America, N.A. and Ditech
Financial LLC f/k/a Green Tree Servicing LLC*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LN MANAGEMENT LLC SERIES 3111 BEL
AIR 24G,

Plaintiff,

v.

MICHAEL T. ELLIOTT, an individual; BANK
OF AMERICA, N.A.; and DOES 1 through 10,
inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No. : A-12-669570-C
Consolidated with: A-13-682055-C

Dept. No.: XIII

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
JUDGMENT**

///

///

///

///

///

///

///

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that a **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND**
3 **JUDGMENT** has been entered by this Court on the 20th day of January, 2021, in the above-
4 captioned matter. A copy of said Order is attached hereto as **Exhibit A**.

5 Dated this 21st day of January, 2021.

6 **AKERMAN LLP**

7 /s/ Nicholas E. Belay

8 ARIEL E. STERN, ESQ.

9 Nevada Bar No. 8276

10 NATALIE L. WINSLOW, ESQ.

11 Nevada Bar No. 12125

12 NICHOLAS E. BELAY, ESQ.

13 Nevada Bar No. 15175

14 1635 Village Center Circle, Suite 200

15 Las Vegas, Nevada 89134

16 *Attorneys for Bank of America, N.A. and Ditech*
17 *Financial LLC f/k/a Green Tree Servicing LLC*
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 21st day of January, 2021, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**, in the following manner:

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

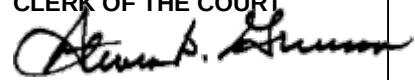
Kerry P. Faughnan, Esq.	kerry.faughnan@gmail.com
DocPrep	filings@docprep.info
Jory Garabedian	jgarabedian@mileslegal.com

I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Carla Llarena
An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A



1 **FFCL**

2 ARIEL E. STERN, ESQ.

3 Nevada Bar No. 8276

4 NATALIE L. WINSLOW, ESQ.

5 Nevada Bar No. 12125

6 NICHOLAS E. BELAY, ESQ.

7 Nevada Bar No. 15175

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: nicholas.belay@akerman.com

16 *Attorneys for Bank of America, N.A. and Ditech*
17 *Financial LLC f/k/a Green Tree Servicing LLC*

18 **DISTRICT COURT**
19 **CLARK COUNTY, NEVADA**

20 LN MANAGEMENT LLC SERIES 3111 BEL
21 AIR 24G,

22 Plaintiff,

23 v.

24 MICHAEL T. ELLIOTT, an individual; BANK
25 OF AMERICA, N.A.; and DOES 1 through 10,
26 inclusive,

27 Defendants.

28 AND ALL RELATED CLAIMS.

Case No. : A-12-669570-C
Consolidated with: A-13-682055-C

Dept. No.: XIII

**~~PROPOSED~~ FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
JUDGMENT**

29 Ditech Financial LLC f/k/a Green Tree Servicing LLC (**Ditech**) and Bank of America, N.A.
30 (collectively, **defendants**) filed a summary judgment motion on September 29, 2020. LN
31 Management LLC Series 3111 Bel Air 24G filed an opposition on November 11, 2020, and
32 defendants filed reply on November 20, 2020. The court held a hearing on the motion on December
33 3, 2020. Following the hearing, the court took the matter under advisement.

1 On December 14, 2020, the court entered a minute order granting defendants' summary
2 judgment motion. The court now enters the following findings of fact and conclusions of law.

3 **FINDINGS OF FACT**

4 ***The Subject Property, Note, and Deed of Trust***

5 1. A deed of trust listing Michael T. Elliott as the borrower (**Borrower**) and Bank of
6 America as the lender and beneficiary was executed on October 6, 2004 and recorded on October 20,
7 2004 (**Deed of Trust**). The Deed of Trust granted Lender a security interest in real property known
8 as 3111 Bel Air Dr., Unit 24G, Las Vegas, Nevada 89109 (the **Property**) to secure the repayment of
9 a promissory note (the **Note**) in the original amount of \$322,100.00 to the Borrower (the Note and
10 Deed of Trust together are the **Loan**). The Deed of Trust listed the APN number as 162-10-812-185.

11 2. In November 2004, Fannie Mae purchased the Loan, thereby acquiring ownership of
12 the Deed of Trust. Fannie Mae maintained that ownership at the time of the HOA Sale on December
13 12, 2012.

14 3. In September 2008, Federal Housing Finance Agency (**FHFA**) placed Fannie Mae
15 into conservatorship "for the purpose of reorganizing, rehabilitating, or winding up [its] affairs." 12
16 U.S.C. § 4617(a)(2). Fannie Mae remains in conservatorship today.

17 4. At the time of the HOA Sale, Bank of America was the servicer of the Loan for
18 Fannie Mae.

19 5. Bank of America serviced the Loan for Fannie Mae up until on or about April 30,
20 2013, when the servicing rights were transferred to Ditech.

21 6. On July 30, 2013, Bank of America recorded an assignment of the Deed of Trust to
22 Ditech.

23 7. On December 20, 2019, Ditech recorded an assignment of the Deed of Trust to New
24 Residential Mortgage, LLC.

25 8. On March 17, 2020, New Residential Mortgage, LLC recorded an assignment of the
26 Deed of Trust to NewRez LLC d/b/a Shellpoint Mortgage Servicing (**NewRez**).

27 ...

28 ...

1 ***Fannie Mae's Contract with Its Servicers, Including Bank of America, Ditech, and NewRez***

2 9. The relationship between Bank of America, Ditech, and NewRez, as the servicers of
3 the Loan, and Fannie Mae, as owner of the Loan, is governed by the Fannie Mae's Single-Family
4 Selling Guide at A2-1-01 and Fannie Mae's Single-Family Servicing Guide (**Guide**), a central
5 governing document for Fannie Mae's relationship with servicers nationwide. Among other things,
6 the Guide provides that Fannie Mae's servicers may act as record beneficiaries for the deeds of trust
7 owned by Fannie Mae and requires that servicers assign these deeds of trust to Fannie Mae upon
8 Fannie Mae's demand. Selling Guide at A2-1-01, Servicing Guide F-1-11.

9 10. The Guide provides that:

10 The servicer ordinarily appears in the land records as the mortgagee to
11 facilitate performance of the servicer's contractual responsibilities, including
12 (but not limited to) the receipt of legal notices that may impact Fannie Mae's
13 lien, such as notices of foreclosure, tax, and other liens. However, *Fannie*
14 *Mae may take any and all action with respect to the mortgage loan it deems*
15 *necessary to protect its ... ownership of the mortgage loan, including*
16 *recordation of a mortgage assignment, or its legal equivalent, from the*
17 *servicer to Fannie Mae or its designee.* In the event that Fannie Mae
18 determines it necessary to record such an instrument, the servicer must assist
19 Fannie Mae by

- 16 • preparing and recording any required documentation, such as
17 mortgage assignments, powers of attorney, or affidavits; and
- 18 • providing recordation information for the affected mortgage loans.

19 Selling Guide at A2-1-03 (emphasis added).

20 11. The Guide also provides for a temporary transfer of possession of the note when
21 necessary for servicing, such as managing litigation on behalf of Fannie Mae:

22 In order to ensure that a servicer is able to perform the services and duties
23 incident to the servicing of the mortgage loan, Fannie Mae temporarily
24 gives the servicer possession of the mortgage note whenever the servicer,
25 acting in its own name, represents the interests of Fannie Mae in
26 foreclosure actions, bankruptcy cases, probate proceedings, or other legal
27 proceedings.

28 This temporary transfer of possession occurs automatically and
immediately upon the commencement of the servicer's representation, in

its name, of Fannie Mae's interests in the foreclosure, bankruptcy, probate, or other legal proceeding.

Selling Guide at A2-1-04.

11. The Guide includes a chapter describing how and when servicers should pursue foreclosure. *See generally* Guide at E-3 (Managing Foreclosure Proceedings). The chapter includes detailed provisions for how servicers may foreclose on properties when either Fannie Mae, MERS, or the servicer itself is the beneficiary of record of the relevant deed of trust. Guide at E-3.2-09.

12. The Guide also includes a chapter that explains how servicers should manage litigation on behalf of Fannie Mae. *See generally* Guide at E-1 (Referring Default-Related Legal Matters and Non-Routine Litigation to Law Firms).

13. The Guide states that "Fannie Mae is at all times the owner of the mortgage note," and "[a]t the conclusion of the servicer's representation of Fannie Mae's interests in the foreclosure . . . possession automatically reverts to Fannie Mae." Guide at A2-1-04.

14. Pursuant to the Guide, a servicer is required to "maintain in the individual mortgage loan file all documents and system records that preserve Fannie Mae's ownership interest in the individual mortgage loan." Guide at A2-4-01.

15. Any servicer retaining documents related to a particular loan, such as a deed of trust, has "no right to possess these documents and records except under the conditions specified by Fannie Mae." Guide at A2-5.1-02.

The HOA Foreclosure Sale and LN Management's Purported Acquisition of the Property

16. On June 21, 2012, Collections, as agent for the HOA, recorded a Notice of Claim – Delinquent Assessment Notice.

17. On July 25, 2012, Collections, as agent for the HOA, recorded a Notice of Default and Election to Sell.

18. After the Notice of Default was recorded, on or about August 16, 2012, Bank of America, through counsel at Miles, Bauer, Bergstrom, & Winters, LLP (**Miles Bauer**), contacted the HOA through Collections and requested the super-priority amount.

...

1 19. Collections responded on or about November 27, 2012, and provided a Statement of
2 Account.

3 20. Following receipt of the Statement of Account, Miles Bauer and Collections
4 discussed the HOA Sale via telephone. In email correspondence recounting the details of the
5 telephone conversation, Collections confirmed that neither it nor the HOA was "foreclosing on a
6 super-priority lien pursuant to NRS 116.3116."

7 21. Collections further confirmed that it and the HOA were "not claiming to have a
8 super-priority lien since the first mortgage [had] not been foreclosed on the property."

9 22. Miles Bauer advised Collections that if the HOA and Collections were to conduct a
10 super-priority sale, "Bank of America would like to payoff any potential senior lien, should one
11 exist, to protect its first mortgage security interest."

12 23. Collections, on behalf of the HOA, then recorded a Notice of Trustee Sale on
13 November 15, 2012.

14 24. On December 17, 2012, a foreclosure deed was recorded against the Property. The
15 foreclosure deed states that the Property was sold at an HOA foreclosure sale on December 12, 2012,
16 to 3111 Bel Air Drive 24G Trust for \$7,001.00.

17 25. 3111 Bel Air Drive 24G Trust subsequently conveyed the Property to LN
18 Management via a Quitclaim Deed recorded on April 26, 2013.

19 26. At no time did the Conservator consent to the HOA Sale extinguishing or foreclosing
20 Fannie Mae's interest in the Property. (FHFA's Statement on HOA Super-Priority Lien Foreclosures
21 (Apr. 21, 2015), [www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)
22 [Foreclosures.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)).

23 27. The fair market value of the Property at the time of the HOA Sale was \$360,000. The
24 purchase price at the HOA Sale was less than 2% of the fair market value.

25 ***Procedural History***

26 28. LN Management initiated an action for quiet title/declaratory relief on May 17, 2013.
27 See Case No. A-13-682055-C. The court consolidated the case with the above-captioned action on
28 October 29, 2013.

1 3. NRS 30.010 *et seq.* gives courts "power to declare rights, status and other legal
2 relations." LN Management and defendants both seek declaratory relief under that statute.

3 4. Here, defendants request declaratory relief and quiet title. LN Management contends
4 that it bought the property and the first deed of trust was extinguished. Defendants assert the sale
5 did not extinguish the deed of trust because: (1) Fannie Mae owned the loan, and Bank of America
6 was the beneficiary of record of the deed of trust in its capacity as the servicer of the loan for Fannie
7 Mae at the time of the HOA foreclosure sale in December 2012, and thus, the Federal Foreclosure
8 Bar applies; (2) the HOA foreclosed on only the sub-priority portion of its statutory lien; (3) the deed
9 of trust survived as a matter of equity.

10 5. In an action such as the present one, the parties must prove their claims and
11 affirmative defenses by a preponderance of the evidence. *See* Nev. J.I. 2EV.1. Under Nevada law,
12 "[t]he term 'preponderance of the evidence' means such evidence as, when weighed with that
13 opposed to it, has more convincing force, and from which it appears that the greater probability of
14 truth lies therein." Nev. J.I. 2EV.1; *Corbin v. State*, 111 Nev. 378, 892 P.2d 580 (1995) (regarding
15 entrapment, "[p]reponderance of the evidence means such evidence as, when weighed with that
16 opposed to it, has more convincing force and the greater probability of truth.").

17 6. Nevada law draws no distinction between circumstantial and direct evidence.
18 *Deveroux v. State*, 96 Nev. 388, 391 (1980); Nev. J.I. 2EV.3 ("The law makes no distinction
19 between the weight to be given either direct or circumstantial evidence. Therefore, all of the
20 evidence in the case, including circumstantial evidence, should be considered...").

21 ***B. The Five-Year Rule under NRCP 41(e) Has Not Run***

22 7. LN Management contends the court should dismiss this case under NRCP 41(e)
23 because the five-year rule has expired. The court rejects this argument.

24 **The Action was Brought to Trial**

25 8. NRCP 41(e) only applies if an action is not brought to trial within 5 years after the
26 action was filed. *See* NRCP 41(e)(2)(B). The Nevada supreme court defines "trial" as "the
27 examination before a competent tribunal, according to the law of the land, of questions of fact or of
28 law put in issue by pleadings, for the purpose of determining the rights of the parties." *United Ass'n*

1 of *Journeyman & Apprentices of Plumbing & Pipe Fitting Indus. v. Manson*, 105 Nev. 816, 819–20,
2 783 P.2d 955, 957 (1989). Under this definition, "proceedings leading to a complete grant of
3 summary judgment constitute a trial" for purposes of the five-year rule. *Monroe v. Columbia Sunrise*
4 *Hosp. & Med. Ctr.*, 123 Nev. 96, 100, 158 P.3d 1008, 1010 (2007). This holds true even when third-
5 party claims remain outstanding. *Id.* at 1011.

6 9. The court granted summary judgment in favor of Ditech on August 13, 2014. The
7 order granted Ditech's motion "in its entirety" and constituted the "final order/judgment in this
8 matter." While the court ultimately granted LN Management's motion to set aside the judgment in
9 September 2014, nothing in either NRCP 41(e) or Nevada case law negates the fact Ditech brought
10 the action "to trial" within the meaning of Rule 41(e).

11 10. Rule 41(e)'s plain language does not contemplate the five-year rule being reinstated
12 after it has already been satisfied on summary judgment. *See Vanguard Piping v. Eighth Jud. Dist.*
13 *Ct.*, 129 Nev. 602, 608, 309 P.3d 1017, 1020 (2013) (stating the rules of statutory interpretation
14 apply to procedural rules and noting the court should look to the plain language of the rule); *Thran v.*
15 *District Ct.*, 79 Nev. 176, 180-81 (1963) (Rule 41(e) is "clear, unambiguous and requires no
16 construction other than its own language.").

17 11. Because Ditech already satisfied the five-year rule, it is no longer applicable to this
18 action.

19 LN Management Stipulated to Forego the Five-Year Rule

20 12. Even if the five-year rule had not already been satisfied, the court finds the parties
21 have stipulated to waive it.

22 13. NRCP 41(e)(5) provides a party may stipulate in writing to extend the time in which
23 to prosecute an action.

24 14. The court finds this is precisely what LN Management did when it moved for
25 reconsideration of the court's May 2018 order dismissing the action under Rule 41(e).

26 15. In the motion, LN Management argued the court should set aside the court's five-year
27 rule dismissal and reopen the case so that the parties could obtain "final orders that would determine
28

1 each of the parties rights as to the property." No other party filed an opposition to LN Management's
2 motion.

3 16. By filing an unopposed motion to disregard the five-year rule dismissal and litigate
4 the matter on the merits, the court finds LN Management and the remaining parties stipulated to
5 forego application of the five-year rule to this matter.

6 **LN Management is judicially estopped from obtaining dismissal under the Five-Year**
7 **Rule.**

8 17. Even assuming the five-year rule continues to apply, the court finds LN Management
9 is judicially estopped from obtaining dismissal.

10 18. Judicial estoppel has five elements: "(1) the same party has taken two positions; (2)
11 the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was
12 successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true);
13 (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of
14 ignorance, fraud, or mistake." *Matter of Frei Irrevocable Tr. Dated Oct. 29, 1996*, 133 Nev. 50, 56,
15 390 P.3d 646, 652 (2017) (citation omitted). All elements are satisfied to prevent LN Management
16 from now asserting the five-year rule.

17 19. *First*, LN Management has taken two positions. In its opposition, LN Management
18 contends the five-year rule expired on October 3, 2017, necessitating dismissal of this action. But
19 LN Management previously moved for reconsideration on June 21, 2018, of the court's order
20 dismissing the action for want of prosecution under the very same rule LN Management now seeks
21 to enforce.

22 20. *Second*, LN Management's positions were taken in this case, a judicial proceeding.

23 21. *Third*, LN Management successfully obtained reconsideration of the court's order
24 dismissing the action under Rule 41(e). The court granted LN Management's motion and reopened
25 the case on July 27, 2018.

26 22. *Fourth*, the positions are inconsistent. LN Management moved for (and obtained)
27 reconsideration of the court's Rule 41(e) dismissal, explicitly arguing such relief was appropriate due
28 to its own wrongful conduct. LN Management now seeks to undo its own motion by arguing the

1 five-year rule somehow expired in October 2017. These positions are entirely irreconcilable. LN
2 Management cannot now argue for dismissal under Rule 41(e) when it previously moved to reopen
3 the case (for the second time) notwithstanding this very rule.

4 23. *Finally*, LN Management's conduct cannot be found to result from ignorance, fraud or
5 mistake. LN Management moved on its own volition for reconsideration of the court's dismissal
6 order and directly argued the order should be set aside based on excusable neglect. In LN
7 Management's own words, such reconsideration was justified because the parties "need" the court to
8 determine the parties' respective rights in the property.

9 **LN Management's Five-Year Rule argument is barred by Waiver and Equitable**
10 **Estoppel.**

11 24. In addition to being judicially estopped from arguing for five-year rule dismissal, LN
12 Management also waived or else should be equitably estopped from raising the issue.

13 25. Waiver is the intentional relinquishment of a known right. *Nev. Yellow Cab Corp. v.*
14 *Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 152 P.3d 737, 740 (Nev. 2007). Waiver of a right
15 may be inferred when a party engages in conduct so inconsistent with an intent to enforce the right
16 as to induce a reasonable belief that the right has been relinquished. *Id.* Further, a party seeking
17 equity is required to do equity. *Overhead Door Co. of Reno, Inc. v. Overhead Door Corp.*, 734 P.2d
18 1233, 1235 (Nev. 1987). Equitable estoppel operates to prevent a party from asserting legal rights
19 that, in equity and good conscience, they should not be allowed to assert because of their own
20 conduct. *NGA #2 Liab. Co. v. Rains*, 946 P.2d 163, 168 (Nev. 1997).

21 26. Here, the court finds LN Management *twice* moved to reopen this case: First, after
22 Ditech brought the action to trial; and second, after LN Management obtained reconsideration of the
23 court's rule 41(e) dismissal order.

24 27. To the extent LN Management believed the five-year rule expired in October 2017,
25 LN Management has intentionally relinquished any such argument.

26 28. Had LN Management indicated any intent to argue for five-year rule dismissal prior
27 to its opposition to the instant motion, defendants could have acted accordingly to either obtain
28

1 affirmative relief or request an expediated resolution of the matter. Instead, LN Management did the
2 exact opposite, arguing the court should maintain the case notwithstanding any such rule.

3 29. Defendants reasonably relied on this relinquishment and would be severely
4 prejudiced if the court dismissed the action without resolving the parties' respective interests in the
5 property.

6 **Alternatively, the Five-Year Rule has not run due to tolling.**

7 30. To the extent the five-year rule was reinstituted based on its September 24, 2014
8 order granting LN Management's post-trial motion to reopen the case, the court finds the deadline
9 still would not have run due to tolling.

10 31. Under this scenario, the earliest the five-year rule could have expired is September
11 24, 2019, or five-years after the court reinstituted the action.

12 32. But the Nevada supreme court has explicitly recognized the deadline can be tolled
13 under certain circumstances, such as when the court stays proceedings. *Baker v. Noback*, 112 Nev.
14 1106, 1110 (1996) (noting it would be "patently unfair" to dismiss an action for failure to bring to
15 trial when a stay prevented the parties from going to trial within the period); *see also Boren v. City of*
16 *N. Las Vegas*, 98 Nev. 5, 6, 638 P.2d 404, 405 (1982) ("**Any** period during which the parties are
17 prevented from bringing an action to trial by reason of a stay order shall not be computed in
18 determining the five-year period of [NRCP] 41(e).") (emphasis added).

19 33. Here, this matter was closed between May 23, 2018 and July 27, 2018 before the
20 court granted LN Management's motion to reopen. The matter was then stayed due to Ditech's
21 bankruptcy on March 27, 2019, and it remains stayed to date.

22 34. Accounting for these tolling periods, the five-year deadline would be at least **246**
23 **days** from when the stay is lifted and/or the case is reopened. Accordingly, the court finds there is
24 no merit to LN Management's contention the five-year rule deadline has expired.

25 **C. Federal Foreclosure Bar – 12 U.S.C. § 4617(j)(3)**

26 Pursuant to the Housing and Economic Recovery Act of 2008 ("HERA"), Congress granted
27 FHFA an array of powers, privileges, and exemptions from otherwise applicable laws to enable
28 FHFA to carry out its statutory functions when acting as Conservator of Fannie Mae and Freddie

1 Mac (together, the "enterprises"). Among these is a broad statutory "exemption" captioned
2 "property protection" that provides when the enterprises are under the conservatorship of the FHFA,
3 none of their property "shall be subject to ... foreclosure ... without the consent of [FHFA]." 12
4 U.S.C. § 4617(j)(3) (the "Federal Foreclosure Bar").

5 35. The Federal Foreclosure Bar contains no conditions precedent to effectiveness of its
6 statutory protections. Unless and until FHFA gives its consent, the federal protection "shall" be
7 given full effect, which includes preemption of state law. *SFR Invs. Pool 1, LLC v. Green Tree*
8 *Servicing, LLC*, No. A-13-680704 (Nev. Dist. Ct. Nov. 17, 2016) (citing 12 U.S.C. § 4617(j)(3)). A
9 contrary interpretation would invert the default rule provided in the statutory text on its head, as if
10 Congress decreed that FHFA's property interests are subject to extinguishment by foreclosure unless
11 FHFA affirmatively declares that it will not grant consent to the extinguishment of a specific
12 property interest. This is not what the statute says, and courts should not rewrite a statute's text. *See*
13 *Lamie v. United States Trustee*, 540 U.S. 526, 538 (2004) (rejecting argument that "would result not
14 [in] a construction of [the] statute, but, in effect, an enlargement of it by the court" (quoting *Iselin v.*
15 *United States*, 270 U. S. 245, 251 (1926))); *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54
16 (1992) ("[I]n interpreting a statute a court should always turn first to one, cardinal canon before all
17 others . . . that a legislature says in a statute what it means and means in a statute what it says.").
18 Here, there is no evidence FHFA consented to extinguishment of the deed of trust.

19 36. The Nevada supreme court and the Ninth Circuit have both held unequivocally that
20 the Federal Foreclosure Bar, 12 U.S.C. § 4617(j)(3), protects Fannie Mae's property interests while it
21 under the conservatorship of the FHFA by preempting the NRS 116.3116 (the **State Foreclosure**
22 **Statute**), which would otherwise permit an HOA's foreclosure of its superpriority lien to extinguish
23 Fannie Mae's deed of trust. *See Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, 417
24 P.3d 363 (Nev. 2018); *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017); *FHFA v. SFR Invs. Pool*
25 *1, LLC*, 893 F.3d 1136 (9th Cir. 2018); *Elmer v. JPMorgan Chase & Co.*, 707 F. App'x 426 (9th Cir.
26 2017); *Saticoy Bay, LLC v. Flagstar Bank, FSB*, 699 F. App'x 658 (9th Cir. 2017).

27 37. In *Christine View*, the Nevada supreme court held that "according to the plain
28 language of the statute, Fannie Mae's property interest effectively becomes the FHFA's while the

1 conservatorship exists. Thus, the Federal Foreclosure Bar protects Fannie Mae's deed of trust while
2 Fannie Mae is under the conservatorship." *Christine View*, 417 P.3d at 367. *Christine View* is
3 published precedent that forecloses any argument suggesting that the Federal Foreclosure Bar does
4 not preempt the State Foreclosure Statute or does not protect Fannie Mae's property interest from
5 extinguishment. *See id.* at 365 (holding that "the Federal Foreclosure Bar invalidates any purported
6 extinguishment of a regulated entity's property interest while under the FHFA's conservatorship
7 unless the FHFA affirmatively consents.").

8 38. Three other recent decisions from the Nevada supreme court, four Ninth Circuit
9 decisions, and dozens of decisions from federal and state district courts in Nevada agree with the
10 Nevada Supreme Court's decision in *Christine View*—an HOA foreclosure sale cannot extinguish
11 property interests of the Enterprises while they are in conservatorship. *See, e.g., Guberland*, 2018
12 WL 3025919, at *2; *A&I Series 3, LLC v. Fannie Mae*, No. 71124, 2018 WL 3387787 (Nev. July 10,
13 2018) (unpublished disposition); *5312 La Quinta Hills, LLC v. BAC Home Loans Servicing, LP*, No.
14 71069, 2018 WL 3025927, at *1 (Nev. June 15, 2018) (unpublished disposition); *Berezovsky*, 869
15 F.3d 923; *FHFA v. SFR*, 893 F.3d 1136; *Elmer*, 707 F. App'x 426; *Flagstar Bank, FSB*, 699 F. App'x
16 658; *see also* CMI's Motion for Summary Judgment at (citing dozens of state and federal district
17 court cases in Nevada).

18 39. The preemption doctrine, which provides that federal law supersedes conflicting state
19 law, arises from the Supremacy Clause of the U.S. Constitution. Here, the text of the Federal
20 Foreclosure Bar declares that "[n]o property of the Agency shall be subject to levy, attachment,
21 garnishment, foreclosure, or sale." 12 U.S.C. § 4617(j)(3).

22 40. The Federal Foreclosure Bar preempts the State Foreclosure Statute under a theory of
23 conflict preemption because "state law is naturally preempted to the extent of any conflict with a
24 federal statute." *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby v. Nat'l Foreign Trade Council*,
25 530 U.S. 363, 372 (2000)).

26 41. Congress's clear and manifest purpose in enacting Section 4617(j)(3) was to protect
27 FHFA conservatorships from actions, such as the HOA Sale, that otherwise would deprive them of
28 their property interests. "[T]he [State Foreclosure Statute] is in direct conflict with Congress's clear

1 and manifest goal to protect Fannie Mae's property interest while under the FHFA's conservatorship
2 from threats arising from state foreclosure law." *Christine View*, 417 P.3d at 367; *Berezovsky*, 869
3 F.3d at 930 ("[T]he Federal Foreclosure Bar implicitly demonstrates a clear intent to preempt [the
4 State Foreclosure Statute]."); *FHFA v. SFR Invs. Pool 1, LLC*, 893 F.3d at 1146-47 (following
5 *Berezovsky*); *Elmer*, 707 F. App'x at 427-28 (same); *Flagstar*, 699 F. App'x at 658-59 (same).

6 42. Accordingly, the Federal Foreclosure Bar preempts the State Foreclosure Statute to
7 the extent a homeowner association's foreclosure of its super-priority lien cannot extinguish a Fannie
8 Mae property interest while it is under FHFA's conservatorship, without the consent of FHFA.

9 43. At the time of the HOA foreclosure sale, Bank of America was the Deed of Trust
10 beneficiary of record in its capacity as the servicer for Fannie Mae. The evidence, which includes a
11 Fannie Mae employee declaration and supporting business records, proves Fannie Mae owned the
12 note and deed of trust at the time of the HOA sale and was in a contractual relationship with Bank of
13 America as the loan servicer. Fannie Mae maintained a property interest in the underlying collateral.
14 *See Daisy Trust*, 135 Nev. at 233-34, 445 P.3d at 849; *In re Montierth*, 131 Nev. 543, 354 P.3d 648
15 (2015); *CitiMortgage, Inc. v. SFR Invs. Pool 1, LLC*, No. 70237, 2019 WL 289690 (Nev. Jan. 18,
16 2019) (unpublished disposition); *CitiMortgage, Inc. v. TRP Fund VI, LLC*, No. 71318, 2019 WL
17 1245886, at *1 (Nev. Mar. 14, 2019); *Guberland*, 2018 WL 3025919 at *2-3 (citing *Montierth*);
18 Restatement (Third) of Property: Mortgages § 5.4 (1997). In citing *Montierth* and the Nevada
19 Supreme Court's adoption of the Restatement (Third) of Property: Mortgages, the Ninth Circuit held
20 that a loan-owner servicer relationship "preserves the note owner's power to enforce its interest
21 under the security instrument, because the note owner can direct the beneficiary to foreclose on its
22 behalf." *Berezovsky*, 869 F.3d at 931. Under these circumstances, the loan owner maintains a
23 secured property interest. *Id.* Therefore, an enterprise's "property interest is valid and enforceable
24 under Nevada law even if the recorded document omits [the Enterprise's] name, if the recorded
25 beneficiary of the deed of trust is a party acting on [the Enterprise's] behalf." *Elmer*, 2017 WL
26 3822061, at *1.

27 44. The Nevada Supreme Court has held materially identical "business records and
28 testimony" constitute "ample evidence" to demonstrate an Enterprise's ownership of a loan and the

1 contractual relationship between an Enterprise and its servicer. *See M&T Bank v. Wild Calla St. Tr.*,
2 No. 74715, 2019 WL 1423107, at *2 (Nev. Mar. 28, 2019) (unpublished disposition); *see also*
3 *CitiMortgage v. SFR*, 2019 WL 289690, at *1 & n.1 ("Although respondent contends that appellant's
4 evidence[—"deposition testimony of appellant's NRCP 30(b)(6) witness, affidavit, and relied-upon
5 business records"—] does not establish that Fannie Mae owned the loan at the time of the HOA
6 foreclosure sale, we disagree."); *CitiMortgage v. TRP*, 2019 WL 1245886, at *1; *SFR Invs. Pool 1,*
7 *LLC v. Green Tree Servicing, LLC*, No. 72010, 2018 WL 6721370, at *1 (Dec. 17, 2018)
8 (unpublished disposition).

9 45. The Ninth Circuit agrees and has held materially the same evidence was admissible
10 and sufficient to establish an Enterprise's property interest for the purposes of summary judgment.
11 *See, e.g., Berezovsky*, 869 F.3d at 933; *Elmer*, 707 F. App'x at 428; *Williston*, 736 F. App'x at 169;
12 *G&P Investments*, 740 F. App'x at 564.

13 46. Nevada law does not require Fannie Mae's ownership interest to be recorded in its
14 own name. *Daisy Trust*, 445 P.3d at 849; *JPMorgan Chase Bank, N.A. v. Guberland LLC-Series 2*,
15 No. 73196, 2019 WL 2339537, at *1 (Nev. May 31, 2019) ("*Guberland II*"). The protection of the
16 Federal Foreclosure Bar is not limited to the interest Fannie Mae might have if it were *record*
17 *beneficiary* of the deed of trust at the time of the HOA sale. Rather, it extends to the property
18 interest that Fannie Mae has as the *owner* of the note and deed of trust while its contractually
19 authorized servicer appears as record beneficiary of that deed of trust, a property interest that Nevada
20 law recognizes. *See Montierth*, 131 Nev. 543, 354 P.3d 648 (holding that a loan owner has a secured
21 property interest when a contractually authorized servicer is the record beneficiary of a deed of
22 trust); *see also Guberland*, 2018 WL 3025919, at *2-3 (applying the Federal Foreclosure Bar where
23 an enterprise "was not the beneficiary of the deed of trust" and its servicer appeared as record
24 beneficiary); *CitiMortgage v. SFR*, 2019 WL 289690 at *2 (relying on *Montierth* and holding the
25 loan servicer's status as record beneficiary of the deed of trust "does not create a question of material
26 fact regarding whether Fannie Mae owns the subject loan"); *CitiMortgage v. TRP*, 2019 WL
27 1245886, at *1 (reversing the district court's finding that the Federal Foreclosure Bar did not prevent
28 the extinguishment of Fannie Mae's deed of trust because it was not publicly recorded in Fannie

1 Mae's name and confirming, under *Montierth*, that "the record beneficiary need not be the actual
2 owner of the loan").

3 47. LN Management bears the burden of proof to establish that FHFA expressly
4 consented to extinguish Fannie Mae's ownership interest in the deed of trust. FHFA's April 21, 2015
5 statement confirms that FHFA did not provide express consent here. In the absence of express
6 consent, the Court cannot imply FHFA's consent, as doing so would ignore the plain text of the
7 Federal Foreclosure Bar. *See Berezovsky*, 869 F.3d 923 (holding that FHFA's consent can only be
8 manifested affirmatively); *see also Alessi & Koenig, LLC v. Dolan, Jr.*, No. 2:15-cv-00805-JCM-
9 CWH, 2017 WL 773827, at *3 (D. Nev. Feb. 27, 2017) (citing and relying on cases in which
10 FHFA's statement was sufficient to show FHFA's lack of consent). Although the federal law
11 controls, it is consistent with Nevada's policy against requiring a party to prove a negative, such as
12 proving a lack of consent. *Andrews v. Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092,
13 1096-97 (1990) (even where a plaintiff bears the burden of proving his or her strict liability claim, "it
14 is unfair to force the plaintiff consumer to prove a negative, i.e., that the product was not altered.");
15 *see also State v. Haskell*, 14 Nev. 209, 209-210 (1879) (in a forfeiture case, once the defendant
16 establishes good title to the property the burden shifts to the state – "not upon the defendants to
17 prove a negative", i.e. that the property was not abandoned or forfeited).

18 48. LN Management has not shown it obtained such consent. To the contrary, FHFA has
19 publicly announced that it "has not consented, and will not consent in the future, to the foreclosure or
20 other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection
21 with HOA foreclosures of super-priority liens." Therefore, the Federal Foreclosure Bar applies.

22 49. Having found that the Federal Foreclosure Bar applies, the next step is to determine if
23 defendants have standing, as the servicer and beneficiary of record at the time of the HOA
24 foreclosure sale and during the applicable periods of this action, to represent Fannie Mae's Mac
25 interest in the loan. The Court finds that defendants were Fannie Mae's contractually authorized
26 servicers of the loan, with standing to represent and defend Fannie Mae's interests in this action. *See*
27 *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754 (Nev. 2017); *Flagstar*,
28 699 F. App'x at 658.

1 50. The Nevada Supreme Court confirmed that "the servicer of a loan owned by [Fannie
2 Mae] may argue that the Federal Foreclosure Bar preempts NRS 116.3116, and that neither [Freddie
3 Mac] nor the FHFA need be joined as a party." *Nationstar*, 396 P.3d at 758.

4 51. Furthermore, there is no bar against private parties like defendants raising a federal
5 preemption argument. *Id.* at 757. To the contrary, in cases state and federal law clash, "*judges are*
6 *bound by federal law.*" *Id.* (quoting *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378,
7 1384 (2015)) (emphasis in original); *See Saticoy Bay LLC Series Christine View v. Federal National*
8 *Mortgage Association*, 134 Nev. Adv. Op. 36 (2018).

9 52. LN Management offers no evidence conflicting with Fannie Mae's ownership of the
10 loan or defendants' right to represent Fannie Mae's interest in the loan.

11 53. Since no party has refuted evidence of Fannie Mae's ownership, the Federal
12 Foreclosure Bar defeats LN Management's contention it took title to the property free and clear of
13 the deed of trust.

14 ***D. Tender Was Excused as Futile.***

15 54. Even if the Federal Foreclosure Bar did not apply, Fannie Mae's deed of trust would
16 still have survived because Bank of America's tender was excused under the Nevada supreme court's
17 decision in *Perla del Mar. 7510 Perla Del Mar Ave Trust v. Bank of Am. N.A.*, 458 P.3d 348, 349
18 (Nev. 2020). That case held the obligation to tender is excused for futility where the evidence shows
19 that the HOA or its foreclosure agent "had a known policy of rejecting such payments." *Id.* at 351
20 (citing cases from other jurisdictions endorsing the general proposition that a tender is excused when
21 the party entitled to payment demonstrates by words or conduct it will not accept the tender).

22 55. Just as in *Perla Del Mar*, Bank of America and Miles Bauer offered to pay the HOA,
23 through Collections of America, the superpriority amount "actually due" with no impermissible
24 conditions attached. *See 7510 Perla Del Mar Ave. Trust v. Bank of America, N.A.*, 458 P.3d 348,
25 349 (Nev. 2020) (noting "[a]n actual tender is unnecessary where it is apparent the other party will
26 not accept it."). The HOA, through its agent, stated no superpriority lien existed until Bank of
27 America completed its own foreclosure.

28 ...

1 56. In analyzing materially similar representations from an HOA trustee, the Nevada
2 supreme court confirmed "[t]he necessary implication of these statements is that [the HOA trustee]
3 would not have accepted a superpriority tender before the first deed of trust was foreclosed." *See*
4 *U.S. Bank N.A. v. SFR Invs. Pool 1 LLC*, No. 78003, 2020 WL 3003017, at *1 (Nev. June 4, 2020)
5 (unpublished) (directing judgment in the bank's favor based on futility).

6 57. Bank of America stood ready, willing, and able to tender the full statutory super-
7 priority amount to protect the deed of trust, but the HOA obstructed Bank of America's ability to
8 tender the superpriority portion of the HOA's lien through its false representations and assurances.
9 *Id.* The HOA sale thus did not extinguish the deed of trust because Bank of America was excused
10 from formal tender.

11 ***E. The HOA Conducted a Sub-Priority Sale.***

12 58. Irrespective of Bank of America's superpriority offer, the HOA foreclosed on only the
13 subpriority portion of its lien because that is what the HOA and its agent chose to do.

14 59. The Nevada Supreme Court in *SFR Investments*, applying the plain language of the
15 statute, explained that "[a]s to first deeds of trust, NRS 116.3116(2) thus splits an HOA lien into two
16 pieces, a superpriority piece and a subpriority piece." *SFR Investments Pool 1 v. U.S. Bank*, 334
17 P.3d 408, 411 (Nev. 2014). Only "[t]he superpriority piece" is "prior to a first deed of trust." *Id.*
18 "The subpriority piece, consisting of all other HOA fees or assessments, is subordinate to a first deed
19 of trust." *Id.* An association can choose to foreclose on either the sub-priority or super-priority
20 portion of its lien. *See Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132
21 Nev. Adv. Op. 5, 366 P.3d 1105, 1116 (2016) ("And if the association forecloses on its superpriority
22 lien portion, the sale also would extinguish other subordinate interests in the property."). *See also*
23 *River Glider Ave. Tr. v. The Bank of N.Y. Mellon*, No. 79808 (Nev. Sup. Ct. Sept. 18, 2020)
24 (unpublished disposition) (finding representations of purchaser in judicial proceeding determinative
25 for whether a sale was a subpriority or super-priority sale).

26 60. This comports with long-standing Nevada law that the foreclosing party's intent
27 determines what is transferred at auction. *See, e.g., Dayton Valley Investors, LLC v. Union Pac. R.*
28 *Co.*, 664 F.Supp. 2d 1174, 1185 (D. Nev. 2009) ("[I]t is the intent of the parties to the deed which ...

1 must determine the nature and extent of the interest conveyed.") (quoting *City Motel, Inc. v. Nevada*
2 *ex. rel. State Dep't of Highways*, 75 Nev. 137, 140, 336 P.2d 375, 377 (1959)). The foreclosing
3 party's intent "is determined from 'all the circumstances surrounding the transaction[.]'" *See Dayton*
4 *Valley*, 664 F.Supp. 2d at 1185 (quoting *Kartheiser v. Hawkins*, 98 Nev. 237, 239, 645 P.2d 967, 968
5 (1982)).

6 61. Here, the undisputed evidence shows the HOA's agent, Collections of America,
7 explicitly informed Bank of America it was not "foreclosing on a super-priority lien pursuant to NRS
8 116.3116" and that the HOA did not claim "to have a super-priority lien since the first mortgage
9 [had] not [been] foreclosed."

10 62. "Because the HOA foreclosed on only its sub-priority lien, [LN Management] cannot
11 meet its burden of showing it has title superior to [the Deed of Trust]." *7912 Limbwood Court Trust*
12 *v. Wells Fargo Bank, N.A.*, 2015 WL 5123317 at *4 (D. Nev. Aug. 31, 2015); *see also MacDonald v.*
13 *Krause*, 77 Nev. 312, 315, 362 P.2d 724, 727 (1961) ("In a quiet title action, the only issue is
14 whether plaintiff has an interest or estate in the property superior to the adverse claim.").
15 Accordingly, defendants are entitled to summary judgment on this alternative basis.

16 ***F. Alternatively, The Court Finds the Deed of Trust Survived as a Matter of Equity***

17 63. The court need not reach the equities in this matter because Fannie Mae's deed of
18 trust survived as a matter of law. *Bank of America, N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113
19 (Nev. 2018). But even if the court balanced the equities in this case, they tip strongly in defendants'
20 favor.

21 64. If an association sells a property for a price that is "palpabl[y] and great[ly]
22 inadequate," all that is needed to show the deed of trust survived as a matter of equity is "very slight
23 additional evidence of unfairness." *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227*
24 *Shadow Canyon*, 405 P.3d 641, 642 (Nev. 2017). To determine if an association's foreclosure-sale
25 price is inadequate, courts must compare that price to the foreclosed property's fair market value at
26 the time of the sale. *See id.*, at 649 (comparing the \$35,000.00 association-foreclosure-sale price to
27 an appraisal showing the fair-market value of free and clear title was \$335,000.00 to determine the
28 association sold the property "for roughly 11 percent of [its] fair market value"). A foreclosure-sale

1 price below 20% of fair market value is "obviously inadequate." *See Shadow Wood*, 366 P.3d at
2 1116.

3 65. The Nevada supreme court has provided a non-exhaustive list of "irregularities that
4 may rise to the level of fraud, unfairness, or oppression" required to set aside an association sale or
5 hold that it did not extinguish a senior deed of trust, including: (1) "failure to mail a deed of trust
6 beneficiary the statutorily required notices"; (2) "***an HOA's representation that the foreclosure sale***
7 ***will not extinguish the first deed of trust***"; (3) "collusion between the winning bidder and the entity
8 selling the property"; (4) "a foreclosure trustee's refusal to accept a higher bid"; and (5) "a
9 foreclosure trustee's misrepresentation of the sale date." *Id.* at n.11 (emphasis added).

10 66. Here, the HOA sold the Property for less than 2% of its fair market value. In light of
11 this "palpabl[y] and great[ly]" inadequate sales price, only slight evidence of unfairness is needed to
12 set aside the foreclosure sale. *See Nationstar*, 405 P.3d at 648. Prior to the HOA Sale, Bank of
13 America contacted Collections to offer to pay the full statutory super-priority amount, as it has done
14 in hundreds – if not thousands – of other cases. Collections subsequently assured Bank of America
15 that it was not foreclosing on a "super-priority lien pursuant to NRS 116.3116" and that the HOA did
16 not claim to "have a super-priority lien." Miles Bauer, on behalf of Bank of America, asked
17 Collections to let them know if the circumstances of the HOA Sale changed, as "Bank of America
18 would like to payoff any potential senior lien, should one exist, to protect [the Deed of Trust]." *Id.*
19 Again, in response to Bank of America's willingness to tender the full statutory super-priority
20 amount, Collections advised that no such lien existed, and it would notify Bank of America if
21 anything changed. *Id.*

22 67. Bank of America attempted to pay the superpriority amount of the HOA's lien here to
23 ensure Fannie Mae's deed of trust was protected, and the HOA prevented it from doing so. This is
24 another example of unfairness the supreme court explicitly identified in *Shadow Canyon*. *See* 405
25 P.3d at 650 (explaining that whether a senior lender "tried to tender payment" to an association
26 before the sale is "significant[]" to determine whether the lender's deed of trust survived as an
27 equitable matter).

28 . . .

1 68. In light of the HOA and its agents' representations to Bank of America and Miles
2 Bauer, coupled with the HOA's efforts to thwart Bank of America's superpriority payment, holding
3 that the deed of trust was extinguished would be much more than "very slight[ly] unfair," and
4 "[v]ery slight additional evidence of unfairness or oppression" is all that is needed in light of the
5 "palpabl[y] and great[ly]" inadequate sale price to hold the deed of trust was not extinguished on
6 equitable grounds. *See Shadow Canyon*, 405 P.3d at 648.

7 69. Even if LN Management was a bona fide purchaser, it is but one factor of many when
8 balancing the equities between it and defendants and does not change the above result. Further, the
9 court finds LN Management was not a bona fide purchaser.

10 70. To be a bona fide purchaser, one must take property "for a valuable consideration and
11 without notice of the prior equity, and without notice of facts which upon diligent inquiry would be
12 indicated and from which notice would be imputed to him, if he failed to make such inquiry."
13 *Shadow Wood*, 366 P.3d at 1115 (citing *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947)).

14 71. A putative bona fide purchaser has the burden to prove it is a bona fide purchaser.
15 *See, e.g., Berge v. Fredericks*, 95 Nev. 183, 185, 591 P.2d 246, 248 (1979) (explaining that the
16 putative bona fide purchaser "was required to show that legal title had been transferred to her before
17 she had notice of the prior conveyance to appellant"). Here, LN Management cannot satisfy its
18 burden to show that it was a bona fide purchaser.

19 72. First, and most obvious, LN Management put forth no evidence that it was a bona
20 fide purchaser.

21 73. Second, LN Management cannot be a bona fide purchaser because it had inquiry
22 notice of Miles Bauer's superpriority offer. A party cannot qualify as a bona fide purchaser if it was
23 under a duty of inquiry that it failed to discharge before purchasing the property at issue. *Berge*, 95
24 Nev. at 189. The *Berge* Court explained that this duty arises:

25 when the circumstances are such that a purchaser is in possession of
26 facts which would lead a reasonable man in his position to make an
27 investigation that would advise him of the existence of prior
28 unrecorded rights. He is said to have constructive notice of their
existence whether he does or does not make the investigation. The
authorities are unanimous in holding that he has notice of whatever the
search would disclose.

1 *Id.*

2 74. A purchaser "put upon inquiry may rebut the presumption of notice by showing that
3 he made due investigation without discovering the prior right or title he was bound to investigate."

4 *Id.*, at 185. LN Management has produced no evidence it conducted such an investigation.

5 75. The bona fide purchaser doctrine does not protect against willful ignorance—
6 plaintiff's decision to purchase a lawsuit cannot transform the encumbered interest it purchased into
7 free and clear title. *See Allison Steel*, 86 Nev. at 497.

8 76. As such, the deed of trust survived the HOA's foreclosure sale as a matter of equity
9 and continues to encumber plaintiff's title to the property.

10 **G. The Court Reforms the Deed of Trust and Subsequent Assignment.**

11 77. Deeds and other instruments, like an assignment, can be "reformed in accordance
12 with the intention of parties when that intention is frustrated by a mutual mistake." *Grappo v.*
13 *Mauch*, 110 Nev. 1396, 1398, 887 P.2d 740, 741 (1994). Reformation should be utilized "when a
14 written instrument fails to conform to the parties' previous understanding or agreement." *Id.*

15 78. Borrower purchased two units in the same condominium development. First,
16 Borrower obtained a loan in the amount of \$322,100.00 to purchase the Property (3111 Bel Air Dr.,
17 Unit 24G), repayment of which was secured by a Deed of Trust recorded on October 20, 2004. The
18 Property was conveyed to Borrower by the previous owner through a Grant Deed recorded on
19 October 16, 2003 as instrument number 20031016-01640. The Deed of Trust lists the APN as 162-
20 10-812-185.

21 79. Borrower subsequently obtained a second loan to purchase another unit in the same
22 condominium complex. Specifically, Borrower obtained a loan in the amount of \$149,000 to
23 purchase real property commonly known as 3111 Bel Air Dr. #216, Las Vegas, NV 89109 (**216**
24 **Property**), repayment of which was secured by a Deed of Trust recorded on December 31, 2007
25 (**216 Deed of Trust**). The 216 Deed of Trust, like the Deed of Trust, lists Bank of America as the
26 Lender. The 216 Property's APN number as 162-10-812-003.

27 80. While the property address and the APN on the Deed of Trust are correct, the Court
28 finds the legal description is incorrect. The Grant Deed conveying the Property to Borrower

1 specifies that Unit 24G is designated Unit 185 in the original Regency Towers plat. Due to a mutual
2 mistake, however, the legal description in the Deed of Trust states that Unit 24G is designated as
3 Unit 3 in the Regency Towers plat. In reality, Unit 3 is the correct legal description for the 216
4 Property. The property records, the Regency Towers plat, and defendants' expert report make clear
5 that the Property's legal description should list Unit 185, as opposed to Unit 3.

6 81. Based on the uncontroverted evidence, the Court reforms the legal description in the
7 Deed of Trust to list Unit 185, as opposed to Unit 3.

8 82. The second instrument requiring reformation is an Assignment of the Deed of Trust
9 recorded on July 30, 2013. Due to a mutual mistake and confusion, the Assignment was
10 inadvertently recorded against APN #162-10-812-003, which is the 216 Property. The Assignment
11 correctly states that it is assigning the Deed of Trust (not the 216 Deed of Trust) but does not appear
12 in the property records for the Property when conducting an assessor's parcel no. search on account
13 of the incorrect APN. The language in the Assignment makes it clear that the Assignment should
14 have been recorded against APN 162-10-812-185.

15 83. Based on the uncontroverted evidence, the Court reforms the Assignment to reflect
16 the correct APN (162-10-812-185) and orders that the Assignment's effective date as to the subject
17 property was the date it was recorded against the incorrect parcel number (July 30, 2013).

18 **ORDER AND JUDGMENT**

19 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the deed of trust,
20 instrument number 20041020-0001569 with the Clark County Recorder, was not extinguished by the
21 HOA's foreclosure sale that is reflected in the trustee's deed upon sale, instrument number
22 201212170000834 with the Clark County Recorder.

23 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the deed of trust,
24 instrument number 20041020-0001569 with the Clark County Recorder, remains a valid, first-
25 position lien encumbering the property located at as 3111 Bel Air Dr., Unit 24G, Las Vegas, Nevada
26 89109, assessor's parcel no. 162-10-812-185.

27 . . .

28 . . .

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the legal description of the property in the deed of trust, instrument number 20041020-0001569 with the Clark County Recorder, is reformed to list Unit 185, as opposed to Unit 3.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Assignment of the deed of trust, recorded on July 30, 2013 as instrument number 201307300000199 with the Clark County Recorder, is reformed to reflect the assessor's parcel no. 162-10-812-185. The assignment's effective date remains the date it was recorded against the incorrect parcel number, or July 30, 2013. The court intends this judgment to correct any alleged deficiencies in the at-issue deed of trust and subsequent assignment.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants' motion for summary judgment is **GRANTED in its entirety**. Judgment is entered in favor of defendants and against LN Management. This is a final judgment.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED the court lifts the stay and reopens this case for the purpose of granting defendants' summary judgment motion and entering the court's judgment.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that all remaining claims are **DISMISSED** as moot.

DATED this 20th day of January, 2021.



DISTRICT JUDGE

Submitted by:

AKERMAN LLP

/s/ Nicholas E. Belay

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

NICHOLAS E. BELAY, ESQ.

Nevada Bar No. 15175

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Bank of America, N.A. and Ditech

Financial LLC f/k/a Green Tree Servicing LLC

Approved as to form and content by:

/s/ Kerry P. Faughnan

KERRY P. FAUGHNAN, ESQ.

Nevada Bar No. 12204

P.O. Box 335361

N. Las Vegas, Nevada 89033

Telephone: (702) 301-3096

Facsimile: (702) 331-4222

Email: kerry.faughnan@gmail.com

Attorneys for LN Management LLC Series 3111

Bel Air 24G

Llarena, Carla (LAA-Las)

From: Belay, Nicholas (Assoc-Las)
Sent: Wednesday, January 6, 2021 2:00 PM
To: Belay, Nicholas (Assoc-Las)
Subject: FW: A-12-669570-C (Elliott, Michael) - proposed order

From: Kerry Faughnan
Sent: Wednesday, January 6, 2021 8:45 AM
To: Belay, Nicholas (Assoc-Las)
Subject: Re: A-12-669570-C (Elliott, Michael) - proposed order

You may add my electronic signature.

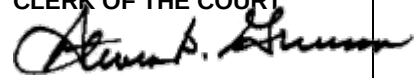
On Tue, Jan 5, 2021 at 4:16 PM <nicholas.belay@akerman.com> wrote:

Hi Kerry,

Just following up. Think you could let me know by tomorrow?

Nicholas Belay

Associate
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134
D: 702 634 5029
nicholas.belay@akerman.com



1 **NOAS**

2 Kerry Faughnan, Esq.

3 Nevada Bar No.12204

4 P.O. Box 335361

5 North Las Vegas, NV 89033

(702) 301-3096

(702) 331-4222- Fax

Kerry.faughnan@gmail.com

Attorney for LN MANAGEMENT, LLC SERIES 3111 BEL AIR 24G

6 **EIGHTH JUDICIAL DISTRICT COURT FOR**

7 **CLARK COUNTY, NEVADA**

8 DITECH FINANCIAL LLC F/K/A GREEN
9 TREE SERVICING LLC,

10 Plaintiff,

11 vs.

12 MICHAEL T. ELLIOTT, an individual; LAS
13 VEGAS INTERNATIONAL COUNTRY
14 CLUB ESTATES HOME OWNERS
15 ASSOCIATION, INC., a Nevada
16 Corporation; REGENCY TOWERS
ASSOCIATION, INC., a Nevada
Corporation; and DOES I-X INCLUSIVE,

17 Defendants.

18 LN MANAGEMENT LLC SERIES 3111
19 BEL AIR 24G

20 Plaintiff,

21 v.

22 MICHAEL T. ELLIOT, an individual;
DITECH FINANCIAL LLC F/K/A
GREEN TREE SERVICING LLC and
DOES 1 through 10, inclusive;

23 Defendants.

Case No.: A-12-669570-C

Dept. No.: XIII

Consolidated with Case No. A-13-682055-C

NOTICE OF APPEAL

1 Comes now Plaintiff, LN Management LLC Series 3111 Bel Air 24G, by and through its
2 counsel of record, Kerry P. Faughnan, Esq., who hereby appeals the January 20, 2021 Order
3 Granting Ditech Financial LLC f/k/a Green Tree Servicing LLC's Motion for Summary
4 Judgment; Notice of Entry filed January 21, 2021.

5 DATED February 22, 2021.

6 /s/ Kerry P. Faughnan
7 Kerry P. Faughnan, Esq.

8 **CERTIFICATE OF SERVICE**

9 I hereby certify that on February 22, 2021 I allowed the Court's ECF system to serve the
10 following interest persons who have appeared in this matter:

11 ~ All Parties on E-Service List ~
12

13
14 DATED February 22, 2021.

15 /s/ Kerry P. Faughnan
16 Kerry P. Faughnan, Esq.
17
18
19
20
21
22
23
24
25
26
27
28