IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

SFR INVESTMENTS POOL 1, LLC,
Appellant,
vs.
MARCHAI, B.T.,
Respondent/Cross-Appellant.
vs.
WYETH RANCH COMMUNITY ASSOCIATION,
Cross-Respondent.

No. 82771

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Eighth Department 11

County Clark Judge Elizabeth Gonzalez

District Ct. Case No. A-13-689461-C Consolidated with A-16-742327-C

2. Attorney filing this docketing statement:

Attorney David J. Merrill Telephone 702-566-1935

Firm David J. Merrill, P.C.

Address 10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145

Client(s) Marchai, B.T.

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

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

Attorney David T. Ochoa Telephone 702-382-1500

Firm Lipson Neilson P.C.

Address 9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144

Client(s) Wyeth Ranch Community Association

Attorney _____ Telephone _____

Firm _____

Address

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

- ☒ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination
- ☐ Dismissal:
  - ☐ Lack of jurisdiction
  - ☐ Failure to state a claim
  - ☐ Failure to prosecute
  - ☐ Other (specify): _____
- ☐ Divorce Decree:
  - ☐ Original ☐ Modification
- ☐ Other disposition (specify): _____

5. Does this appeal raise issues concerning any of the following?

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

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

SFR Investments Pool 1, LLC v. Marchai, B.T., Case No. 74416

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

The district court case Marchai, B.T. v. Perez, Case No. A-13-689461-C was consolidated with Marchai, B.T. v. SFR Investments Pool 1, LLC, Case No. A-16-742327-C, also from the Eighth Judicial District Court. The district court tried both consolidated cases and issued its findings of fact and conclusions of law on March 8, 2021.

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

Marchai commenced this action against SFR for judicial foreclosure, claiming Wyeth Ranch Community Association's foreclosure did not extinguish Marchai's deed of trust. Marchai also asserted alternative claims for wrongful foreclosure, intentional interference with contract, and breach of good faith against Wyeth Ranch in the event the district court ruled for SFR. Based upon documents Wyeth Ranch produced, the district court concluded after a bench trial that Wyeth Ranch applied the homeowner's partial payments first to the oldest association dues. Hence, the homeowner satisfied Wyeth Ranch's lien's superpriority portion and its foreclosure did not extinguish Marchai's deed of trust. Because the district court ruled for Marchai against SFR, it dismissed Marchai's alternative claims against Wyeth Ranch.

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

Marchai contends that the district court correctly ruled for Marchai against SFR. Marchai filed this cross-appeal to preserve its claims against Wyeth Ranch in the event an appellate court reversed the district court. Hence, if an appellate court reverses the district court, the issues on appeal are as follows:

1. If an appellate court concludes SFR was a bona fide purchaser for value, did the district court err by not entering judgment for Marchai and against Wyeth Ranch on its claim for wrongful foreclosure?

2. If an appellate court concludes that the homeowner's payments did not satisfy the lien's superpriority portion, did the district court err by not entering judgment for Marchai and against Wyeth Ranch on its claim for breach of good faith?

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

Marchai is not aware of pending proceedings in this court raising the same or similar issues.

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

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

This cross-appeal is not presumptively retained by the Supreme Court. But SFR's docketing statement has requested the Supreme Court retain this case despite presumptive assignment to the Court of Appeals.

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

Was it a bench or jury trial? Bench

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Not applicable

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

Marchai contends that no written judgment was filed in the district court upon which SFR could seek appellate review and, thus, SFR's appeal is premature. The district court entered findings of fact and conclusions of law, but has not yet entered a judgment. But in an abundance of caution, Marchai filed its notice of cross-appeal under N.R.A.P. 4(a)(2).

17. Date written notice of entry of judgment or order was served Not applicable

Was service by:

☐ Delivery

☐ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

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

(b) Date of entry of written order resolving tolling motion _____

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed April 26, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
SFR filed its notice of appeal on April 12, 2021.
Marchai filed its notice of appeal on April 26, 2021.

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

NRAP(4)(a)(2)

SUBSTANTIVE APPEALABILITY

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

(a)

☐ NRAP 3A(b)(1)	☐ NRS 38.205
☐ NRAP 3A(b)(2)	☐ NRS 233B.150
☐ NRAP 3A(b)(3)	☐ NRS 703.376
☐ Other (specify)	

(b) Explain how each authority provides a basis for appeal from the judgment or order:
As stated in response to Question No. 16, above, Marchai believes SFR's appeal is premature and, thus, no basis exists for this Court to exercise jurisdiction to review the judgment or order appealed from. The district court entered its findings of fact and conclusions of law, but has not yet entered a judgment. But in an abundance of caution, Marchai filed its notice of cross-appeal under NRAP(4)(a)(2).

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

(a) Parties:

Marchai, B.T.
SFR Investments Pool 1, LLC
Wyeth Ranch Community Association
Cristela Perez
U.S. Bank, N.A.
Alessi & Koenig, LLC

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

Perez and U.S. Bank are not parties to this appeal because they did not appear in the action and the district court entered a default against both. Alessi & Koenig is not a party to this appeal because it did not participate in the district court as it filed bankruptcy.

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

Marchai's claims: Judicial foreclosure (no judgment entered); Unconstitutional Takings (October 3, 2017); Due Process (October 3, 2017); Wrongful Foreclosure (no judgment entered); Breach of Good Faith (no judgment entered); Intentional Interference with Contract (no judgment entered); Quiet Title (no judgment entered against SFR; January 24, 2017 as to Wyeth Ranch).
SFR's counterclaims: Declaratory Relief/Quiet Title (no judgment entered); Preliminary and Permanent Injunction (no judgment entered).

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

☐ Yes

☒ No

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

(a) Specify the claims remaining pending below:
The district court entered its findings of fact and conclusions of law, but has not yet entered a formal judgment granting Marchai's judicial foreclosure and quiet title claims, denying Marchai's wrongful foreclosure, breach of good faith, and intentional interference with contract claims, and denying SFR's declaratory relief/quiet title and preliminary and permanent injunction claims.

(b) Specify the parties remaining below:
Marchai, SFR, and Wyeth Ranch.

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

☐ Yes

☒ No

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

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):
As stated in response to Question No. 16, above, Marchai believes SFR's appeal is premature and, thus, no basis exists for this Court to exercise jurisdiction to review the judgment or order appealed from. The district court entered its findings of fact and conclusions of law, but has not yet entered a judgment. But in an abundance of caution, Marchai filed its notice of cross-appeal under NRAP(4)(a)(2).

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

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

VERIFICATION

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

Marchai, B.T. Name of appellant	David J. Merrill Name of counsel of record
May 20, 2021 Date	/s/ David J. Merrill Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 20th day of May, 2021, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

David T. Ochoa, Lipson Neilson P.C., 9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144

Karen T. Hanks, Kim Gilbert Ebron, 7625 Dean Martin Drive, Suite 110, Las Vegas, Nevada 89139

Thomas J. Tanksley, 10161 Park Run Drive, Suite 150, Las Vegas, Nevada 89145

Dated this 20th day of May, 2021

/s/ David J. Merrill
Signature

SFR Investments Pool 1, LLC
vs.
Marchai, B.T.
vs.
Wyeth Ranch Community Association
Case No. 82771

Table of Contents of Exhibits to the Docketing Statement Civil Appeals

Exhibit 1

A-13-689461-C
XXVI

CIVIL COVER SHEET

Clark County, Nevada

Case No. _____
(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone):	*Defendant(s) (name/address/phone):*
MARCHI B.T.	CRISTELA PEREZ, ET. AL.
Attorney (name/address/phone): Benjamin D. Petiprin, Esq. (NV Bar 11681) Law Offices of Les Zieve 3753 Howard Hughes Parkway, Suite 200 Las Vegas, Nevada 89169 Tel: (702) 948-856 Fax: (702) 446-989	*Attorney (name/address/phone):*

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ **Arbitration Requested**

Civil Cases

Real Property

- ☐ **Landlord/Tenant**
  - ☐ Unlawful Detainer
- ☒ **Title to Property**
  - ☒ Foreclosure
  - ☐ Liens
  - ☐ Quiet Title
  - ☐ Specific Performance
- ☐ **Condemnation/Eminent Domain**
- ☐ **Other Real Property**
  - ☐ Partition
  - ☐ Planning/Zoning

Torts

Negligence
- ☐ **Negligence – Auto**
- ☐ **Negligence – Medical/Dental**
- ☐ **Negligence – Premises Liability** (Slip/Fall)
- ☐ **Negligence – Other**

- ☐ **Product Liability**
  - ☐ Product Liability/Motor Vehicle
  - ☐ Other Torts/Product Liability
- ☐ **Intentional Misconduct**
  - ☐ Torts/Defamation (Libel/Slander)
  - ☐ Interfere with Contract Rights
- ☐ **Employment Torts** (Wrongful termination)
- ☐ **Other Torts**
  - ☐ Anti-trust
  - ☐ Fraud/Misrepresentation
  - ☐ Insurance
  - ☐ Legal Tort
  - ☐ Unfair Competition

Probate

Estimated Estate Value: ____

- ☐ **Summary Administration**
- ☐ **General Administration**
- ☐ **Special Administration**
- ☐ **Set Aside Estates**
- ☐ **Trust/Conservatorships**
  - ☐ Individual Trustee
  - ☐ Corporate Trustee
- ☐ **Other Probate**

Other Civil Filing Types

- ☐ **Construction Defect**
  - ☐ Chapter 40
  - ☐ General
- ☐ **Breach of Contract**
  - ☐ Building & Construction
  - ☐ Insurance Carrier
  - ☐ Commercial Instrument
  - ☐ Other Contracts/Acct/Judgment
  - ☐ Collection of Actions
  - ☐ Employment Contract
  - ☐ Guarantee
  - ☐ Sale Contract
  - ☐ Uniform Commercial Code
- ☐ **Civil Petition for Judicial Review**
  - ☐ Foreclosure Mediation
  - ☐ Other Administrative Law
  - ☐ Department of Motor Vehicles
  - ☐ Worker's Compensation Appeal

- ☐ **Appeal from Lower Court** *(also check applicable civil case box)*
  - ☐ Transfer from Justice Court
  - ☐ Justice Court Civil Appeal
- ☐ **Civil Writ**
  - ☐ Other Special Proceeding
- ☐ **Other Civil Filing**
  - ☐ Compromise of Minor's Claim
  - ☐ Conversion of Property
  - ☐ Damage to Property
  - ☐ Employment Security
  - ☐ Enforcement of Judgment
  - ☐ Foreign Judgment – Civil
  - ☐ Other Personal Property
  - ☐ Recovery of Property
  - ☐ Stockholder Suit
  - ☐ Other Civil Matters

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

☐ NRS Chapters 78-88	☐ Investments (NRS 104 Art. 8)	☐ Enhanced Case Mgmt/Business
☐ Commodities (NRS 90)	☐ Deceptive Trade Practices (NRS 598)	☐ Other Business Court Matters
☐ Securities (NRS 90)	☐ Trademarks (NRS 600A)	

September 30, 2013
Date

/s/ Benjamin D. Petiprin
Signature of initiating party or representative

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CLERK OF THE COURT

COMP
LAW OFFICES OF LES ZIEVE
Benjamin D. Petiprin, Esq. (NV Bar 11681)
3753 Howard Hughes Parkway, Suite 200
Las Vegas, Nevada 89169
Tel: (702) 948-8565
Fax: (702) 446-9898

Attorneys for plaintiff Marchai B.T.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

CRISTELA PEREZ, an individual; SFR INVESTMENTS POOL 1, LLC, a limited liability company; U.S. BANK NATIONAL ASSOCIATION, N.D., a national association; DOES 1 through 10, inclusive, and ROES 1 through 10, inclusive.

Defendants.

CASE NO.: A-13-689461-C

DEPT. NO.: XXVI

COMPLAINT FOR JUDICIAL FORECLOSURE OF DEED OF TRUST

Exempt from Arbitration
Action Involves Real Property

COMES NOW Plaintiff, Marchai B.T., a Bank Trust ("Plaintiff"), and alleges as follows:

1. Plaintiff is, and at all times herein mentioned, a Bank Trust duly authorized to transact business in the State of Nevada.

2. This action concerns real property located in the City of Las Vegas, County of Clark, State of Nevada, and is legally described as set forth in **Exhibit "1"** attached hereto, and incorporated herein by this reference. The property is commonly known as: 7119 Wolf Rivers Avenue, Las Vegas, NV 89131 (the "Subject Property"), Clark County Assessor's Parcel Number 125-15-811-013.

3. Plaintiff is informed and believes that Cristela Perez ("Borrower") is an individual, residing in the City of Las Vegas, County of Clark, State of Nevada and has an ownership interest in or to the Subject Property by reason of a deed of trust.

4. Plaintiff is informed and believes that SFR Investments Pool 1, LLC ("SFR Investments") is a limited liability company, and has an interest in the Subject Property or some part of it by reason of a trustee's deed upon sale and is the record owner of the Subject Property.

5. Plaintiff is informed and believes that U.S. Bank National Association, N.D. ("US Bank") is a national association, and has an interest in the Subject Property or some part of it by reason of a junior lien, which interest is subsequent to that of Plaintiff.

6. Plaintiff is ignorant of the true names and capacities of individual defendants sued herein as DOES 1 through 10, inclusive, and corporations, partnerships or other business entities sued herein as ROES 1 through 10, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff is informed and believes that defendants named herein as DOES 1 through 10 and ROES 1 through 10 have, or may claim to have, some right, title or interest in and to the Subject Property, the exact nature of which is unknown to Plaintiff and Plaintiff will seek leave to amend this complaint ("Complaint") to allege their true names and capacities when and as ascertained, and will further ask leave to join said defendants in these proceedings.

7. On or about October 19, 2005, for valuable consideration, the Borrower made, executed and delivered to CMG Mortgage, Inc. ("CMG Mortgage") that certain InterestFirst Adjustable Rate Note dated October 19, 2005 (the "Note") evidencing a loan to the Borrower in the original principal amount of $442,000.00 ("Loan"). A copy of the Note is attached hereto as **Exhibit "2"** and incorporated herein by this reference.

8. To secure payment of the principal sum and interest provided in the Note, as part of the same transaction, Borrower executed and delivered to CMG Mortgage, as beneficiary, a Deed of Trust (hereinafter the "Deed of Trust") dated October 19, 2005. A true and correct copy of the Deed of Trust is attached hereto as **Exhibit "3"** and incorporated herein by this reference. The Deed of Trust was recorded in book number 20051109 as instrument number 0001385 in the

Official Records of the Clark County Recorder's Office ("Official Records") on November 9, 2005.

9. The Deed of Trust was then assigned to CitiMortgage, Inc. by that certain Corporate Assignment of Deed of Trust ("Assignment") recorded in book number 20120605 and instrument number 0003133 in the Official Records on June 5, 2012. The Deed of Trust was subsequently assigned to U.S. Bank National Association, as Trustee for Stanwich Mortgage Loan Trust, Series 2012-6 by that certain Assignment of Mortgage (Assignment 2") recorded in book number 20120726 as instrument number 0002017 in the Official Records on July 26, 2012. The Deed of Trust was then assigned to Plaintiff by that certain Assignment of Deed of Trust ("Assignment 3") recorded in book number 20130812 as instrument number 0002562 in the Official Records on August 12, 2013. True and correct copies of the Assignment, Assignment 2 and Assignment 3 are attached hereto as **Exhibit "4"** and incorporated herein by this reference.

10. On or about January 30, 2006, defendant US Bank funded a loan to Borrower in the original principal sum of $100,000.00. The loan was, and is evidenced by a Deed of Trust ("Junior Deed of Trust") recorded in book number 20060406 as instrument number 0004914 of the Official Records. A true and correct copy of the Junior Deed of Trust is attached hereto as **Exhibit "5"** and incorporated herein by this reference.

11. Wyeth Ranch Homeowners Association ("HOA") recorded multiple Notice of Delinquent Assessment Liens, Notice of Defaults, and Notice of Trustees Sales between November 5, 2007 and October 31, 2012. Most recently, HOA recorded that certain Notice of Trustee's Sale in book number 20130731 as instrument number 0001002 of the Official Records on July 31, 2013. The trustee's sale was held on August 28, 2013 at 2:00 P.M.

12. Defendant SFR Investments purchased the Subject Property at the trustee's sale for the amount of $21,000.00, as referenced in that certain Trustee's Deed Upon Sale ("TDUS") recorded in book number 20130909 as instrument number 0001816 of the Official Records. A true and correct copy of the TDUS is attached hereto as **Exhibit "6"** and incorporated herein by this reference.

13. Plaintiff is informed and believes that on October 1, 2011 a default occurred under the terms of the Note, in that the Borrower failed to make the regular monthly installment payment due on that date and all subsequent payments in the approximate amount of $2,657.39.

14. That certain Notice of Intent to Foreclose ("Notice of Intent") dated October 3, 2012 was subsequently mailed to the Borrower. A true and correct copy of the Notice of Intent is attached hereto as **Exhibit "7"** and incorporated herein by this reference. The Notice of Intent provided notice to the Borrower of her default under the terms of the Note and Deed of Trust of monthly payments obligations in the amount of $36,281.60. The Notice of Intent indicated that acceleration and foreclosure and public sale of the Subject Property would occur if the amount in default was not cured within 30 days. The Notice of Intent further provided that the Borrower has the right to reinstate the Loan following acceleration pursuant to the terms under the Note and Deed of Trust, and that Borrower has a right to assert in any foreclosure action the non-existence of a default and any other defenses to acceleration and foreclosure.

15. The subject Note provides that, if the payors default in payment of any installment when due, or in the performance of any agreement in the subject Deed of Trust securing payment of the subject Note, the entire principal and interest will become immediately due and payable at the option of the noteholder. The subject Deed of Trust provides that, if the trustors default in paying any indebtness secured by the subject Deed of Trust, or in the performance of any agreement in the subject Note or Deed of Trust, the entire principal and interest secured by the subject Deed of Trust will, at the option of the beneficiary, become immediately due and payable.

16. The Deed of Trust further provides that in the event of a default, the lender may invoke the power of sale and after the required notices and time frames, sell the Subject Property at a public auction.

17. By the terms of the subject Note, the Borrower promised and agreed to pay to Plaintiff monthly installments of $2,657.39, principal and interest, beginning December 1, 2005. The Borrower has wholly failed, neglected and refused to pay the installment that was due on October 1, 2011 and the subsequent months, up to and including the date of this Complaint. The

total of the monthly payments in default including accrued fees and interest is approximately $74,440.01. For such failure and default under the subject Note and Deed of Trust, Plaintiff has elected to declare the entire remaining sum of principal and interest immediately due and payable. Additional interest will accrue at the rate of $38.30 per day for each additional day from October 1, 2011 to the date of entry of judgment in this action.

18. Plaintiff may hereafter be required to expend additional sums to protect its security in the Subject Property. In the subject Deed of Trust, the Borrower agreed to pay any sums expended by Plaintiff. Plaintiff will amend this Complaint to allege the nature and amounts of such sums if Plaintiff is required to make the additional expenditures.

19. Under the subject Note and Deed of Trust, the Borrower, agreed that, if any action were instituted on the Note or Deed of Trust, she, as defendant, would pay the sum fixed by the Court as Plaintiff's attorneys' fees and that these charges would also become a lien against the Subject Property. Because of the above-described defaults, it has become necessary for Plaintiff to employ an attorney to commence and prosecute this foreclosure action. The reasonable value of services of counsel in this action shall be proved at or after trial in this action.

FIRST CAUSE OF ACTION

(For Judicial Foreclosure of Deed of Trust, Against all Defendants)

20. Plaintiff realleges and incorporates herein by reference each and every allegation set forth in Paragraphs 1 through 19 of the Complaint as though set forth in full.

21. Despite Plaintiff's demands for payment under the Note and Deed of Trust, Borrower has failed and refused to pay Plaintiff its indebtedness due, and Borrower is now in default under the Note and Deed of Trust.

22. As a result of the default under the Note as secured by the Deed of Trust, Plaintiff seeks to exercise its right under the Deed of Trust to foreclose on the Subject Property. And Plaintiff seeks a Judgment of this Court foreclosing said Deed of Trust with the Court to award Judgment for any deficiency which may remain after applying all proceeds of the sale of the Subject Property applicable to the Judgment procured hereunder. The filing of this action does

not constitute a waiver of Plaintiff's right to proceed with a non-judicial foreclosure if it so elects.

23. The Note and Deed of Trust provide that in the event of default thereunder by the Borrowers, Plaintiff is entitled to recover its costs, including reasonable attorneys' fees, incurred in enforcement thereof. Plaintiff has employed Benjamin D. Petiprin of the Law Offices of Les Zieve, licensed and practicing attorney in the State of Nevada, for the purpose of instituting and prosecuting the within action. Attorneys' fees have been, and continue to be incurred in an amount to be proven at trial.

24. As a result of Borrower's default and breach, Plaintiff has been damaged in the amount of the principal balance of the loan, accrued interest, late charges, advances, expenses and attorneys' fees and costs which remain due under the Note and Deed of Trust.

WHEREFORE, Plaintiff prays for relief as follows:

As to the First Cause of Action

1. That the Court enter a money judgment against Borrower defendant only:

a. The sum of $430,113.48 principal, together with interest as allowed at the Note rate currently at 3% from October 1, 2011, to the date of judgment, according to proof;

b. Costs of this action and reasonable attorneys' fees;

c. Additional sums, if any, that Plaintiff hereafter expends to protect its interest in the Subject Property, together with interest, according to proof.

2. That the Court adjudge the rights, claims, ownership, liens, titles and demands of defendants are subject, subordinate and subsequent to Plaintiff's Deed of Trust;

3. That the Court order, adjudge, and decree that the Subject Deed of Trust be foreclosed and that the usual Judgment be made for the sale of the Subject Property, according to law, by the Sheriff of the County of Clark, or by a levying officer to be appointed by the Court; that the proceeds of the sale be applied in payment of the amounts due to Plaintiff; that defendants and all persons claiming under them subsequent to the execution of said Deed of Trust, either as lien claimants, judgment creditors, claimants under a junior trust deed, purchasers, encumbrances and otherwise, be barred and foreclosed from all rights, claims,

interest or equity of redemption of the Subject Property and every part of the Subject Property when the time for redemption has lapsed;

4. That the Court award Plaintiff judgment and execution against Borrower defendant only for any deficiency that may remain after applying all proceeds of the sale of the Subject Property duly applicable to satisfy the amounts by the Court under paragraph 1 of this demand for judgment;

5. That the Court permit Plaintiff or any other party to this suit, to become purchasers at the foreclosure sale; that when the time for redemption has lapsed, the levying officer or Sheriff, as the case may be, shall execute a deed to the purchaser of the Subject Property at the sale; and that the purchaser be given possession of the Subject Property upon production of the levying officer's or Sheriff's Deed;

6. For attorneys' fees according to proof in an amount the Court deems reasonable;

7. That the Court award all other appropriate and just relief.

8. For costs of suit incurred herein; and

9. For such other and further relief as the Court may deem just and proper.

DATED: September 30, 2013

LAW OFFICES OF LES ZIEVE

By: /s/ Benjamin D. Petiprin
Benjamin D. Petiprin, Esq.
Attorney for Plaintiff
Marchai B.T.

EXHIBIT 1

EXHIBIT 1

LEGAL DESCRIPTION

PARCEL I:

LOT 13 IN BLOCK A OF WYETH RANCH-UNIT 2, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 112 OF PLATS, PAGE 8 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL II:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT OF THE COMMON LOTS AS SHOWN ON THE ABOVE MAP AND AS SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED OCTOBER 4, 2002 IN BOOK 20021004 AS DOCUMENT NO. 01353 AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

EXHIBIT 2

EXHIBIT 2

Perez (R)

2.3295889

Loan No.: 32501493

InterestFirst[SM] ADJUSTABLE RATE NOTE

(One-Year LIBOR Index (As Published In *The Wall Street Journal*) – Rate Caps)

10/31 CL

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE AND FOR CHANGES IN MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

MIN: 1000724-0032501493-7
MERS TELEPHONE: (888) 679-6377

October 19, 2005	LAS VEGAS	NEVADA
[Date]	[City]	[State]

LF MQ SP

7119 WOOL RIVERS AVENUE, LAS VEGAS, NEVADA 89131
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ **442,000.00** (this amount is called "Principal"), plus interest, to the order of Lender. Lender is **CMG MORTGAGE, INC.**. I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of **5.000%**. The interest rate I will pay may change in accordance with Section **4** of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment on the **FIRST** day of every month, beginning on **December 1, 2005**. Before the First Principal and Interest Payment Due Date as described in Section 4 of this Note, my payment will consist only of the interest due on the unpaid principal balance of this Note. Thereafter, I will pay principal and interest by making a payment every month as provided below.

I will make my monthly payments of principal and interest beginning on the First Principal and Interest Payment Due Date as described in Section 4 of this Note. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date, and if the payment includes both principal and interest, it will be applied to interest before Principal. If, on **November 1, 2035**, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at **3160 CROW CANYON ROAD, SUITE 240, SAN RAMON, CALIFORNIA 94583** or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

My monthly payment will be in the amount of U.S. $ **1,841.67** before the First Principal and Interest Payment Due Date, and thereafter will be in an amount sufficient to repay the principal and interest at the rate determined as described in Section 4 of this

Note in substantially equal installments by the Maturity Date. The Note Holder will notify me prior to the date of change in monthly payment.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 or 5 of this Note.

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the **FIRST** day of **November, 2010**, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding **Two and One-Fourth** percentage points (**2.250%**) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than **10.000%** or less than **2.250%**. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than **Two** percentage points (**2.000%**) from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 10.000%.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

(G) Date of First Principal and Interest Payment

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

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date of my monthly payment unless the Note Holder agrees in writing to those changes. If the partial Prepayment is made during the period when my monthly payments consist only of interest, the amount of the monthly payment will decrease for the remainder of the term when my payments consist only of interest. If the partial Prepayment is made during the period when my payments consist of principal and interest, my partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of fifteen (15) calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be five percent (5.00%) of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That

Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

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

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

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

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead read as follows:

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

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

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

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

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

CRISTELA PEREZ _____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

[Sign Original Only]

Pay to the order of:

_____

Without Recourse
CMG MORTGAGE, INC.

By: _____

Name and Title: _____

PAY TO THE ORDER OF CITIMORTGAGE, INC.

WITHOUT RECOURSE

CMG MORTGAGE, INC.
A CALIFORNIA CORPORATION
3160 CROW CANYON ROAD, #350
SAN RAMON, CA 94583

Divina Lanuza
ASSISTANT SECRETARY

Loan #: 32501493

FIXED/ADJUSTABLE RATE ASSUMPTION RIDER

THIS ASSUMPTION RIDER is made this **19th** day of **October, 2005**, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned person whether one or more, (the "Borrower") to secure Borrower's Note to **CMG MORTGAGE, INC.** (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

7119 WOPL RIVERS AVENUE, LAS VEGAS, NEVADA 89131
mQ LF of (PROPERTY ADDRESS)

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

A. **ASSUMPTION.** Any person purchasing the Property from Borrower may assume full liability to repay Borrower's Note to Lender under the terms and conditions set out in this Assumption Rider.

B. **AGREEMENT.** Lender may require the Purchaser to sign an assumption agreement, in the form required by Lender, which obligates the Purchaser to keep all the promises and agreements made in the Note and Security Instrument. Borrower will continue to be obligated under the Note and Security Instrument unless Lender releases Borrower in writing.

C. **APPLICABILITY.** Lender is bound by these conditions and terms, as follows:

1. Lender shall have no obligation to allow assumption by a purchaser from Borrower until the initial fixed interest rate payable on the Note changes to an adjustable rate;
2. This Assumption Rider applies only to the first transfer of the Property by Borrower and not to a foreclosure sale;
3. Purchaser must be an individual, not a partnership, corporation or other entity.
4. Purchaser must meet Lender's credit underwriting standards for the type of loan being assumed as if Lender were making a new loan to Purchaser;
5. Purchaser shall assume only the balance due on the Note at the time of assumption for the term remaining on the Note;
6. If applicable, Borrower's private mortgage insurance coverage must be transferred to the Purchaser in writing, unless waived by Lender;

7. If Borrower's Note has a conversion feature and Borrower has exercised the right of conversion of this loan to a fixed rate loan from Lender, this Assumption Rider is void and Lender has no obligation to allow assumption by a Purchaser from Borrower; and

8. Lender must reasonably determine that Lender's security will not be impaired by the loan assumption.

D. **ASSUMPTION RATE.** Lender will allow assumption by Purchaser at Borrower's Note interest rate in effect at the time of assumption.

E. **ADDITIONAL CHARGES.** In addition, Lender may charge an amount up to one percent (1%) of the current Note balance and its normal loan closing costs, except the cost of a real estate appraisal.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants of this Assumption Rider.

CRISTELA PEREZ (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

CONFIDENTIAL

True Certified Copy of Original

NOTE ALLONGE

Statement of Purpose: This Note Allonge is attached to and made part of the Note, for the purpose of Noteholder Endorsements to evidence transfer of interest.

Loan Number: 2003295889

Loan Date: 10/19/2005 **Original Loan Amount:** $ 442,000.00

Originator: CMG MORTGAGE, INC.
Original Mortgagor: CRISTELA PEREZ
Property Address: 7119 WOLF RIVERS AVENUE, LAS VEGAS, NV 89131

Pay to The Order of
U.S. BANK NATIONAL ASSOCIATION, AS
TRUSTEE FOR STANWICH MORTGAGE LOAN
TRUST, SERIES 2012-6
Without Recourse

Id No: *12035949*

CITIMORTGAGE, INC.

By:

M. E. Wileman, Vice President

ALLONGE

Pay to the Order of:

MARCHAI B.T.

Without Recourse:

Original Loan Amount:	**$442,000.00**
Dated:	**10/19/2005**
Made By:	**CRISTELA PEREZ**
Premises Secured:	**7119 WOLF RIVERS AVENUE LAS VEGAS, NEVADA 89131**

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR STANWICH MORTGAGE LOAN TRUST, SERIES 2012-6, BY CARRINGTON MORTGAGE SERVICES LLC., AS ATTORNEY IN FACT

By:_____
Name: **GREG SCHLEPPY**
Title: **SR. VICE PRESIDENT**

7000035044

EXHIBIT 3

EXHIBIT 3

20051109-0001385

Fee: $38.00
N/C Fee: $0.00

11/09/2005 09:44:04
T20050204478
Requestor:
FIDELITY NATIONAL TITLE

Frances Deane KGP
Clark County Recorder Pgs: 22

Assessor's Parcel Number: 125-15-811-013
When recorded mail to:
CMG MORTGAGE, INC.
3160 CROW CANYON ROAD, SUITE 240
SAN RAMON, CALIFORNIA 94583
Loan No.: 32501493

Mail Tax Statements to:
CRISTELA PEREZ
7119 WOOL RIVERS AVENUE
LAS VEGAS, NEVADA 89131
Prepared By:

Recording Requested By:

22

31

6290286H [Space Above This Line For Recording Data]

DEED OF TRUST

MIN 1000724-0032501493-7
MERS TELEPHONE: (888) 679-6377

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated October 19, 2005, together with all Riders to this document.
(B) "Borrower" is CRISTELA PEREZ, A MARRIED WOMAN, AS HER SOLE AND SEPARATE PROPERTY. Borrower is the trustor under this Security Instrument.
(C) "Lender" is CMG MORTGAGE, INC.. Lender is a corporation organized and existing under the laws of the State of CALIFORNIA. Lender's address is 3160 CROW CANYON ROAD, SUITE 240, SAN RAMON, CALIFORNIA 94583.
(D) "Trustee" is FIDELITY NATIONAL TITLE AGENCY OF NEVADA.
(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of

Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated **October 19, 2005.** The Note states that Borrower owes Lender **Four Hundred Forty Two Thousand And 00/100** Dollars (U.S. $ **442,000.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **November 1, 2035.**

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

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

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

[X] Adjustable Rate Rider	[ ] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[ ] Planned Unit Development Rider	[ ] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[ ] Other(s) [specify]

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

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

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

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

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

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

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

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are

imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County [Type of Recording Jurisdiction] of **CLARK** [Name of Recording Jurisdiction]:

LOT 13 IN BLOCK A OF WYETH RANCH- UNIT 2, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 112 OF PLATS, PAGE 8 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA. A NON- EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, USE AND ENJOYMENT OF THE COMMON LOTS AS SHOWN ON THE ABOVE MAP AND AS SET FOURTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED OCTOBER 4, 2002 IN BOOK 20021004 AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

Parcel ID Number: **125-15-811-013**

LF MG

which currently has the address of

7119 WOBE RIVERS AVENUE [Street]

LAS VEGAS [City], Nevada **89131** [Zip Code] ("Property Address"):

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

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for

encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

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

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

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

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

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

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

due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

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

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

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can

agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

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

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

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

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

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

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

either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

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

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

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

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

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may

take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

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

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

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

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

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

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

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

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

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

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

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

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

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less

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

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

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

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

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

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

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees

to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

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

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

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

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

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall

mean and include the plural and vice versa; and (e) the word "may" gives sole discretion without any obligation to take any action.

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

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

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

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law.

There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

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

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party,

that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

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

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

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

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

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the

Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

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

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. $ **4,420.00**.

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

Witnesses:

_____ _____ (Seal)
CRISTELA PEREZ -Borrower

_____ _____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

_____ _____ (Seal)
-Borrower

STATE OF NEVADA
COUNTY OF Clark

This instrument was acknowledged before me on 10-20-05 by CRISTELA PEREZ

Mary Quackenbush
My Commission Expires: 05-31-09

Mary Quackenbush
Notary Public, State of Nevada
Appointment No. 05-96415-1
My Appt Expires May 31, 2009

FIXED/ADJUSTABLE RATE RIDER

(LIBOR One-Year Index (As Published In *The Wall Street Journal*)- Rate Caps)

THIS FIXED/ADJUSTABLE RATE RIDER is made this **19th** day of **October, 2005**, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to **CMG MORTGAGE, INC.** ("Lender") of the same date and covering the property described in the Security Instrument and located at:

LF mg

7119 WOOL RIVERS AVENUE, LAS VEGAS, NEVADA 89131

[Property Address]

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

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

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of **5.000%**. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the **FIRST** day of **November, 2010**, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index." If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes Before each Change Date, the Note Holder will calculate my new interest rate by adding **Two and One-Fourth** percentage points (**2.250%**) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date. The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than **10.000%** or less than **2.250%**. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than **10.000%**.

(E) Effective Date of Changes

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

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

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

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

> **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a

bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

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

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

2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

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

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

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

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

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

CRISTELA PEREZ (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

EXHIBIT 4

EXHIBIT 4

Inst #: 201206050003133
Fees: $18.00
N/C Fee: $0.00
06/05/2012 03:42:06 PM
Receipt #: 1187409
Requestor:
NATIONWIDE TITLE CLEARING
Recorded By: JACKSM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

(2)

I hereby affirm that this document submitted for recording does not contain a social security number.

Signed: _____
DERRICK WHITE
ASST. SECRETARY

Parcel #: 125-15-811-013

When Recorded Mail To:
CitiMortgage, Inc.
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683
Investor L#

CORPORATE ASSIGNMENT OF DEED OF TRUST

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS) AS NOMINEE FOR CMG MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS PO BOX 2026, FLINT, MI, 48501, (ASSIGNOR)**, by these presents does convey, grant, sell, assign, transfer and set over the described Deed of Trust with all interest secured thereby, all liens, and any rights due or to become due thereon to **CITIMORTGAGE, INC., WHOSE ADDRESS IS 1000 TECHNOLOGY DRIVE, O'FALLON, MO 63368-2240 (800)283-7918, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE)**.

Said Deed of Trust made by **CRISTELA PEREZ**, and recorded on 11/09/2005 as Instrument # 0001385, and/or Book 20051109, Page , in the Recorder's office of CLARK, Nevada. .

Date: 05/25/2012 (MM/DD/YYYY)

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS) AS NOMINEE FOR CMG MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS.

By: _____
DERRICK WHITE
ASST. SECRETARY

FORM5\FRMNV1

15926922

Parcel #: 125-15-811-013
Investor L#

STATE OF FLORIDA COUNTY OF PINELLAS
The foregoing instrument was acknowledged before me on 05/25/2012 (MM/DD/YYYY), by DERRICK WHITE as ASST. SECRETARY for MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS) AS NOMINEE FOR CMG MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS, who, as such ASST. SECRETARY being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

Signed: _____
MIRANDA AVILA
Notary Public - State of FLORIDA
Commission expires: 08/22/2014

Miranda Avila
Notary Public State of Florida
My Commission # EE 019063
Expires August 22, 2014

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

Mail Tax Statements to: CRISTELA PEREZ
7119 WOLF RIVERS AVENUE
LAS VEGAS, NV 89131

CIMAV 15926922 -@ MERS (MOM) EMK3826611 MIN 100072400325014937 MERS PHONE 1-888-679-MERS FORMS\FRMNV1

15926922

Inst #: 201207260002017
Fees: $18.00
N/C Fee: $0.00
07/26/2012 10:44:40 AM
Receipt #: 1248352
Requestor:
ORION FINANCIAL GROUP
Recorded By: MSH Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

I the undersigned hereby affirm that this document submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

PREPARED BY & RETURN TO:
M. E. Wileman
2860 Exchange Blvd. # 100
Southlake, TX 76092
Parcel # 125-15-811-013

Assignment of Mortgage Send Any Notices to Assignee.

For Valuable Consideration, the undersigned, **CITIMORTGAGE, INC. 4050 REGENT BLVD, MAIL STOP N2A-222, IRVING, TX 75063 (Assignor)** by these presents does assign and set over, without recourse, to **U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR STANWICH MORTGAGE LOAN TRUST, SERIES 2012-6 1610 E. St. Andrews Pl, Suite B150, Santa Ana, CA 92705 (Assignee)** the described mortgage with all interest, all liens, any rights due or to become due thereon, executed by **CRISTELA PEREZ, A MARRIED WOMAN, AS HER SOLE AND SEPARATE PROPERTY** to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., (MERS) AS NOMINEE FOR CMG MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS. Said mortgage **Dated: 10/19/2005** is recorded **in the State of NV, County of Clark on 11/9/2005, Book 20051109 Instrument# 0001385 AMOUNT: $ 442,000.00** Property Address: 7119 WOLF RIVERS AVENUE,, LAS VEGAS NV 89131

IN WITNESS WHEREOF, the undersigned corporation/trust has caused this instrument to be executed by its proper officer. Executed on: 07/26/2012

CITIMORTGAGE, INC.

By: _____

PEREZ JDM *12031213*

M. E. Wileman, Authorized Signator

MIN 100072400325014937
MERS Phone 888-679-6377

NV Clark

CITICAP/WL17-2012/AS

State of Texas, County of Tarrant
On 07/26/2012, before me, the undersigned, M. E. Wileman, who acknowledged that he/she is Authorized Signator of/ for CITIMORTGAGE, INC. and that he/she executed the foregoing instrument and that such execution was done as the free act and deed of CITIMORTGAGE, INC.

Notary public, C. Lafferty
My commission expires: November 30, 2014

MAIL TAX BILL TO:
CRISTELA PEREZ, A MARRIED WOMAN, AS HER SOLE AND SEPARATE PROPERTY Property Address: 7119 WOLF RIVERS AVENUE,, LAS VEGAS NV 89131

12031213

MIN 100072400325014937 MERS Phone 888-679-6377
NV Clark CITICAP/WL17-2012/AS

Inst #: 201308120002562
Fees: $18.00
N/C Fee: $25.00
08/12/2013 02:42:09 PM
Receipt #: 1729913
Requestor:
LSI TITLE AGENCY INC.
Recorded By: CDE Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:

Peak Loan Servicing
5900 Canoga Ave Suite 200
Woodland Hills CA 91367

Parcel ID# : 125-15-811-013
Ln# 7000035044/PEREZ

SPACE ABOVE THIS LINE FOR RECORDER'S USE

130170768

Assignment of Deed of Trust

Date of Assignment: 8/12/13

"This instrument is being recorded as an ACCOMMODATION ONLY, with no Representation as to its effect upon title"

Assignor: : U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR STANWICH MORTGAGE LOAN TRUST, SERIES 2012-6

Assignee : MARCHAI B.T.

Executed By: CRISTELA PEREZ, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY To MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR CMG MORTGAGE, INC. and FIDELITY NATIONAL TITLE AGENCY OF NEVADA, as Trustee, Date of Deed of Trust: 10/19/2005 Recorded: 11/09/2005 in Book/Reel/Liber: — Page: —as Instrument/CFN No.: 20051109-0001385 in Official Records of the CLARK County, State of NEVADA

Property Address: 7119 WOLF RIVERS AVENUE, LAS VEGAS, NEVADA 89131

Parcel ID #: 125-15-811-013

Legal:

LOT 13 IN BLOCK A OF WYETH RANCH-UNIT 2, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 112 OF PLATS, PAGE 8 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA. A NON-EXLUSIVE EASEMENT FOR INGESS, EGRESS, USE AND ENJOYMENT OF THE COMMON LOTS AS SHOWN ON THE ABOVE MAP AND AS SET FORUTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED OCTOBER 4, 2002 IN BOOK 20021004 AS THE SAME MAY BE AMENDED FROM TIME TO TIME.

KNOW ALL MEN BY THESE PRESENTS that in consideration of the sum of TEN and NO/100ths DOLLARS and other good and valuable consideration, paid to the above named assignor, the receipt and sufficiency of which is hereby acknowledged, said Assignor here by assigns unto the above-named Assignee, the said Deed of Trust, secured thereby, which all moneys now owning or that may hereafter become due or owning in respect thereof, and the full benefit of all the powers and of all the covenants and provisos therein contained, and the said Assignor hereby Grants and conveys unto the said Assignee, the Assignor's beneficial interest under the Deed of Trust.

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

Dated: 3/12/13

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR STANWICH MORTGAGE LOAN TRUST, SERIES 2012-6, BY CARRINGTON MORTGAGE SERVICES LLC. AS ATTORNEY IN FACT

Witness: **LETICIA MACIAS**

By: **GREG SCHLEPPY, SR. VICE PRESIDENT**

State of CALIFORNIA
County of ORANGE

On 3/12/13 before me, **ANGELICA ROSALES PACHECO**, Notary Public personally appeared **GREG SCHLEPPY**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary: **ANGELICA ROSALES PACHECO**

ANGELICA ROSALES PACHECO
COMM. #1973291
Notary Public - California
Orange County
My Comm. Expires Mar. 26, 2016

EXHIBIT 5

EXHIBIT 5

20060406-0004914

Fee: $21.00
N/C Fee: $0.30

04/06/2006 17:00:22
T20060061379
Requestor:
FIRST AMERICAN TITLE INSURANCE LENDEI

Frances Deane KXC
Clark County Recorder Pgs: 8

Assessor's Parcel Number: 125-15-811-013

Mail Tax Statements To (name and address):
CRISTELA PEREZ AND ROBERT ROSE
7119 WOLF RIVERS AVE
LAS VEGAS NV 89131

Return To (name and address):
First American
1228 Euclid Avenue, 4th Floor
Cleveland, OH 44115

——State of Nevada—————— Space Above This Line For Recording Data——

Order #: 8744120
ALS #: 3000434454

DEED OF TRUST
(With Future Advance Clause)

1. DATE AND PARTIES. The date of this Deed of Trust (Security Instrument) is 12/26/2006 and the parties, their addresses and tax identification numbers, if required, are as follows:
GRANTOR: CRISTELA PEREZ AND ROBERT ROSE MARRIED WOMAN SEPARATE PROPERTY
3000434454

☐ If checked, refer to the attached Addendum incorporated herein, for additional Grantors, their signatures and acknowledgments.

TRUSTEE: U.S. Bank Trust Company, National Association
111 S.W. Fifth Avenue, Suite 3500
Portland, OR 97204

LENDER: U.S. Bank, National Association N.D.
4325 17th Avenue S.W.
Fargo, ND 58103

RECORDERS MEMO
POSSIBLE POOR RECORD DUE TO QUALITY OF ORIGINAL DOCUMENT

2. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined on page 2) and Grantor's performance under this Security Instrument, Grantor irrevocably grants, bargains, conveys and sells to Trustee, in trust for the benefit of Lender, with power of sale, the following described property *(if property description is in metes and bounds the name and mailing address of the person who prepared the legal description must be included)*:

The real estate deed of trust herein is described in Exhibit "A" which is attached hereto and hereby incorporated herein by reference.

The property is located in CLARK (County) at 7119 WOLF RIVERS AVE
LAS VEGAS, Nevada 89131
(Address) (City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time shall not exceed $ 100,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.

4. SECURED DEBT AND FUTURE ADVANCES. The term "Secured Debt" is defined as follows:

   A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. *(You must specifically identify the debt(s) secured and you should include the final maturity date of such debt(s).)*

   B. All future advances from Lender to Grantor or other future obligations of Grantor to Lender under any promissory note, contract, guaranty, or other evidence of debt executed by Grantor in favor of Lender after this Security Instrument whether or not this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Grantor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Grantor, or any one or more Grantor and others. Future advances are contemplated and are governed by the provisions of NRS 106.300 to 106.400, inclusive. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.

   C. All other obligations Grantor owes to Lender, which may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Grantor and Lender.

   D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

In the event that Lender fails to provide any necessary notice of the right of rescission with respect to any additional indebtedness secured under paragraph B of this Section, Lender waives any subsequent security interest in the Grantor's principal dwelling that is created by this Security Instrument (but does not waive the security interest for the debts referenced in paragraph A of this Section).

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5. DEED OF TRUST COVENANTS. Grantor agrees that the covenants in this section are material obligations under the Secured Debt and this Security Instrument. If Grantor breaches any covenant in this section, Lender may refuse to make additional extensions of credit and reduce the credit limit. By not exercising either remedy on Grantor's breach, Lender does not waive Lender's right to later consider the event a breach if it happens again.

Payments. Grantor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.

Prior Security Interests. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Grantor agrees to make all payments when due and to perform or comply with all covenants. Grantor also agrees not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written approval.

Claims Against Title. Grantor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Grantor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Grantor's payment. Grantor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Grantor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Grantor may have against parties who supply labor or materials to maintain or improve the Property.

Property Condition, Alterations and Inspection. Grantor will keep the Property in good condition and make all repairs that are reasonably necessary. Grantor shall not commit or allow any waste, impairment, or deterioration of the Property. Grantor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Grantor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Grantor will notify Lender of all demands, proceedings, claims, and actions against Grantor, and of any loss or damage to the Property.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Grantor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Grantor will in no way rely on Lender's inspection.

Authority to Perform. If Grantor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Grantor appoints Lender as attorney in fact to sign Grantor's name or pay any amount necessary for performance. Lender's right to perform for Grantor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument.

Leaseholds; Condominiums; Planned Unit Developments. Grantor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Grantor will perform all of Grantor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

Condemnation. Grantor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Grantor authorizes Lender to intervene in Grantor's name in any of the above described actions or claims. Grantor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

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Insurance. Grantor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding sentence can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Grantor subject to Lender's approval, which shall not be unreasonably withheld. If Grantor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Grantor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Grantor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Grantor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Grantor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Grantor. If the Property is acquired by Lender, Grantor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

Financial Reports and Additional Documents. Grantor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Grantor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Grantor's obligations under this Security Instrument and Lender's lien status on the Property.

6. WARRANTY OF TITLE. Grantor warrants that Grantor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to irrevocably grant, bargain, convey and sell the Property to Trustee, in trust, with power of sale. Grantor also warrants that the Property is unencumbered, except for encumbrances of record.
7. DUE ON SALE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, a transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.
8. DEFAULT. Grantor will be in default if any of the following occur:

Fraud. Any Consumer Borrower engages in fraud or material misrepresentation in connection with the Secured Debt that is an open end home equity plan.

Payments. Any Consumer Borrower on any Secured Debt that is an open end home equity plan fails to make a payment when due.

Property. Any action or inaction by the Borrower or Grantor occurs that adversely affects the Property or Lender's rights in the Property. This includes, but is not limited to, the following: (a) Grantor fails to maintain required insurance on the Property; (b) Grantor transfers the Property; (c) Grantor commits waste or otherwise destructively uses or fails to maintain the Property such that the action or inaction adversely affects Lender's security; (d) Grantor fails to pay taxes on the Property or otherwise fails to act and thereby causes a lien to be filed against the Property that is senior to the lien of this Security Instrument; (e) a sole Grantor dies; (f) if more than one Grantor, any Grantor dies and Lender's security is adversely affected; (g) the Property is taken through eminent domain; (h) a judgment is filed against Grantor and subjects Grantor and the Property to action that adversely affects Lender's interest; or (i) a prior lienholder forecloses on the Property and as a result, Lender's interest is adversely affected.

Executive Officers. Any Borrower is an executive officer of Lender or an affiliate and such Borrower becomes indebted to Lender or another lender in an aggregate amount greater than the amount permitted under federal laws and regulations.

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9. REMEDIES ON DEFAULT. In addition to any other remedy available under the terms of this Security Instrument, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Grantor is in default. In some instances, federal and state law will require Lender to provide Grantor with notice of the right to cure, or other notices and may establish time schedules for foreclosure actions.
At the option of the Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. Lender shall be entitled to, without limitation, the power to sell the Property.
If there is a default, Trustee shall, at the request of Lender, advertise and sell the Property as a whole or in separate parcels at public auction to the highest bidder for cash and convey absolute title free and clear of all right, title and interest of Grantor at such time and place as Trustee designates. Trustee shall give notice of sale, including the time, terms and place of sale and a description of the Property to be sold as required by the applicable law.
Upon the sale of the Property and to the extent not prohibited by law, Trustee shall make and deliver a deed to the Property sold which conveys absolute title to the purchaser, and after first paying all fees, charges, and costs, shall pay to Lender all moneys advanced for repairs, taxes, insurance, liens, assessments and prior encumbrances and interest thereon, and the principal and interest on the Secured Debt, paying the surplus, if any, to Grantor. Lender may purchase the Property. The recitals in any deed of conveyance shall be prima facie evidence of the facts set forth therein.
The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Grantor's default, Lender does not waive Lender's right to later consider the event a default if it happens again.
10. EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS. If Grantor breaches any covenant in this Security Instrument, Grantor agrees to pay all expenses Lender incurs in performing such covenants or protecting its security interest in the Property. Such expenses include, but are not limited to, fees incurred for inspecting, preserving, or otherwise protecting the Property and Lender's security interest. These expenses are payable on demand and will bear interest from the date of payment until paid in full at the highest rate of interest in effect as provided in the terms of the Secured Debt. Grantor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. To the extent permitted by the United States Bankruptcy Code, Grantor agrees to pay the reasonable attorneys' fees Lender incurs to collect the Secured Debt as awarded by any court exercising jurisdiction under the Bankruptcy Code. This Security Instrument shall remain in effect until released. Grantor agrees to pay for any recordation costs of such release.
11. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.
Grantor represents, warrants and agrees that:

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A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
B. Except as previously disclosed and acknowledged in writing to Lender, Grantor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
C. Grantor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Grantor shall take all necessary remedial action in accordance with any Environmental Law.
D. Grantor shall immediately notify Lender in writing as soon as Grantor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.

12. ESCROW FOR TAXES AND INSURANCE. Unless otherwise provided in a separate agreement, Grantor will not be required to pay to Lender funds for taxes and insurance in escrow.
13. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND. All duties under this Security Instrument are joint and individual. If Grantor signs this Security Instrument but does not sign an evidence of debt, Grantor does so only to mortgage Grantor's interest in the Property to secure payment of the Secured Debt and Grantor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Grantor, Grantor agrees to waive any rights that may prevent Lender from bringing any action or claim against Grantor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Grantor and Lender.
14. SEVERABILITY; INTERPRETATION. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
15. SUCCESSOR TRUSTEE. Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee without any other formality than the designation in writing. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon Trustee by this Security Instrument and applicable law.
16. NOTICE. Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one grantor will be deemed to be notice to all grantors.
17. WAIVERS. Except to the extent prohibited by law, Grantor waives all appraisement and homestead exemption rights relating to the Property.
18. LINE OF CREDIT. The Secured Debt includes a revolving line of credit. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.

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19. APPLICABLE LAW. This Security Instrument is governed by the laws as agreed to in the Secured Debt, except to the extent required by the laws of the jurisdiction where the Property is located, and applicable federal laws and regulations.
20. RIDERS. The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument.
[Check all applicable boxes]
☐ Assignment of Leases and Rents ☐ Other .....
21. ☐ ADDITIONAL TERMS.

SIGNATURES: By signing below, Grantor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Grantor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

1/30/06 1/30/06

(Signature) CRISTELA PEREZ (Date) (Signature) ROBERT ROSE (Date)

ACKNOWLEDGMENT:
STATE OF Nevada, COUNTY OF Clark } ss.
This instrument was acknowledged before me this 30th day of January 2006
(Individual) by CRISTELA PEREZ AND ROBERT ROSE MARRIED WOMAN SEPERATE PROPERTY
My commission expires:

(Notary Public)

Branch Manager
(Title and Rank)

JASON R. BAUCOM
Notary Public, State of Nevada
Appointment No. 05-95527-1
My Appt. Expires Apr 8, 2009

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EXHIBIT "A"

LEGAL DESCRIPTION

A PARCEL OF LAND SITUATED IN THE STATE OF NEVADA, COUNTY OF CLARK, WITH A STREET LOCATION ADDRESS OF 7119 WOLF RIVERS AVE; LAS VEGAS, NV 89131-0139 CURRENTLY OWNED BY CRISTELA PEREZ HAVING A TAX IDENTIFICATION NUMBER OF 125-15-811-013 AND BEING THE SAME PROPERTY MORE FULLY DESCRIBED IN BOOK/PAGE OR DOCUMENT NUMBER 40721003728 DATED 7/19/2004 AND FURTHER DESCRIBED AS WYETH RANCH-UNIT 2 PLAT BOOK 112 PAGE 8 LOT 13 BLOCK A PT S2 SE4 SEC 15 TWP 19 RGN 60.

125-15-811-013
7119 WOLF RIVERS AVE; LAS VEGAS, NV 89131-0139

20060131701500
27313887/f

PEREZ
8744120
FIRST AMERICAN LENDERS ADVANTAGE
DEED OF TRUST

EXHIBIT 6

EXHIBIT 6

Carrington Mortgage Services, LLC
PO Box 9050
Temecula, CA 92589-9050

2266385873

PRESORT
First-Class Mail
U.S. Postage and
Fees Paid
WSO

Send Payments to:
Carrington Mortgage Services, LLC
Attn: Payment Processing
PO Box 79001
Phoenix, AZ 85062-9001

Send Correspondence to:
Carrington Mortgage Services, LLC
PO Box 54285
Irvine, CA 92619-4285

20121004-51

CRISTELA PEREZ
7119 WOLF RIVERS AVE
LAS VEGAS, NV 89131-0139

NO565

CARRINGTON
MORTGAGE SERVICES, LLC

P.O. Box 54285, Irvine, CA 92619-4285
(888) 788-7306 Fax (949) 517-5220

October 3, 2012

CRISTELA PEREZ
7119 WOLF RIVERS AVE
LAS VEGAS, NV 89131-0139

Property Address: 7119 WOLF RIVERS AVENUE
LAS VEGAS, NV 89131

RE: Loan Number: 7000035044

NOTICE OF INTENT TO FORECLOSE

Dear Mortgagor(s):

The above referenced loan is in default because the monthly payment(s) due on and after October 1, 2011 have not been received. The amount required to cure this delinquency, as of the date of this letter, is $36,281.60, less $0.00, monies held in Unapplied.

SUBSEQUENT PAYMENTS, LATE CHARGES, AND OTHER FEES WILL BE ADDED TO THE ABOVE STATED REINSTATEMENT AMOUNT AS THEY ARE ASSESSED.

Please remit the total amount due in CERTIFIED FUNDS, utilizing one of the following payment resources:

OVERNIGHT MAIL:
Carrington Mortgage Services, LLC
ATTN: Cashiering Dept.
1610 E. Saint Andrew Place, Ste. B-150
Santa Ana, Ca. 92705

| WESTERN UNION QUICK COLLECT
| Any Western Union Location:
| Code City: CARRINGTONMS
| Code State: CA
|

IF YOU ARE UNABLE TO BRING YOUR ACCOUNT CURRENT, PLEASE CONTACT CARRINGTON MORTGAGE SERVICES, LLC TO DISCUSS HOME RETENTION ALTERNATIVES TO AVOID FORECLOSURE AT (888) 788-7306 OR BY MAIL AT 1610 E. SAINT ANDREW PLACE, SUITE B-150, SANTA ANA, CA 92705.

YOU MAY ALSO CONTACT THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ("HUD") HOTLINE NUMBER AT (800) 569-4287 OR YOU CAN VISIT THEM AT http://www.hud.gov/foreclosure/index.cfm TO FIND OUT OTHER OPTIONS YOU MAY HAVE TO AVOID FORECLOSURE.

Failure to cure the delinquency within 30 days of the date of this letter may result in acceleration of the sums secured by the Deed of Trust or Mortgage and in the sale of the property.

You have the right to reinstate your loan after legal action has begun. You also have the right to assert in foreclosure, the non-existence of a default or any other defense to acceleration and foreclosure.

Should you have any questions, please contact our office at (888) 788-7306, 5:00 AM to 9:00 PM Monday through Thursday, 5:00 AM to 5:00 PM Friday, 6:00 AM to 10:00 AM Saturday and 8:00 AM to 12:00 PM Sunday, Pacific Time.

Sincerely,

Loan Servicing Department
Carrington Mortgage Services, LLC

-IMPORTANT BANKRUPTCY NOTICE
If you have been discharged from personal liability on the mortgage because of bankruptcy proceedings and have not reaffirmed the mortgage, or if you are the subject of a pending bankruptcy proceeding, this letter is not an attempt to collect a debt from you but merely provides informational notice regarding the status of the loan. If you are represented by an attorney with respect to your mortgage, please forward this document to your attorney.

-CREDIT REPORTING
We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report. As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

-MINI MIRANDA
This communication is from a debt collector and it is for the purpose of collecting a debt and any information obtained will be used for that purpose. This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the bankruptcy laws of the United States.

-HUD STATEMENT
Pursuant to section 169 of the Housing and Community Development Act of 1987, you may have the opportunity to receive counseling from various local agencies regarding the retention of your home. You may obtain a list of the HUD-approved housing counseling agencies by calling the HUD nationwide toll free telephone number at (800) 569-4287.

-EQUAL CREDIT OPPORTUNITY ACT NOTICE
The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers CMS' compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

EXHIBIT 7

EXHIBIT 7

Inst #: 201309090001816
Fees: $17.00 N/C Fee: $0.00
RPTT: $1568.25 Ex: #
09/09/2013 10:59:56 AM
Receipt #: 1763390
Requestor:
ALESSI & KOENIG, LLC
Recorded By: JACKSM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

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

A.P.N. No.125-15-811-013 TS No. 11632

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: SFR Investments Pool 1, LLC
The Foreclosing Beneficiary herein was: Wyeth Ranch Community Association
The amount of unpaid debt together with costs: $14,677.80
The amount paid by the Grantee (Buyer) at the Trustee's Sale: $21,000.00
The Documentary Transfer Tax: $1,568.25
Property address: 7119 WOLF RIVERS AVE, LAS VEGAS, NV 89131-0139
Said property is in [ ] unincorporated area: City of LAS VEGAS
Trustor (Former Owner that was foreclosed on): CRISTELA PEREZ

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded December 20, 2011 as instrument number 0001246, in Clark County, does hereby grant, without warranty expressed or implied to: SFR Investments Pool 1, LLC (Grantee), all its right, title and interest in the property legally described as: WYETH RANCH-UNIT 2 PLAT LOT 13 BLOCK A, as per map recorded in Book 112, Pages 8 as shown in the Office of the County Recorder of Clark County Nevada.

TRUSTEE STATES THAT:
This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on August 28, 2013 at the place indicated on the Notice of Trustee's Sale.

Ryan Kerbow, Esq.
Signature of AUTHORIZED AGENT for Alessi & Koenig, Llc.

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN before me AUG 2 9 2013, Ryan Kerbow

WITNESS my hand and official seal.
(Seal) (Signature)

NOTARY PUBLIC
HEIDI A. HAGEN
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. MAY 17, 2017
No: 13-10829-1

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 125-15-811-013
   b.
   c.
   d.
2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

FOR RECORDERS OPTIONAL USE ONLY
Book _____ Page: _____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 21,000.00
   b. Deed in Lieu of Foreclosure Only (value of property) ( )
   c. Transfer Tax Value: $ 307,403.00
   d. Real Property Transfer Tax Due $ 1,568.25

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 _____ Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: Alessi & Koenig, LLC	Print Name: SFR Investments Pool 1, LLC
Address: 9500 W. Flamingo Rd., Ste. 205	Address: 5030 Paradise Road, B-214
City: Las Vegas	City: Las Vegas
State: NV Zip: 89147	State: NV Zip: 89119

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

Print Name: Alessi & Koenig, LLC	Escrow # N/A Foreclosure
Address: 9500 W. Flamingo Rd., Ste. 205	
City: Las Vegas	State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Exhibit 2

Electronically Filed
11/13/2013 02:46:39 PM

CLERK OF THE COURT

AACC
HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
E-mail: howard@hkimlaw.com
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
E-mail: diana@hkimlaw.com
JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593
E-mail: jackie@hkimlaw.com
HOWARD KIM & ASSOCIATES
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for SFR Investments Pool 1, LLC

HOWARD KIM & ASSOCIATES
1055 WHITNEY RANCH DRIVE, SUITE 110
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

CRISTELA PEREZ, an individual; SFR INVESTMENTS POOL 1, LLC, a limited liability company; U.S. BANK NATIONAL ASSOCIATION, N.D., a national association; DOES I through X; and ROE CORPORATIONS I through 10, inclusive,

Defendants.

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,

Counterclaimant/Cross-Claimant,

vs.

MARCHAI B.T., a Bank Trust; U.S. BANK NATIONAL ASSOCIATION, N.D., a national association; CRISTELA PEREZ, an individual; and DOES I through X; and ROE CORPORATIONS I through 10, inclusive,

Counter-Defendant/Cross-Defendants.

Case No. A-13-689461-C

Dept. No. XXVI

ANSWER, COUNTERCLAIM, AND CROSS CLAIM

SFR INVESTMENTS POOL 1, LLC ("SFR") hereby answers the Plaintiff MARCHAI B.T.'s complaint as follows:

INTRODUCTION

1. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 1 of the complaint, and therefore denies said allegations.

2. The document referenced in paragraph 2 of the complaint speaks for itself and SFR denies any allegations inconsistent with the document.

3. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 3 of the complaint, and therefore denies said allegations, except that, upon information and belief, Cristela Perez is an individual, residing in Nevada.

4. SFR admits that it claims an ownership interest in the subject property pursuant to a recorded foreclosure deed recorded in the Official Records of the Clark County Recorder as Instrument No. 201309090001816.

5. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 5 of the complaint, and therefore denies said allegations.

6. The allegations contained in paragraph 6 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained in paragraph 6 of the complaint.

7. The document referenced in paragraph 7 of the complaint speaks for itself, and SFR denies any allegations inconsistent with the document.

8. The document referenced in paragraph 8 of the complaint speaks for itself, and SFR denies any allegations inconsistent with the document.

9. The documents referenced in paragraph 9 of the complaint speak for themselves, and SFR denies any allegations inconsistent with the documents.

10. The document referenced in paragraph 10 of the complaint speaks for itself, and SFR

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denies any allegations inconsistent with the document.

11. The documents referenced in paragraph 11 of the complaint speak for themselves. SFR admits the allegations contained in paragraph 11 of the complaint.

12. The document referenced in paragraph 12 of the complaint (Trustee's Deed Upon Sale) is not attached to the complaint as Exhibit 6 as stated in paragraph 12. That notwithstanding, the document attached as Exhibit 6 speaks for itself, and SFR denies any allegations inconsistent with the document. SFR admits that it purchased the subject property for $21,000.00 at a public foreclosure auction.

13. SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in paragraph 13 of the complaint, and therefore denies said allegations.

14. The document referenced in paragraph 14 of the complaint (Notice of Intent to Foreclose) is not attached to the complaint as Exhibit 7. That notwithstanding the document attached as Exhibit 7 speaks for itself, and SFR denies any allegations inconsistent with the document.

15. The documents referenced in paragraphs 15, 16, 17, 18 and 19 of the complaint speak for themselves, and SFR denies any allegations inconsistent with the documents. Further, the allegations in paragraphs 15, 16, and 17 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR is without sufficient knowledge or information to form a belief as the truth of the factual allegations contained in paragraphs 15, 16, 17, 18 and 19 of the complaint and therefore denies the same.

FIRST CAUSE OF ACTION
(Judicial Foreclosure of Deed of Trust)

16. SFR repeats and realleges its answers to paragraphs 1 through 19 of the complaint as though fully set forth herein.

17. The allegations contained in paragraph 21 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required; SFR is without sufficient knowledge or information to form a belief as to the truth of the factual allegations contained in

paragraph 21 of the complaint, and therefore denies said allegations.

18. The allegations contained in paragraph 22 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies that Plaintiff has a right under the Deed of Trust to foreclose on the subject property either judicially or non-judicially.

19. The documents referenced in paragraph 23 of the complaint speak for themselves, and SFR denies any allegations inconsistent with the documents. Further, the allegations contained in paragraph 23 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies the factual allegations contained therein.

20. The allegations contained in paragraph 24 of the complaint call for a legal conclusion, therefore, no answer is required. To the extent an answer is required, SFR denies that amounts remain due under the Deed of Trust and is without sufficient knowledge or information to form a belief as the truth of the remaining factual allegations contained in paragraph 24 of the complaint and therefore denies the same.

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AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim upon which relief may be granted.

2. Plaintiff is not entitled to relief from or against SFR, as Plaintiff has not sustained any loss, injury, or damage that resulted from any act, omission, or breach by SFR.

3. The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of Plaintiff.

4. The occurrence referred to in the Complaint, and all injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third party or parties over whom SFR had no control.

5. SFR did not breach any statutory or common law duties allegedly owed to Plaintiff.

6. Plaintiff's claims are barred because SFR complied with applicable statutes and with the requirements and regulations of the State of Nevada.

7. Plaintiff's causes of action are barred in whole or in part by the applicable statues of

limitations or repose, or by the equitable doctrines of laches, waiver, estoppel, and ratification.

8. Plaintiff is not entitled to equitable relief because it has an adequate remedy at law.

9. Plaintiff has no standing to enforce the first deed of trust and the underlying promissory note.

10. The first deed of trust and other subordinate interests in the Property were extinguished by the Association foreclosure sale held in accordance with NRS Chapter 116.

11. Pursuant to Nevada Rule of Civil Procedure 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry at the time of filing this Answer. Therefore, SFR reserves the right to amend this Answer to assert any affirmative defenses if subsequent investigation warrants.

COUNTERCLAIM AND CROSSCLAIM

FOR QUIET TITLE AND INJUNCTIVE RELIEF

SFR INVESTMENTS POOL 1, LLC ("SFR"), hereby demands quiet title and requests injunctive relief against Counter-Defendant MARCHAI B.T., a Bank Trust ("Marchai"); and Cross-Defendants CRISTELA PEREZ ("Perez") and U.S. BANK NATIONAL ASSOCIATION, N.D ("U.S. Bank") as follows:

I. PARTIES

1. SFR is a Nevada limited liability company with its principal place of business in Clark County, Nevada and the current title owner of the property commonly known as **7119 Wolf Rivers Avenue, Las Vegas, NV 89131; Parcel No. 125-15-811-013** (the "Property").

2. Upon information and belief, Counter-Defendant, Marchai is a bank trust that may claim an interest in the Property via a 2005 deed of trust securing a loan originated by CMG Mortgage, Inc.

3. Upon information and belief, Cross-Defendant, Perez is a Nevada resident and former title owner to the Property.

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4. Upon information and belief, Cross-Defendant, U.S. Bank is a national association that may claim an interest in the Property via a 2006 deed of trust securing a home equity line of credit.

5. Upon information and belief, each of the Cross-Defendants sued herein as DOES I through X, inclusive claim an interest in the Property or are responsible in some manner for the events and action that SFR seeks to enjoin; that when the true names capacities of such defendants become known, SFR will ask leave of this Court to amend this counterclaim and cross-claim to insert the true names, identities and capacities together with proper charges and allegations.

6. Upon information and belief, each of the Cross-Defendants sued herein as ROES CORPORATIONS I through X, inclusive claim an interest in the Property or are responsible in some manner for the events an happenings herein that SFR seeks to enjoin; that when the true names capacities of such defendants become known, SFR will ask leave of this Court to amend this counterclaim and cross-claim to insert the true names, identities and capacities together with proper charges and allegations.

II. GENERAL ALLEGATIONS

SFR Acquired Title to the Property through Foreclosure of an Association Lien with Super Priority Amounts

7. SFR acquired the Property at a publicly-held foreclosure auction on August 28, 2013 in accordance with NRS 116.3116, et. seq. ("Association foreclosure sale").

8. The resulting foreclosure deed to SFR was recorded in the Official Records of the Clark County Recorder as Instrument No. 201309090001816.

9. Wyeth Ranch Community Association (the "Association") had a lien pursuant to NRS 116.3116(1) ("Association Lien") that was perfected at the time the Association recorded its declaration of CC&Rs.

10. The Association foreclosure sale was conducted by Alessi & Koenig, LLC, agent for the Association, pursuant to the powers conferred by the Nevada Revised Statutes 116.3116, 116.31162-116.31168, the Association's governing documents (CC&R's) and a Notice of Delinquent Assessment Lien which was recorded on December 20, 2011 in the Official Records

of the Clark County Recorder as Instrument No. 201112200001246.

11. As recited in the foreclosure deed, the Association foreclosure sale complied with all requirements of law, including but not limited to, recording and mailing of copies of Notice of Delinquent Assessment Lien, Notice of Default and Election to Sell Under Homeowners Association Lien, and the recording, posting and publication of the Notice of Sale.

12. Pursuant to NRS 116.3116(2), the entire Association Lien is prior to all other liens and encumbrances of unit except:

> (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;
> (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and
> (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

13. NRS 116.3116(2) further provides that a portion of the Association Lien has priority over even a first security interest in the Property:

> [the Association Lien] is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien[.]

15. Pursuant to NRS 116.1104, the provisions of NRS 116.3116(2) granting priority cannot be waived by agreement or contract, including any subordination clause in the CC&Rs.

16. According to NRS 116.1108, real property law principles supplement the provisions of NRS 116.

17. Upon information and belief, the Association took the necessary action to trigger the super-priority portion of the Association Lien.

18. Upon information and belief, no party still claiming an interest in the Property recorded a lien or encumbrance prior to the declaration creating the Association.

19. Upon information and belief, SFR's bid on the Property was in excess of the amount necessary to satisfy the costs of sale and the super-priority portion of the Association Lien.

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20. Upon information and belief, the Association or its agent Alessi distributed or should have distributed the excess funds to lien holders in order of priority pursuant to NRS 116.3114(c).

21. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or constructive notice of the requirement to pay assessments to the Association and of the Association Lien.

22. Upon information and belief, Counter-Defendant and Cross-Defendants had actual or constructive notice of the Association's foreclosure proceedings.

23. Upon information and belief, prior to the Association foreclosure sale, no individual or entity paid the full amount of delinquent assessments described in the Notice of Default.

24. Upon information and belief, Counter-Defendant Marchai had actual or constructive notice of the super-priority portion of the Association Lien.

25. Upon information and belief, at all relevant times, Counter-Defendant Marchai had internal policies and procedures relating to super-priority liens.

26. Upon information and belief, Counter-Defendant Marchai knew or should have known that its interest in the Property could be extinguished through foreclosure if it failed to cure the super-priority portion of the Association Lien representing 9 months of assessments for common expenses based on the periodic budget adopted by the association which would have become due in the absence of acceleration for the relevant time period.

27. Upon information and belief, prior to the Association foreclosure sale, no individual or entity paid the super-priority portion of the Association Lien representing 9 months of assessments for common expenses based on the periodic budget adopted by the association which would have become due in the absence of acceleration for the relevant time period.

28. Pursuant to NRS 116.31166, the foreclosure sale vested title in SFR "without equity or right of redemption," and the foreclosure deed is conclusive against the Property's "former owner, his or her heirs and assigns, and **all other persons**."

Interests, Liens and Encumbrances Extinguished by the Super-Priority Association Lien

29. Upon information and belief, Cross-Defendant Perez obtained title to the Property in July

of 2004 through a Grant Bargain Sale Deed from Robert D. Rose, Jr.

30. On November 9, 2005, CMG Mortgage, Inc. ("CMG") recorded a deed of trust against the Property in the Official Records of the Clark County Recorder as Instrument Nos. 200511090001385 ("First Deed of Trust").

31. The First Deed of Trust includes a legal description referencing the Association's declaration of CC&Rs.

32. Upon information and belief, the Association was formed and its declaration of CC&Rs was recorded in the Official Records of the Clark County Recorder prior to the time that the First Deed of Trust and Second Deed of Trust were recorded.

33. Upon information and belief, CMG had actual or constructive notice of the Association Lien and NRS 116.3116 before it funded the loan secured by the First Deed of Trust.

34. On or about June 05, 2012 CitiMortgage Inc. recorded a Corporate Assignment of Deed Trust wherein CMG assigned all of its rights under the First Deed of Trust to CitiMortgage, Inc. in the Official Records of the Clark County Recorder as Instrument No. 201206050003133.

35. On or about July 26, 2012, US Bank National Association as trustee for Stanwhich Mortgage Loan Trust ("Stanwhich") recorded an Assignment of Mortgage wherein CitiMortgage, Inc. assigned all of its rights under the October 19, 2005 mortgage to US Bank National Association as trustee for Stanwhich Mortgage in the Official Records of the Clark County Reporter as Instrument 201207260002017.

36. On or about August 12, 2013, Plaintiff Marchai caused an Assignment of Deed Trust wherein US Bank National Association as trustee for Stanwhich assigned all of its rights under the October 19, 2005 mortgage to Plaintiff Marchai. The original date of the assignment was March 12, 2013.

37. On or about September 30, 2013, Marchai filed a Complaint for Judicial Foreclosure on Deed of Trust despite the fact that their security interest in the Property was extinguished by the foreclosure of the Association Lien.

38. Cross-Defendant Perez's ownership interest in the Property was extinguished by the foreclosure of the Association Lien.

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39. Cross-Defendant U.S. Bank's security interest in the Property was extinguished by the foreclosure of the super priority portion of the Association Lien.

III. FIRST CLAIM FOR RELIEF
(Declaratory Relief/Quiet Title Pursuant to NRS 30.010, et. seq., NRS 40.10 & NRS 116.3116)

40. SFR repeats and realleges the allegations of paragraphs 1 - 39 as though fully set forth herein and incorporates the same by reference.

41. Pursuant to NRS 30.010, et. seq. and NRS 40.10, this Court has the power and authority to declare the SFR's rights and interests in the Property and to resolve the Counter-Defendant and Cross-Defendants' adverse claims in the Property.

42. Pursuant to NRS 116.31166, the Association foreclosure sale vested title in the Association "without equity or right of redemption," and the Foreclosure Deed is conclusive against the Property's "former owner, his or her heirs and assigns, and **all other persons**."

43. SFR obtained title to the Property pursuant to a foreclosure deed, which was recorded in the Official Records of the Clark County Recorder as Instrument No. 201309090001816.

44. Upon information and belief, Cross-Defendant Perez, may claim an ownership interest in the Property.

45. Upon information and belief, Cross-Defendant US Bank, may claim an ownership interest in the Property.

46. Upon information and belief, Counter-Defendant Marchai claims an interest in the Property through the Deed of Trust even after the Association foreclosure sale.

47. A foreclosure sale conducted pursuant to NRS 116.31162 - 116.31168, like all foreclosure sales, extinguishes the title owner's interest in the Property and all junior liens and encumbrances, including deeds of trust.

48. Pursuant to NRS 116.3116(2), the super-priority portion of the Association Lien has priority over the First Deed of Trust.

49. Counter-Defendant and Cross-Defendants were duly notified of the Association foreclosure sale and failed to act to protect their interests in the Property, if any legitimately existed.

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50. SFR is entitled to a declaratory judgment from this Court finding that: (1) SFR is the title owner of the Property pursuant to the quitclaim deed obtained from the Association; (2) the Association foreclosure deed was valid and enforceable; (3) the Association foreclosure sale extinguished Counter-Defendant and Cross-Defendants' ownership and security interests in the Property; and (4) SFR's rights and interest in the Property are superior to any adverse interest claimed by Counter-Defendant and Cross-Defendants.

51. SFR seeks an order from the Court quieting title to the Property in favor of SFR.

IV. SECOND CLAIM FOR RELIEF
(Preliminary and Permanent Injunction)

52. SFR repeats and realleges the allegations of paragraphs 1- 53 as though fully set forth herein and incorporate the same by reference.

53. Pursuant to NRS 116.31166, the Association foreclosure sale vested title in the Association "without equity or right of redemption," and the Foreclosure deed is conclusive against the Property's "former owner, his or her heirs and assigns, and **all other persons**."

54. On or about August 28, 2013, SFR obtained title to the Property pursuant to a Foreclosure deed from the Association.

55. Counter-Defendant Marchai may claim that it maintained an interest in the Property through the First Deed of Trust which was extinguished by the Association foreclosure sale.

56. Cross-Defendants, Perez and US Bank may claim an ownership interest in the Property.

57. A foreclosure sale based on the Deed of Trust is invalid as Counter-Defendant and Cross-Defendants lost their interest in the Property, if any, at the Association foreclosure sale in 2013.

58. Any sale or transfer of title to the Property by Counter-Defendant and Cross-Defendants would be invalid because their interest in the Property, if any, was extinguished by the Association foreclosure sale.

59. Any attempt to take or maintain possession of the Property by Counter-Defendant and Cross-Defendants would be invalid because their interest in the Property, if any, was extinguished by the Association foreclosure sale.

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60. Any attempt to sell, transfer, encumber or otherwise convey the Property by the Counter-Defendant and Cross-Defendants would be invalid because their interest in the Property, if any, was extinguished by the Association foreclosure sale.

61. On the basis of the facts described herein, SFR has a reasonable probability of success on the merits of its claims and has no other adequate remedies at law.

62. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-Defendant and Cross-Defendants from beginning or continuing any eviction proceedings that would affect SFR's possession of the Property.

63. SFR is entitled to a preliminary injunction and permanent injunction prohibiting Counter-Defendant and Cross-Defendants from any sale or transfer that would affect the title to the Property.

VI. PRAYER FOR RELIEF

SFR requests judgment against Counter-Defendant and Cross-Defendants as follows:

1. For a declaration and determination that SFR Investments Pool 1, LLC is the rightful owner of title to the Property, and that Counter-Defendant and Cross-Defendants be declared to have no right, title or interest in the Property.

2. For a preliminary and permanent injunction that Counter-Defendant and Cross-Defendants are prohibited from initiating or continuing foreclosure proceedings, and from selling or transferring the Property;

3. For general and special damages in excess of $10,000.00

4. For an award of attorney's fees and costs of suit; and

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5. For any further relief that the Court may deem just and proper.

Dated this 13th day of November, 2013.

HOWARD KIM & ASSOCIATES

/s/Diana S. Cline

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DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of November, 2013, pursuant to NRCP 5(b), I served via first class U.S. Mail, postage prepaid, the foregoing Answer, Counterclaim and Cross-Claim for Quiet Title and Injunctive Relief to the following parties:

Benjamin D. Petiprin, Esq.
LAW OFFICES OF LES ZIEVE
3753 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169
Attorney for Marchai B.T.

/s/ Andrew M. David
An Employee of Howard Kim & Associates

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Facsimile: (702) 485-3301
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI B.T., a Bank Trust,

Plaintiff,

vs.

CRISTELA PEREZ, an individual; SFR INVESTMENTS POOL 1, LLC, a limited liability company; U.S. BANK NATIONAL ASSOCIATION, N.D., a national association; DOES I through X; and ROE CORPORATIONS I through 10, inclusive,

Defendants.

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company,

Counterclaimant/Cross-Claimant,

vs.

MARCHAI B.T., a Bank Trust; U.S. BANK NATIONAL ASSOCIATION, N.D., a national association; CRISTELA PEREZ, an individual; and DOES I through X; and ROE CORPORATIONS I through 10, inclusive,

Counter-Defendant/Cross-Defendants.

Case No. A-13-689461-C

Dept. No. XXVI

INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)

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

SFR INVESTMENTS POOL 1, LLC	$223.00
TOTAL	**$223.00**

DATED November 13th, 2013.

HOWARD KIM & ASSOCIATES

/s/Diana S. Cline
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Exhibit 3

DISTRICT COURT CIVIL COVER SHEET A-16-742327-C

County, Nevada

Case No. XXXI

(Assigned by Clerk's Office)

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Marchai, B.T.	SFR Investments Pool 1, LLC
117 North Fuller	5030 Paradise Road, Suite B-214
Los Angeles, CA 90036	Las Vegas, NV 89119
Attorney (name/address/phone):	**Attorney (name/address/phone):**
David J. Merrill, P.C.	Kim Gilbert Ebron
10161 Park Run Drive, Suite 150	7625 Dean Martin Drive, Suite 110
Las Vegas, NV 89145	Las Vegas, NV 89139
(702) 566-1935	(702) 485-3300

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

Real Property	Torts	
Landlord/Tenant	**Negligence**	**Other Torts**
☐ Unlawful Detainer	☐ Auto	☐ Product Liability
☐ Other Landlord/Tenant	☐ Premises Liability	☐ Intentional Misconduct
Title to Property	☐ Other Negligence	☐ Employment Tort
☐ Judicial Foreclosure	**Malpractice**	☐ Insurance Tort
■ Other Title to Property	☐ Medical/Dental	☐ Other Tort
Other Real Property	☐ Legal	
☐ Condemnation/Eminent Domain	☐ Accounting	
☐ Other Real Property	☐ Other Malpractice	

Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate *(select case type and estate value)*	**Construction Defect**	**Judicial Review**
☐ Summary Administration	☐ Chapter 40	☐ Foreclosure Mediation Case
☐ General Administration	☐ Other Construction Defect	☐ Petition to Seal Records
☐ Special Administration	**Contract Case**	☐ Mental Competency
☐ Set Aside	☐ Uniform Commercial Code	**Nevada State Agency Appeal**
☐ Trust/Conservatorship	☐ Building and Construction	☐ Department of Motor Vehicle
☐ Other Probate	☐ Insurance Carrier	☐ Worker's Compensation
Estate Value	☐ Commercial Instrument	☐ Other Nevada State Agency
☐ Over $200,000	☐ Collection of Accounts	**Appeal Other**
☐ Between $100,000 and $200,000	☐ Employment Contract	☐ Appeal from Lower Court
☐ Under $100,000 or Unknown	☐ Other Contract	☐ Other Judicial Review/Appeal
☐ Under $2,500		

Civil Writ		Other Civil Filing
Civil Writ		**Other Civil Filing**
☐ Writ of Habeas Corpus	☐ Writ of Prohibition	☐ Compromise of Minor's Claim
☐ Writ of Mandamus	☐ Other Civil Writ	☐ Foreign Judgment
☐ Writ of Quo Warrant		☐ Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

August 25, 2016

Date

Signature of initiating party or representative

See other side for family-related case filings.

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CLERK OF THE COURT

COMP
DAVID J. MERRILL
Nevada Bar No. 6060
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Attorney for MARCHAI, B.T.

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust,

Plaintiff,

vs.

SFR INVESTMENTS POOL 1, LLC, a Nevada limited liability company; WYETH RANCH COMMUNITY ASSOCIATION, a Nevada non-profit corporation; ALESSI & KOENIG, LLC, a Nevada limited liability company; DOES 1 through 10, inclusive, and ROES 1 through 10, inclusive.

Defendants.

Case No.: A-16-742327-C
Dept. No. XXXI

EXEMPT FROM ARBITRATION: ACTION CONCERNING TITLE TO REAL ESTATE

COMPLAINT

Marchai, B.T., a Nevada business trust, alleges as follows:

1. Marchai is a Nevada business trust authorized to transact business in the State of Nevada.

2. This action concerns real property located in the City of Las Vegas, County of Clark, State of Nevada. The property is commonly known as 7119 Wolf

Rivers Avenue, Las Vegas, Nevada 89131, Clark County Assessor's Parcel Number 125-15-811-013.

3. Marchai is informed and believes that SFR Investments Pool 1, LLC is a Nevada limited liability company, which has an interest in the property by reason of the recording of a trustee's deed upon sale and is the record owner of the property.

4. Marchai is informed and believes that Wyeth Ranch Community Association is a Nevada non-profit corporation doing business in Clark County, Nevada.

5. Marchai is informed and believes that Alessi & Koenig, LLC is a Nevada limited liability company doing business in Clark County, Nevada.

6. Marchai is unaware of the true names and capacities of individual defendants sued herein as DOES 1 through 10, inclusive, and corporations, partnerships, or other business entities sued herein as ROES 1 through 10, inclusive, and therefore sues these defendants by such fictitious names. Marchai is informed and believes that defendants named herein as DOES 1 through 10 and ROES 1 through 10 have, or may claim to have, some right, title, or interest in and to the property, the exact nature of which is unknown to Marchai and Marchai will seek leave to amend this complaint to allege their true names and capacities when and as ascertained, and will further ask leave to join said defendants in these proceedings.

7. On or about October 19, 2005, for valuable consideration, Cristela Perez made, executed, and delivered to CMG Mortgage, Inc. that certain InterestFirst Adjustable Rate Note dated October 19, 2005 evidencing a loan to Perez in the original principal amount of $442,000.00.

8. To secure payment of the principal sum and interest provided in the note, as part of the same transaction, Perez executed and delivered to CMG Mortgage, as beneficiary, a Deed of Trust dated October 19, 2005. The Deed of Trust

was recorded in book number 20051109 as instrument number 0001385 in the Official Records of the Clark County Recorder's Office on November 9, 2005.

9. On November 5, 2007, Complete Association Management Company recorded on behalf of Wyeth Ranch a Notice of Delinquent Violation Lien as Document No. 20071105-0000341 in which Wyeth Ranch claimed a lien for unpaid violations in the amount of $1,400.00.

10. Marchai is informed and believes that Perez failed to timely pay Wyeth Ranch association dues on January 1, April 1, or July 1, 2008.

11. On October 8, 2008, the Clark County Recorder recorded a Notice of Delinquent Assessment (Lien) as Document No. 200810080003311, which Alessi & Koenig executed as agent for Wyeth Ranch. According to the notice, as of September 30, 2008, Perez owed Wyeth Ranch $1,425.17.

12. On January 5, 2009, Alessi & Koenig, on behalf of Wyeth Ranch, recorded with the Clark County Recorder as Document No. 20090105-0002988 a Notice of Default and Election to Sell Under Homeowners Association Lien. According to the notice of default, as of December 17, 2008, Perez owed Wyeth Ranch $3,096.46.

13. On January 14, 2010, Alessi & Koenig, on behalf of Wyeth Ranch, recorded with the Clark County Recorder as Document No. 201001140002589 a Notice of Trustee's Sale. According to the notice of sale, Perez owed Wyeth Ranch $6,964.25 in unpaid assessments. The notice set a sale for February 17, 2010.

14. Marchai is informed and believes that between February 2010 and March 2011, Perez paid Wyeth Ranch $2,005.00 in association dues.

15. On March 9, 2011, Alessi & Koenig, on behalf of Wyeth Ranch, recorded with the Clark County Recorder as Document No. 201103090001741 a Rescission of Notice Trustee's Sale, in which Wyeth Ranch rescinded the January 14, 2010, notice of sale.

16. On March 29, 2011, Alessi & Koenig, on behalf of Wyeth Ranch, recorded with the Clark County Recorder as Document No. 201103290002937 a Notice of Trustee's Sale. According to the notice of sale, Perez owed Wyeth Ranch $7,306.62 in unpaid assessments. The notice set a sale for May 8, 2011.

17. Marchai is informed and believes that on August 4, 2011, Perez paid Wyeth Ranch another $165.00.

18. Marchai is informed and believes that on October 1, 2011, Perez defaulted under the terms of her loan from CMG Mortgage in that Perez failed to make the regular monthly installment payment on that date in the approximate amount of $2,657.39, and all subsequent payments.

19. On December 20, 2011, Alessi & Koenig, on behalf of Wyeth Ranch, recorded with the Clark County Recorder as Document No. 201112200001246 a Notice of Delinquent Assessment (Lien). According to the notice, Perez owed Wyeth Ranch $9,296.56.

20. On February 28, 2012, Alessi & Koenig, on behalf of Wyeth Ranch, recorded with the Clark County Recorder as Document No. 201202280000836 a Notice of Default and Election to Sell Under Homeowners Association Lien. According to the notice of default, Perez owed Wyeth Ranch $10,625.06 in unpaid assessments.

21. Marchai is informed and believes that between March and May 2012, Perez paid Wyeth Ranch another $595.00.

22. On June 5, 2012, a Corporate Assignment of Deed of Trust was recorded with the Clark County Recorder as Document 201206050003133 that evidences an assignment of the deed of trust from CMG Mortgage, Inc. to CitiMortgage, Inc.

23. Marchai is informed and believes that on July 26, 2012, Perez made a $165.00 payment to Wyeth Ranch.

24. On July 26, 2012, an Assignment of Mortgage was recorded with the Clark County Recorder as Document 201207260002017 that evidences an assignment of the deed of trust from CitiMortgage to U.S. Bank, N.A. as Trustee for the Stanwich Mortgage Loan Trust, Series 2012-6.

25. On October 31, 2012, Alessi & Koenig, on behalf of Wyeth Ranch, recorded with the Clark County Recorder as Document No. 201210310000686 a Notice of Trustee's Sale. According to the notice of sale, Perez owed Wyeth Ranch $11,656.07. The notice set a sale for November 28, 2012.

26. Marchai is informed and believes that on November 13, 2012, Perez made a $300.00 payment to Wyeth Ranch.

27. On March 12, 2013, U.S. Bank, as trustee of the Stanwich Trust, assigned the deed of trust to Marchai.

28. On July 31, 2013, Alessi & Koenig, on behalf of Wyeth Ranch, recorded with the Clark County Recorder as Document 201307310001002 another Notice of Trustee's Sale. According to the notice of sale, Perez owed Wyeth Ranch $14,090.80. The notice set a sale for August 28, 2013.

29. On August 12, 2013, an Assignment of Deed of Trust was recorded with the Clark County Recorder as Document No. 201308120002562 that evidences the assignment of the deed of trust from U.S. Bank, as trustee of the Stanwich Trust, to Marchai.

30. On September 9, 2013, the Clark County Recorder recorded a Trustee's Deed Upon Sale as Document No. 201309090001816 that Alessi & Koenig executed. According to the trustee's deed, SFR acquired Alessi & Koenig's "right, title, and interest" in the property for $21,000.00 at a sale conducted on August 28, 2013.

31. Alessi & Koenig and Wyeth Ranch wrongfully foreclosed against the property in reliance upon NRS §§ 116.3116 *et seq.* (the "Statute").

32. The purported foreclosure sale under the Statute did not extinguish Marchai's deed of trust, which continues to constitute a valid encumbrance against the property.

33. Alessi & Koenig and Wyeth Ranch failed to give constitutionally adequate notice to Marchai of Wyeth Ranch's lien as required by the Supreme Court in *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983), given that the Statute on its face violated Marchai's rights to due process secured by the United States and Nevada Constitutions.

34. Alessi & Koenig and Wyeth Ranch failed to give constitutionally adequate notice to Marchai of Wyeth Ranch's notice of default.

35. Alessi & Koenig and Wyeth Ranch failed to give constitutionally adequate notice to Marchai of the notice of sale.

36. Alessi & Koenig and Wyeth Ranch failed to identify any superpriority amount claimed by Wyeth Ranch and failed to describe the "deficiency in payment" required by NRS § 116.31162(1)(b)(1) in the notice of default.

37. Alessi & Koenig and Wyeth Ranch failed to provide notice of any purported superpriority lien amount or the consequences for the failure to pay any purported superpriority lien amount.

38. Alessi & Koenig and Wyeth Ranch failed to identify the amount of the alleged lien that was for late fees, interest, fines/violations, or collection fees/costs.

39. Alessi & Koenig and Wyeth Ranch failed to identify if Wyeth Ranch intended to foreclose upon the superpriority portion of its lien, if any, or on the sub-priority portion of its lien.

40. Alessi & Koenig and Wyeth Ranch failed to specify in any of the recorded documents that Wyeth Ranch's foreclosure would extinguish Marchai's interest in the property.

41. Alessi & Koenig and Wyeth Ranch failed to market, sell, or auction the property for in a commercially reasonable manner.

42. SFR purports to have purchased the property at the August 28, 2013, foreclosure sale for $21,000.00.

43. The property has an approximate fair market value well in excess of the $21,000.00 purchase price.

44. The sale and purchase of the property was unconscionable and commercially unreasonable.

45. Neither Alessi & Koenig, nor Wyeth Ranch, nor the Statute gave fair notice to Marchai that the nonjudicial foreclosure of Wyeth Ranch's lien could extinguish Marchai's interest in the property as required by the Due Process clauses of both the United States Constitution and the Constitution of the State of Nevada.

46. To date, the note remains unpaid, and no document has been recorded on the property expressly releasing Marchai's deed of trust.

47. SFR had actual or record notice of Marchai's interest in the property.

48. At the time of Wyeth Ranch's foreclosure, Perez had paid more than nine months of association dues following Wyeth Ranch's "institution of an action to enforce the lien," which satisfied any superpriority portion of Wyeth Ranch's lien. Thus, to the extent SFR acquired any interest in the property, it did so subject to Marchai's deed of trust.

49. At the time of Wyeth Ranch's foreclosure, Wyeth Ranch's lien, or a portion thereof, including the superpriority portion, had expired. Thus, to the extent SFR acquired anything it acquired the property subject to Marchai's deed of trust.

First Claim for Relief
(Declaratory Relief Under Amendment V to the United States Constitution—Takings Clause—Against SFR, Wyeth Ranch, and Alessi & Koenig)

50. Marchai repeats and realleges each of the paragraphs set forth above.

51. The purported foreclosure pursuant to the Statute effected a regulatory taking of Marchai's secured interest in the property without just

compensation, in violation of the Fifth Amendment to the United States Constitution.

52. An actual and justiciable controversy exists between Marchai and SFR, Wyeth Ranch, and Alessi & Koenig regarding the purported foreclosure sale and the rights associated with the foreclosure sale.

53. Without declaratory relief, an interpretation of the Statute and an interpretation of the constitutional validity of the Statute, Marchai's rights and secured interest in the property will be adversely affected.

54. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale under the Statute did not extinguish Marchai's deed of trust, which continues to be a valid encumbrance against the property.

55. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale be voided and set aside because the foreclosure pursuant to the Statute effected a regulatory taking of Marchai's secured interest in the Property without just compensation, in violation of the Fifth Amendment to the United States Constitution.

56. Marchai has been damaged by SFR, Wyeth Ranch, and Alessi & Koenig's conduct as specified herein in an amount to be proven at trial.

57. Marchai has been required to engage the services of an attorney to protect its interests in the property and is entitled to recover its reasonable attorney's fees and costs incurred in connection with this action.

Second Claim for Relief
(Declaratory Relief under the Due Process Clauses of the United States and Nevada Constitutions—Against SFR, Wyeth Ranch, and Alessi & Koenig)

58. Marchai repeats and realleges each of the paragraphs set forth above.

59. The Statute on its face violates Marchai's constitutional rights, in particular those rights to due process secured by both the United States and Nevada Constitutions and is thus void and unenforceable.

60. Any purported notice provided was inadequate, insufficient, and in violation of Marchai's rights to due process as it failed to provide fair notice as required by the due process clauses of both the United States and Nevada Constitutions.

61. An actual and justiciable controversy exists between Marchai and SFR, Alessi & Koenig, and Wyeth Ranch regarding the purported foreclosure sale and the rights associated with the foreclosure sale.

62. Without declaratory relief, an interpretation of the Statute, and an interpretation of the constitutional validity of the Statute, Marchai's rights and secured interest in the property will be adversely affected.

63. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale under the Statute did not extinguish Marchai's deed of trust, which continues to be a valid encumbrance against the Property.

64. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale be voided and set aside because the Statute on its face violates Marchai's due process under both the United States and Nevada Constitutions.

65. Marchai has been damaged by SFR, Wyeth Ranch, and Alessi & Koenig's conduct as specified herein in an amount to be proven at trial.

66. Marchai has been required to engage the services of an attorney to protect its interests in the property and is entitled to recover its reasonable attorney's fees and costs incurred in connection with this action.

Third Claim for Relief
(Wrongful Foreclosure—Against SFR, Wyeth Ranch, and Alessi & Koenig)

67. Marchai repeats and realleges each of the paragraphs set forth above.

68. SFR wrongfully purported to purchase Marchai's property in violation of the Statute and common law.

69. The foreclosure sale was wrongful because the foreclosure itself was contrary to law, in that:

(a) The Statute on its face violates Marchai's constitutional rights, in particular Marchai's rights to due process under both the Nevada and United States Constitutions.

(b) The purported foreclosure pursuant to the Statute effected a regulatory taking of Marchai's secured interest in the property without just compensation in violation of the Fifth Amendment to the United States Constitution.

(c) Any purported notice provided was also inadequate, insufficient, and in violation of Marchai's rights to due process under both the United States and Nevada Constitutions.

(d) The lien, or a portion thereof, had expired by the time of the foreclosure.

(e) Perez paid more than nine months of association dues following Wyeth Ranch's institution of an action to enforce its lien.

70. SFR is not a bona fide purchaser of the Property.

71. SFR's $21,000.00 purchase price for the property was unconscionable.

72. The sale and purchase of the property was not commercially reasonable.

73. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale did not extinguish Marchai's deed of trust, which continues as a valid encumbrance against the property.

74. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale be voided and set aside because SFR is not a bona fide purchaser of the property.

75. Based upon the foregoing, Marchai requests an order setting aside the purported foreclosure sale as void because SFR's $21,000.00 purchase price for the property was not commercially reasonable.

76. Based upon the foregoing, Marchai requests an order declaring that the purported foreclosure sale be voided and set aside because SFR's $21,000.00 purchase price for the property was unconscionable.

77. Marchai has been damaged by SFR, Wyeth Ranch, and Alessi & Koenig's conduct as specified herein in an amount to be proven at trial.

78. Marchai has been required to engage the services of an attorney to protect its interests in the property and is entitled to recover its reasonable attorney's fees and costs incurred in connection with this action.

Fourth Claim for Relief
(Violation of NRS § 116.1113 *et seq.*—Against Wyeth Ranch and Alessi & Koenig)

79. Marchai repeats and realleges each of the paragraphs set forth above.

80. Wyeth Ranch and Alessi & Koenig wrongfully foreclosed upon the property in violation of the Statute.

81. Given the above-enumerated violations of the Statute, Marchai asserts that Wyeth Ranch's purported sale of the property be voided and set aside and requests any and all damages flowing from these violations.

Fifth Claim for Relief
(Intentional Interference with Contractual Relations against SFR, Wyeth Ranch, and Alessi & Koenig)

82. Marchai repeats and realleges each of the paragraphs set forth above.

83. Marchai had a valid contract with Perez as evidenced by the note and deed of trust, which included as part of the benefit of the bargain a first priority secured interest in the property.

84. SFR, Wyeth Ranch, and Alessi & Koenig knew or should have known of the contract between Marchai and Perez.

85. SFR, Wyeth Ranch, and Alessi & Koenig knowingly interfered with the contract between Marchai and Perez by failing to market, sell, or auction the property for a commercially reasonable or fair market value, thus evidencing intent to harm Marchai.

86. SFR knowingly interfered with the contract between Marchai and Perez by wrongfully obtaining possession of the property for an unconscionable and commercially unreasonable amount, thus evidencing intent to harm Marchai.

87. SFR knowingly interfered with the contract between Marchai and Perez by wrongfully obtaining possession of the property and attempting to extinguish Marchai's security interest in the Property.

88. SFR, Wyeth Ranch, and Alessi & Koenig all lacked justification for these interferences, because of the many infirmities described within this amended complaint, including:

(a) The Statute on its face violates Marchai's constitutional rights, in particular Marchai's rights to due process under both the Nevada and United States Constitutions.

(b) The purported foreclosure pursuant to the Statute effected a regulatory taking of Marchai's secured interest in the Property without just compensation in violation of the Fifth Amendment to the United States Constitution.

(c) Any purported notice provided was also inadequate, insufficient, and in violation of Marchai's rights to due process under both the United States and Nevada Constitutions.

(d) The lien, or a portion thereof, had expired by the time of the foreclosure.

(e) Perez paid more than nine months of association dues following Wyeth Ranch's institution of an action to enforce its lien.

89. Marchai has been damaged by SFR, Wyeth Ranch, and Alessi & Koenig's conduct as specified herein in an amount to be proven at trial.

90. Marchai has been required to engage the services of an attorney to protect its interests in the property and is entitled to recover its reasonable attorney's fees and costs incurred in connection with this action.

Sixth Claim for Relief
(Quiet Title—Against SFR, Wyeth Ranch, and Alessi & Koenig)

91. Marchai repeats and realleges each of the paragraphs set forth above.

92. For all of the independent reasons cited above in Claims 2 through 6, Wyeth Ranch's sale did not extinguish Marchai's senior deed of trust.

93. For all of the independent reasons cited above in Claims 2 through 6, Marchai requests an order declaring that the purported foreclosure sale did not extinguish Marchai's deed of trust, which continues as a valid encumbrance against the Property.

94. For all of the independent reasons cited above in Claims 2 through 6, Marchai requests an order declaring that the purported foreclosure sale be voided and set aside because SFR is not a bona fide purchaser of the Property.

95. For all of the independent reasons cited above in Claims 2 through 6, Marchai requests an order setting aside Wyeth Ranch's sale as void because SFR's payment of $21,000.00 as a purchase price for the property was not commercially reasonable and the sale was not conducted in a commercially reasonable manner.

96. For all of the independent reasons cited above in Claims 2 through 6, Marchai requests an order declaring that the purported foreclosure sale be voided and set aside because SFR's $21,000.00 purchase price for the property was unconscionable.

97. Marchai has been damaged by SFR, Wyeth Ranch, and Alessi & Koenig's conduct as specified herein in an amount to be proven at trial.

98. Marchai has been required to engage the services of an attorney to protect its interests in the property and is entitled to recover its reasonable attorney's fees and costs incurred in connection with this action.

99. Accordingly, Marchai requests that title be quieted in its name and its deed of trust continue as a valid encumbrance against the Property.

PRAYER FOR RELIEF

WHEREFORE, Marchai prays for relief as follows:

A. For a declaration by the Court that Marchai holds a valid interest in the property under the note and deed of trust, and that SFR acquired the property subject to Marchai's interest;

B. That title in the Property be quieted in Marchai;

C. That Wyeth Ranch's purported foreclosure sale be declared void and set aside;

D. For judgment in an amount proven at trial in excess of $10,000.00;

E. For an award of interest, costs, and attorneys' fees; and

F. For any further relief the Court deems just and proper.

DATED this 25th day of August 2016.

DAVID J. MERRILL, P.C.

By: _____

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Exhibit 4

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CLERK OF THE COURT

DAO

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI B.T.,

Plaintiff,

vs.

CRISTELA PEREZ; SFR INVESTMENTS POOL 1, LLC; U.S. BANK NATIONAL ASSOCIATION, N.D.; DOES I through X; and ROE CORPORATIONS 1 through 10, inclusive,

Defendants.

Case No. A-13-689461-C

Dep't No. VII

And all related actions.

DECISION AND ORDER

This case arises from a homeowners' association's (HOA) non-judicial foreclosure sale of residential real property located at 7119 Wolf Rivers Avenue in Las Vegas, Nevada. Now before the Court are Defendant SFR Investments Pool 1 ("SFR") and Plaintiff Marchai's Motions for Summary Judgment and SFR's Motion to Strike. These matters came before the Court on February 16, 2015. The Court denies SFR and Marchai's Motions for Summary Judgment and SFR's Motion to Strike.

I. Factual Background

The residential property in this case, the Wolf Rivers property, is subject to the terms of the Wyeth Ranch Community Association's ("the HOA") Declaration of Covenants, Conditions and Restrictions (CC&Rs). In 2004, Cristela Perez entered into two loan agreements with Countrywide Home Loans in order to purchase the property. The loans were secured by two deeds of trust on the Wolf Rivers property. Perez refinanced these two

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loans through an agreement with CMG Mortgage. CMG Mortgage recorded a deed of trust against the property on November 9, 2005.

A. First Notice of Delinquent Assessment Lien

The HOA recorded its first Notice of Delinquent Assessment Lien on October 8, 2008. At that time, the HOA collected $140.00 per month in association dues. At the beginning of 2009, the HOA increased its monthly dues to $152.50. The HOA recorded a Notice of Default and Election to Sell on January 7, 2009. The HOA recorded a Notice of Trustee's Sale on January 14, 2010. In 2010, the HOA increased its monthly dues to $159.50.

On February 3, 2010, the HOA sent a demand letter to Perez. On February 12, 2010, Perez paid the HOA $900.00. On April 13, 2010, the HOA proposed a payment plan to Perez. On May 11, 2010, Perez paid the HOA $300.00. Perez failed, however to comply with the payment plan.

On July 13, 2010, the HOA mailed a Pre-Notice of Trustee Sale and Notice of Default and Election to Sell to Perez. Perez paid the HOA $645.00 between August 2 and November 30, 2010. The HOA recorded a Rescission of Notice of Sale on March 9, 2011. Perez paid the HOA $160.00 on March 10, 2011.

On March 29, 2011, the HOA recorded a second Notice of Sale. On July 27, 2011, the HOA sent Perez a letter stating Perez was in breach of the payment plan. On August 4, 2011, Perez paid the HOA $165.00.

B. Second Notice of Delinquent Assessment Lien

On December 20, 2011, the HOA recorded a second Notice of Delinquent Assessment lien. The HOA recorded a Notice of Default and Election to Sell on February 28, 2012. Perez paid the HOA $760.00 between March 19 and July 26, 2012. CMG Mortgage assigned its deed of trust to CitiMortgage in May of 2012. CitiMortgage assigned the deed to U.S. Bank in July of 2012. The HOA recorded a Notice of Trustee's Sale on October 31, 2012. Perez paid the HOA $300.00 on November 13, 2012.

In March of 2013, U.S. Bank assigned its deed of trust to Marchai. Neither U.S. Bank nor Marchai recorded the transfer of interest for approximately five months. During this gap, U.S. Bank did not inform Marchai of the HOA's foreclosure proceedings. The HOA mailed a Notice of Trustee's sale to CMG Mortgage, CitiMortgage, and U.S. Bank on July 29, 2013. Marchai recorded its interest in the Wolf Rivers property on August 12, 2013. Marchai's loan servicer received notice of the trustee's sale on August 27, 2013, the day before the sale was scheduled to take place. The servicer contacted the HOA's trustee conducting the sale, Alessi & Koenig, to ask that the sale be postponed. The HOA declined.

Alessi & Koenig as trustee for the HOA conducted a foreclosure sale of the Wolf Rivers property on August 28, 2013. SFR purchased the property for $21,000.00. SFR recorded a trustee's deed upon sale on September 9, 2013 identifying SFR as the grantee and the HOA as the foreclosing beneficiary. The trustee's deed states:

> Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien... does hereby grant, without warranty expressed or implied to: SFR... all its right, title and interest in the property...
>
> This conveyance is made pursuant to the powers conferred upon the Trustee by NRS 116 et seq... All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with.

At the time of sale, Perez owed the HOA $14,677.80. As of January 14, 2016, Perez owes Marchai $489,372.77 based the agreement secured by the deed of trust. Marchai asserts Perez is now in default on the agreement between Perez and Marchai.

II. Procedural History

On September 30, 2013, Marchai filed a complaint against Perez, SFR, and U.S. Bank. Marchai seeks to judicially foreclose on the Wolf Rivers property based on Perez's breach of the agreement secured by the deed of trust. On November 13, 2013, SFR filed an answer, counterclaim, and crossclaim. SFR brought counterclaims and crossclaims for declaratory relief/quiet title and injunctive relief. Specifically, SFR alleges Marchai's

interest in the Wolf Rivers property was extinguished by the non-judicial foreclosure of the HOA's super-priority lien established pursuant to NRS Chapter 116. The super-priority lien brands certain HOA liens as "prior to all other liens and encumbrances," excluding those recorded before the applicable CC&Rs. See NRS 116.3116(2)(a)-(b). The Court has entered defaults against Perez and U.S. Bank in this case.

On July 9, 2014, the Court ordered that the case be stayed pending a ruling from the Nevada Supreme Court on an HOA foreclosure's effect on a first deed of trust. The Nevada Supreme Court issued its ruling in SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408 (Nev. 2014) on September 18, 2014. The Nevada Supreme Court denied a rehearing on October 16, 2014. The Court lifted the stay in the instant case on January 28, 2015.

Both Marchai and SFR filed motions for summary judgment on January 14, 2016. The parties dispute whether NRS Chapter 116 is constitutional and whether the HOA foreclosure procedure in the instant case complied with NRS Chapter 116. The parties filed oppositions to each other's motions on February 3 and 4, 2016. The parties filed replies on February 8 and 9, 2016. SFR's reply contained a countermotion to strike portions of Marchai's motion for summary judgment and opposition. SFR asserts Marchai's motion exceeded the appropriate page limit. SFR also argues Marchai's opposition contains evidence not properly disclosed in the discovery process.

III. Discussion

A. Motion to Strike

The parties do not dispute that Marchai violated EDCR 2.20(a) by failing to obtain leave of Court before filing a brief in support of its motion for summary judgment that exceeded thirty pages. The parties also agree that Marchai's person most knowledgeable failed to appear at a properly noticed deposition on December 2, 2015. Marchai asserts that its failure to request leave of the Court to file an over-length brief was inadvertent. Marchai argues its failure to provide a person most knowledgeable for deposition was the result of miscommunication between substituted counsel. The parties have communicated regarding rescheduling the deposition. SFR argues these irregularities necessitate the

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Court striking the excess pages in Marchai's motion for summary judgment and certain declarations submitted in support of Marchai's opposition to SFR's motion for summary judgment.

The Court finds the interests of deciding this motion on its merits outweigh the need to sanction Marchai for technical violations of Court rules. The Court also finds that SFR will not be prejudiced by the Court's decision to deny its motion. The table of contents in Marchai's motion for summary judgment uses extremely descriptive headings containing the factual and legal assertions Marchai makes throughout its motion. Using just these headings and Marchai's exhibits, the Court would be able to evaluate Marchai's arguments. In addition, though Marchai's person most knowledgeable failed to attend the scheduled December 2, 2015 deposition, Marchai has presented an explanation to the Court. The substitution of counsel created confusion regarding the deposition. This does not excuse Marchai from presenting its person most knowledgeable at a subsequent deposition, which the parties are working towards.

Failure to ask for leave, which would have been granted, and to attend one deposition does not justify the level of sanctions contemplated by SFR's motion to strike. The Court and the parties are benefitted by the Court considering all relevant, appropriate material in rendering a decision. Therefore, the Court denies SFR's motion to strike.

B. Motions for Summary Judgment

Summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law." Wood v. Safeway, Inc., 121 P.3d 1026, 1029 (Nev. 2005) (internal quotation marks and alterations omitted). "If the party moving for summary judgment will bear the burden of persuasion at trial, that party 'must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence.'" Francis v. Wynn Las Vegas, LLC, 262 P.3d 705, 714 (Nev. 2011) (citing Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 172 P.3d 131, 134 (Nev. 2007)). "When requesting summary judgment, the moving party bears the initial burden of production to

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demonstrate the absence of a genuine issue of material fact. If the moving party meets its burden, then the nonmoving party bears the burden of production to demonstrate that there is a genuine issue of material fact. Las Vegas Metro. Police Dep't v. Coregis Ins. Co., 256 P.3d 958, 961 (Nev. 2011) (internal citations omitted).

Marchai and SFR seek summary judgment on each of their claims. SFR argues the HOA foreclosure sale extinguished Marchai's interest in the Wolf Rivers property. Marchai argues its interest survived the foreclosure sale and is superior to SFR's interest. To determine what interests remain on the Wolf Rivers property and the interests' priority, the Court must evaluate NRS Chapter 116 and the foreclosure process in this particular case.

1. Retroactive Application of the SFR Decision

Marchai argues the decision in SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408 (Nev. 2014), reh'g denied (Oct. 16, 2014) should only be applied prospectively. SFR was decided on September 18, 2014. In the instant case, the foreclosure sale took place on August 28, 2013.

The Nevada Supreme Court has ruled that:

> In determining whether a new rule of law should be limited to prospective application, courts have considered three factors: (1) "the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed;" (2) the court must "weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation;" and (3) courts consider whether retroactive application "could produce substantial inequitable results."

Breithaupt v. USAA Prop. & Cas. Ins. Co., 867 P.2d 402, 405 (Nev. 1994) (quoting Chevron Oil Co. v. Huson, 404 U.S. 97, 106–07 (1971)).

In the SFR decision, the Nevada Supreme Court noted, "Nevada's state and federal district courts are divided on whether NRS 116.3116 establishes a true priority lien." SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 412 (Nev. 2014), reh'g denied (Oct. 16, 2014). There was no clear past precedent on the issue. The superpriority of HOA liens was

a matter of first impression for the Nevada Supreme Court, but the resolution was foreshadowed. The Nevada Supreme Court relied on the language of NRS Chapter 116 and official comments to the Uniform Common Interest Ownership Act of 1982. Id. The language establishing the nature of the superpriority lien was amended in 2009, several years before the foreclosure sale in this case. The SFR decision also relied on a December 2012 Nevada Real Estate Division advisory opinion holding an HOA could enforce its superpriority lien through a non-judicial foreclosure. 334 P.3d at 416-417.

In addition, the Court finds that applying the SFR decision to the facts of this case does not interfere with the prior history of the rule in question and will not produce substantial inequitable results. NRS 116.3116 was adopted in 1991. The original 1991 language states that an HOA lien is prior to a first security interest on the property "to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to section 99 of this act which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien." At this point, holders of first deeds of trust were on notice of a potential priority conflict.

The Court finds that applying SFR to the facts in this case does not implicate any concerns about retroactive application of a new principle of law. Therefore, in evaluating the constitutionality and application of NRS Chapter 116, the Court will refer to the decision in SFR.

2. Constitutionality of NRS Chapter 116

Marchai argues the HOA foreclosure provisions of NRS Chapter 116 are unconstitutional, which would prevent the HOA sale from extinguishing Marchai's interest in the Wolf Rivers property. Specifically, Marchai cites the due process clause, takings clause, and void for vagueness doctrine.

a. Procedural Requirements of NRS Chapter 116

Nevada Revised Statute Chapter 116 provides the procedural requirements for homeowners' associations seeking to secure a lien for unpaid assessments

and fees. "NRS 116.3116(2)... splits an HOA lien into two pieces, a superpriority piece and a subpriority piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges, is 'prior to' a first deed of trust." SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 411 (Nev. 2014), reh'g denied (Oct. 16, 2014). That super-priority portion of the lien was held by the Nevada Supreme Court to be a true super-priority lien, which will extinguish a first deed of trust if foreclosed upon pursuant to Chapter 116's requirements. Id. at 419. Specifically, "[t]he sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption." NRS 116.31166(3); see also SFR v. U.S. Bank, 334 P.3d at 412.

For an HOA foreclosure sale to be valid, Chapter 116 requires the foreclosing HOA and its agent comply with several requirements related to notifying interested parties, including junior lienholders, of the impending foreclosure sale. To initiate foreclosure under Chapter 116, a Nevada HOA must first notify the owner of the delinquent assessments. See NRS 116.31162(1)(a). If the owner does not pay within thirty days, the HOA must then provide the owner a notice of default and election to sell. See NRS 116.31162(1)(b).

After recording the notice of default and election to sell, Chapter 116 requires the HOA to mail a copy of the notice of default and election to sell to "[e]ach person who has requested notice pursuant to NRS 107.090 or 116.31168." NRS 116.31163(1). At closer look, this provision of Chapter 116 requires the HOA to mail the notice of default to "[e]ach person who has recorded a request for a copy of the notice" and "[e]ach other person with an interest whose interest or claimed interest is subordinate to the [association's lien]." NRS 107.090(2)-(4) (reading NRS 107.090 and 116.31168 together, "deed of trust" has been replaced with "association's lien"); see NRS 116.31168(1) ("NRS 107.090 appl[ies] to the foreclosure of an association's lien as if a deed of trust were being foreclosed"). In addition to noticing those interested persons, Chapter 116 requires the HOA to mail notice to "[a]ny holder of a recorded security interest encumbering the unit's owner's interest who has

notified the association, 30 days before the recordation of the notice of default, of the existence of the security interest." NRS 116.31163(2); see NRS 111.320 ("record[ing]... must from the time of filing... impart notice to all persons of the contents thereof"); see also First Nat. Bank v. Meyers, 161 P. 929, 931 (Nev. 1916) ("One need but revert to the fact that recordation is for the purpose of giving notice to the world"). In sum, a foreclosing HOA must mail the notice of default and election to sell to (1) persons who have recorded a request for notice, (2) persons holding or claiming a subordinate interest, and (3) holders of security interests recorded at least 30 days before notice of default.

Then, if the lien has not been paid off within 90 days, the HOA may continue with the foreclosure process. See NRS 116.31162(1)(c). The HOA must next mail a notice of sale to all those who were entitled to receive the prior notice of default and election to sell, as well as the holder of a recorded security interest if the security interest holder "has notified the association, before the mailing of the notice of sale of the existence of the security interest." See NRS 116.311635(1)(a)(1), (b)(2). As this Court interprets the "notified-the-association" provision, this additional notice requirement simply means the HOA must mail the notice of sale to any holder of a security interest who has recorded its interest prior to the mailing of the notice of sale.

b. Due Process Clause

Marchai alleges NRS 116.3116 is unconstitutional because Chapter 116's express notice provisions do not require HOAs to provide mandatory notice to lenders of an impending non-judicial foreclosure; rather, Chapter 116 requires lenders to request notice in advance of foreclosure in order to receive notice of foreclosure. Marchai argues Chapter 116's notice provisions, on their face, fail to meet the notice requirements of the due process clause and therefore render Chapter 116's non-judicial foreclosure scheme unconstitutional on its face.

i. Constitutional Notice Requirement

"[P]rior to an action which will affect an interest in life, liberty, or property protected by the Due Process Clause of the Fourteenth Amendment, a State

must provide 'notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 795 (1983) (holding statutory notice requirements posting and publishing announcement of pending tax sale did not meet requirements of the Due Process Clause of the Fourteenth Amendment) (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)). "In Mennonite, the Supreme Court applied this principle and found that mere constructive notice afforded inadequate due process to a readily ascertainable mortgage holder." Cont'l Ins. Co. v. Moseley, 683 P.2d 20, 21 (Nev. 1984). The Court held that personal service or mailed notice is required: "Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable." Mennonite, 462 U.S. at 800 (emphasis in original).

Under NRS 116.31162, HOAs are required to give actual notice of their impending lien foreclosures to record owners of the property at issue. Although Chapter 116 requires actual notice be given to the property owner, the United States Supreme Court has long held, "[n]otice to the property owner, who is not in privity with his creditor and who has failed to take steps necessary to preserve his own property interest, also cannot be expected to lead to actual notice to the mortgagee." Mennonite, 462 U.S. at 799. The question here becomes, does Chapter 116 provide mortgage holders actual notice – "notice mailed to the mortgagee's last known available address, or by personal service." See Mennonite, 462 U.S. at 798.

Marchai argues Nevada law shifts the burden of giving notice to the mortgagee because associations need only give actual notice to a lienholder "who has notified the association, 30 days before the recordation of the notice of default, of the existence of [its] security interest." NRS 116.31163(2). Statutory provisions that require a party to give notice in order to get notice are often referred to as "opt-in" or "request-notice" provisions.

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In Small Engine Shop, Inc. v. Cascio, the Fifth Circuit Court of Appeals held that Louisiana's "request-notice" statute "prospectively shift[ed] the entire burden of ensuring adequate notice to an interested property owner regardless of the circumstances." 878 F.2d 883, 884 (5th Cir. 1989). Such a shift in the burden of ensuring adequate notice, the Small Engine Court held, does not afford a defaulting property owner facing foreclosure adequate notice under Mennonite and therefore violates the Due Process Clause. Id. at 890; see also USX Corp. v. Champlin, 992 F.2d 1380, 1385 (5th Cir. 1993) ("[second mortgagee]'s interest, even though terminable by foreclosure of the superior loan was sufficient to trigger due process"). For that reason, the court held the "request-notice" statute only serves to supplement the preexisting notice scheme, to allow creditors who are not otherwise reasonably ascertainable to become ascertainable. Small Engine, 878 F.2d at 892-3.

Chapter 116, if read in a vacuum, could lead to the erroneous interpretation that a mortgage holder is only entitled to receive notice of a homeowners' association's impending foreclosure if that mortgage holder requests such notice from the association; however, this reading would ignore the well-established cannon of statutory interpretation—constitutional avoidance. "It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity." U S ex rel Attorney Gen. v. Delaware & Hudson Co, 213 U.S. 366 (1909); see also State v. Curler, 67 P. 1075, 1076 (Nev. 1902) ("it is a well–established rule of this and other courts that constitutional questions will never be passed upon, except when absolutely necessary to properly dispose of the particular case").

The reading of Chapter 116's notice requirements in a way to be constitutionally valid requires that a foreclosing homeowners' association must provide notice to the following parties:

(1) Any interested person who has recorded a request for notice with the proper county recorder must be mailed copies of the notice of default and election to sell and the

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notice of sale. See NRS 116.31163(1) (notice of default must be given to "[e]ach person who has requested notice pursuant to NRS 107.090 or 116.31168"), NRS 107.090(2) (a "request for a copy of the notice of default or of sale" must be "record[ed] in the office of the county recorder of the county in which any part of the real property is situated"), and NRS 116.31168(1) ('The request must identify the lien by stating the names of the unit's owner and the common-interest community."); see also NRS 116.311635(1)(b)(1) (notice of sale must be mailed to all persons entitled to receive a copy of the notice of default). This request-notice provision exists to allow interested parties who are not otherwise ascertainable an opportunity to receive notice and protect their interest.

(2) Any other person holding or claiming an interest subordinate to the association's lien must be mailed copies of the notice of default and election to sell and the notice of sale. See NRS 116.31163(1) and .311635(1)(b)(1), supra; see also NRS 116.31168(1) (incorporating requirements of NRS 107.090 to HOA foreclosures) and NRS 107.090(3)(b) (notice must be mailed to "[e]ach other person with an interest whose interest or claimed interest is subordinate to the [association's lien]."). This catch-all provision exists to provide notice to any other interested party whose identity is reasonably ascertainable.

(3) Any holders of a recorded security interest that encumbers the homeowner's interest must be mailed copies of (a) the notice of default and election to sell, if the security interest was recorded at least 30 days before notice of default was recorded, and (b) the notice of sale, if the security interest was recorded prior to the mailing of the notice of sale. See NRS 116.31163(2), supra, and NRS 116.311635(1)(b)(2) (HOA must mail notice of sale to security interest holder that "has notified the association, before the mailing of the notice of sale of the existence of the security interest."); see also NRS 111.320, supra, and First Nat. Bank v. Meyers, 161 P. at 931 (recording of the security interest gives notice to the world of that interest).

This actual notice provision explicitly requires the foreclosing homeowners' association to provide notice to mortgage holders that have timely recorded interest in the subject property. Therefore, Marchai's facial challenge of Chapter 116's notice

requirements fails because the provisions of Chapter 116 read as a whole and in conjunction with well-established related law ensures mortgage holders and other interested parties receive actual notice of a homeowners' association's impending non-judicial foreclosure sale.

b. State Action Requirement

Although Chapter 116, on its face, provides for notice firmly grounded within the boundaries of the Due Process Clause of the Fourteenth Amendment, the Court questions whether the mandates of the Due Process Clause are in fact triggered. Marchai must identify some "state action" that runs afoul of the Fourteenth Amendment. See Lugar v. Edmondson Oil Co., 457 U.S. 922, 930 (1982) ("the Due Process Clause protects individuals only from governmental and not from private action, plaintiffs had to demonstrate that the sale of their goods was accomplished by state action"); see also S.O.C., Inc. v. Mirage Casino-Hotel, 23 P.3d 243, 247 (Nev. 2001) ("The general rule is that the Constitution does not apply to private conduct."). "Embedded in our Fourteenth Amendment jurisprudence is a dichotomy between state action, which is subject to scrutiny under the Amendment's Due Process Clause, and private conduct, against which the Amendment affords no shield, no matter how unfair that conduct may be." Nat'l Collegiate Athletic Ass'n v. Tarkanian, 488 U.S. 179, 191 (1988) (holding state university's imposition of sanctions against legendary basketball coach Jerry Tarkanian in furtherance of the NCAA's rules and recommendations did not transform NCAA's private conduct into state action).

In analyzing the state-action issue where a private party's decisive conduct has caused harm to another private party, the question becomes "whether the State was sufficiently involved to treat that decisive conduct as state action." Tarkanian, 488 U.S. at 192. In general, the State's involvement may transform private conduct into state action when the State delegates its authority to the private actor; the State knowingly accepts benefits derived from unconstitutional behavior; or when the State creates the legal framework governing the private conduct. Id. (citing for each proposition, respectively,

West v. Atkins, 487 U.S. 42 (1988); Burton v. Wilmington Parking Authority, 365 U.S. 715, 722 (1961); and North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975) (holding state's garnishment statute, which permitted writ of garnishment to be issued in pending actions by court clerk, denied due process of law)).

The conduct at issue in this case, a non-judicial foreclosure authorized by Nevada law, centers the state-action analysis on the Nevada's creation of the legal framework governing HOA non-judicial foreclosure actions. The inquiry here turns on whether the Nevada Legislature's enactment of the legal framework governing non-judicial foreclosure of homeowners' association liens constitutes sufficient state action to trigger the due process protections of the Fourteenth Amendment for mortgage holders. This Court finds it is not.

The "State is responsible for the... act of a private party when the State, by its law, has compelled the act." Adickes v. S. H. Kress & Co., 398 U.S. 144, 170 (1970). However, a State's mere acquiescence in a private action does not convert that action into that of the State. See Flagg Bros. v. Brooks, 436 U.S. 149, 164 (1978).

In Flagg Bros. v. Brooks, Ms. Brooks had fallen on hard times, faced eviction, and was forced by circumstance to place her belongings in storage. Ms. Books filed a lawsuit against the storage company, Flagg Brothers, alleging a violation of her Fourteenth Amendment rights. Specifically, the issue centered on Flagg Brothers's threat to sell Ms. Brooks's belongings pursuant to New York Uniform Commercial Code unless she paid her storage fee. Id., 436 U.S. at 153. Ms. Brooks argued that "Flagg Brothers' proposed action [wa]s properly attributable to the State because the State ha[d] authorized and encouraged it in enacting [the statutory framework authorizing the sale of her property to satisfy the storage lien]." Id., 436 U.S. at 164. The Court held that the state statute, together with private action conforming to the statute, was insufficient to establish state action, reasoning:

> Here, the State of New York has not compelled the sale of a bailor's goods, but has merely announced the circumstances under which its courts will not interfere with a private sale.

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> Indeed, the crux of respondents' complaint is not that the State has acted, but that it has refused to act. This statutory refusal to act is no different in principle from an ordinary statute of limitations whereby the State declines to provide a remedy for private deprivations of property after the passage of a given period of time.

Flagg Bros., 436 U.S. at 166 (emphasis in original).

Here, the State of Nevada, by enacting the provisions of Chapter 116, has merely announced the requirements a homeowners' association must fulfill to legally foreclose on a lien; the State of Nevada has not compelled homeowners' associations to act. Like the State of New York in Flagg Bros., here the State of Nevada has announced circumstances in which it will not interfere with the foreclosure of homeowners' association liens. Therefore, because the State of Nevada has merely acquiesced to, and not compelled, the non-judicial foreclosure of homeowners' association liens, this Court finds state action does not exist in this situation sufficient to implicate the protections of the due process clause.

Marchai cannot show that legislative enactment of Chapter 116 is a due process violation. Therefore, the Court denies Marchai's motion for summary judgment on this ground.

b. Taking Clause

Marchai argues that NRS Chapter 116 effects a regulatory taking. The Fifth Amendment to the United States Constitution prohibits "private property be[ing] taken for public use without just compensation." U.S. Const. amend. V. Article One of the Nevada Constitution correspondingly provides that "[p]rivate property shall not be taken for public use without just compensation having been first made, or secured." Nev. Const. art. I, § 8(6). The Nevada Supreme Court clarified regulatory taking jurisprudence as follows: "a per se regulatory taking occurs when a public agency seeking to acquire property for a public use... fails to follow the [statutory eminent domain] procedures... and appropriates or permanently invades private property for public use without first paying just compensation." See McCarran Int'l Airport v. Sisolak, 137 P.3d 1110, 1127 (Nev. 2006). "In deciding whether a particular governmental action has effected a taking, this Court

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focuses... both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole." Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 327 (2002) (quoting San Diego Gas & Elec. Co. v. San Diego, 450 U.S. 621, 636 (1981)).

The Nevada Legislature's enactment of the statutory framework encompassing HOA liens and non-judicial foreclosures does not rise to the level of a government taking for a public purpose. The enactment of the statutory framework alone is insufficient government action to establish such a taking. The character of the legislative action is simply to create a legal framework for private conduct to operate within, and because the foreclosure action is non-judicial, the nature of the government interference in private property is minimal, possibly even non-existent. In fact, one of the many complaints about Chapter 116's framework, is the prescription that HOA liens may be foreclosed upon without government intervention or judicial approval. That being so, the foreclosure of an HOA lien is not an action of the government, but instead is that of a private party — the HOA and its foreclosure agent.

In SFR v. U.S. Bank, the Court found the private interest at stake here was "essential for common-interest communities," stating, "Otherwise, when a homeowner walks away from the property and the first deed of trust holder delays foreclosure, the HOA has to 'either increase the assessment burden on the remaining unit/parcel owners or reduce the services the association provides (e.g., by deferring maintenance on common amenities).'" SFR v. U.S. Bank, 334 P.3d 408, 414 (Nev. 2014), reh'g denied (Oct. 16, 2014) (quoting Uniform Law Commission's Joint Editorial Board for Uniform Real Property Acts, The Six–Month "Limited Priority Lien" for Association Fees Under the Uniform Common Interest Ownership Act, at 5-6). The Court noted that the true super-priority lien was created "[t]o avoid having the community subsidize first security holders who delay foreclosure, whether strategically or for some other reason." Id. A homeowners' association is a private entity that serves an exclusively private interest; therefore, any taking that occurs as a result of a foreclosure of an HOA lien is a private action to benefit a private interest.

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Marchai cannot show that legislative enactment of Chapter 116 is a government taking by regulation or that a private foreclosure of an HOA lien serves to further a public purpose. Therefore, the Court denies Marchai's motion for summary judgment on this ground.

c. Void for Vagueness Doctrine

Marchai argues NRS Chapter 116 is unconstitutionally vague. Nevada's two-factor test for vagueness examines whether the statute, "(1) fails to provide notice sufficient to enable persons of ordinary intelligence to understand what conduct is prohibited and (2) lacks specific standards, thereby encouraging, authorizing, or even failing to prevent arbitrary and discriminatory enforcement." Flamingo Paradise Gaming, LLC v. Chanos, 217 P.3d 546, 553-54 (Nev. 2009) (quoting Silvar v. Eighth Judicial Dist. Court ex rel. County of Clark, 129 P.3d 682, 684-85 (Nev. 2006). "A statute which does not impinge on First Amendment freedoms... may be stricken as unconstitutionally vague only if it is found to be so in all its applications. Additionally, the standard of review is less strict under a challenge for vagueness where the review is directed at economic regulations." State v. Rosenthal, 819 P.2d 1296, 1300 (Nev. 1991). "Enough clarity to defeat a vagueness challenge may be supplied by judicial gloss on an otherwise uncertain statute, by giving a statute's words their well settled and ordinarily understood meaning, and by looking to the common law definitions of the related term or offense." Busefink v. State, 286 P.3d 599, 605 (Nev. 2012) (quoting Holder v. Humanitarian Law Project, 130 S.Ct. 2705, 2718 (2010)).

For the purposes of this Order, the Court will not dispute Marchai's assertion that NRS Chapter 116 is inartfully drafted; however, this is not enough for the Court to refuse to apply NRS Chapter 116. See Fairbanks v. Pavlikowski, 423 P.2d 401, 404 (Nev. 1967). The Court finds that NRS Chapter 116 is not unconstitutionally vague. As previously discussed in the Court's decision to apply the decision of SFR in this case, Chapter 116's original 1991 language put holders of first deeds of trust on notice of a potential priority conflict. Though there were conflicting interpretations of Chapter 116 prior to the SFR decision, judicial

enforcement was not arbitrary or discriminatory. The decision in SFR has clarified some ambiguities in the statutes. Because this statute does not infringe on constitutionally protected rights, as previously discussed, the standard for the Court to find unconstitutional vagueness is high. The language of Chapter 116 and the SFR decision is sufficient for this Court to find NRS Chapter 116 is not unconstitutionally vague.

Marchai cannot show that NRS Chapter 116 is unconstitutionally vague. Therefore, the Court denies Marchai's motion for summary judgment on this ground.

3. Alleged Issues Prior to Sale

Marchai asserts there are issues with the HOA's foreclosure process prior to the foreclosure sale. Marchai argues issues regarding notice and tender prevent the HOA foreclosure sale from extinguishing Marchai's deed of trust.

a. Notice

Marchai argues that the HOA failed to comply with several notice provisions of NRS Chapter 116, including requirements that notices be mailed via first class mail and notices be mailed to all parties with an interest in the property. SFR argues the foreclosure deed conclusively establishes that the notice provisions of NRS Chapter 116 were met.

The foreclosure deed's recitals are conclusive evidence of compliance with the notice provisions of NRS 116.31162 through 116.31168. NRS 116.31166(2). The deed in this case states all statutory notices were given. SFR can rely on the deed's recitals as proof that the HOA fulfilled the notice provisions of NRS Chapter 116.

The foreclosure deed's recitals are not unassailable, however. The Nevada Supreme Court recently held:

> The long-standing and broad inherent power of a court to sit in equity and quiet title, including setting aside a foreclosure sale if the circumstances support such action, the fact that the recitals made conclusive by operation of NRS 116.31166 implicate compliance only with the statutory prerequisites to foreclosure, and the foreign precedent cited under which equitable relief may still be available in

> the face of conclusive recitals, at least in cases involving fraud, lead us to the conclusion that the Legislature, through NRS 116.31166's enactment, did not eliminate the equitable authority of the courts to consider quiet title actions when an HOA's foreclosure deed contains conclusive recitals.

Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 at *6 (2016).

Based on the language in Shadow Wood and the Court's equitable powers, the Court is not persuaded that sending notices via certified mail as opposed to first class mail would justify setting aside a foreclosure sale or its effect if the parties actually received notice in a timely manner. Absent some further showing that notice was not actually received, recitals in the foreclosure deed are sufficient to establish that the HOA complied with NRS Chapter 116.

Marchai only provides evidence that notice was not received by an interested party in one case. Marchai asserts it did not receive the notice of trustee's sale mailed on July 29, 2013. At the time, Marchai had an interest in the Wolf Rivers property; however, Marchai did not have a recorded interest in the property. Though U.S. Bank transferred its deed of trust to Marchai in March of 2013, neither party recorded the transfer until August 12, 2013. U.S. Bank did receive the notice of trustee's sale mailed on July 29, 2013. Marchai's failure to receive notice can be attributed to its own actions and the actions of U.S. Bank. The HOA mailed notices to all parties that it could have known had an interest in the property.

Marchai failed to show the HOA violated the notice provisions of NRA Chapter 116. Therefore, the Court denies Marchai's motion for summary judgment on this ground.

b. Tender

Marchai asserts the homeowner tendered the HOA lien's superpriority amount prior to the HOA foreclosure sale. Marchai argues this tender causes Marchai's deed of trust to survive the HOA foreclosure sale.

The Court is faced with a novel set of facts in this case. The foreclosure process, from the first notice of delinquent assessment to the actual foreclosure sale, spanned

almost five years. During this period, Perez, the homeowner, paid the HOA $3,230.00. This is definitely more than the value of nine months of assessment fees, regardless of which year's rate is applied. At the end of the period, however, Perez still owed the HOA $14,677.80.

The Court must determine whether the homeowner's payments to an HOA in this case constitute tender of the superpriority amount. NRS 116.3116(2) states the HOA lien is prior to first deeds of trust "to the extent of the assessments for common expenses based on the periodic budget adopted by the association... which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien..." The statute does not state who can satisfy the superpriority portion of the lien.

The Court finds the answer relies on the definition of "tender" rather than distinguishing between homeowners and first deed of trust holders. A party's tender of the super-priority amount is sufficient to extinguish the super-priority character of the lien, leaving only a junior lien. See SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 414 (2014), reh'g denied (Oct. 16, 2014) and Sears v. Classen Garage & Serv. Co., 612 P.2d 293, 295 (Okla. Civ. App. 1980) ("a proper and sufficient tender of payment operates to discharge a lien"). The common law definition of tender is "an offer of payment that is coupled either with no conditions or only with conditions upon which the tendering party has a right to insist." Fresk v. Kraemer, 99 P.3d 282, 286-7 (Or. 2004); see also 74 Am. Jur. 2d Tender § 22. Tender is satisfied where there is "an offer to perform a condition or obligation, coupled with the present ability of immediate performance, so that if it were not for the refusal of cooperation by the party to whom tender is made, the condition or obligation would be immediately satisfied." 15 Williston, A Treatise on the Law of Contracts, § 1808 (3d. ed. 1972).

In the case of a first deed of trust holder offering to pay the HOA nine months of assessments, a tender is undoubtedly taking place in order to satisfy the superpriority amount. The deed of trust holder offers to perform a specific condition that the HOA is

clearly aware of. In the case of a homeowner paying an HOA, the case is not so clear. The homeowner has a responsibility to pay the HOA fees every month. Payments to the HOA could be directed towards old or new monthly fees. The homeowner paying the HOA is not a clear offer to satisfy the HOA's superpriority lien amount. It could be an offer to satisfy the homeowner's newer debts to the HOA.

The Court finds that further factual development is needed to determine whether Perez's payments to the HOA constituted a valid tender. Marchai is careful in its motion for summary judgment to phrase Perez's payments to the HOA during the foreclosure process as continually being in response to the HOA's notices of delinquent liens and sales. If this was the intent of Perez, Marchai can make the case that Perez's payments to the HOA were designed to satisfy the HOA lien's superpriority amount. This would potentially protect Perez, as Marchai would be able to sell the Wolf Rivers property to collect Perez's debt rather than directly pursue Perez under the agreement secured by the deed of trust. On the other hand, SFR could prove Perez was attempting to keep up with her monthly dues and had no intent of directing her payments towards the HOA's superpriority amount. The foreclosure process's length of time in this case further complicates the issue for both sides.

The Court finds genuine issues of material fact exist on the issue of tender. Therefore, the Court denies both Marchai and SFR's motion for summary judgment on this ground.

4. Alleged Issues With Foreclosure Sale

Marchai asserts there are also issues with the HOA's foreclosure sale. Marchai argues issues regarding the wording in the foreclosure deed and commercial reasonableness prevent the foreclosure sale from extinguishing Marchai's interest in the property. SFR argues any issues in the foreclosure process cannot impact SFR's interest in the property as a bona fide purchaser.

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a. Alessi & Koenig's Interest in the Property

Marchai argues SFR actually purchased Alessi & Koenig's interest in the Wolf Rivers property rather than the HOA's interest. Marchai bases its argument on a sentence in the foreclosure deed:

> Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien... does hereby grant, without warranty expressed or implied to: SFR... all its right, title and interest in the property...

While the Court agrees this sentence is inartfully drafted, the Court does not agree that it conclusively establishes that Alessi & Koenig were the grantors at the HOA foreclosure sale. At most, this sentence creates an ambiguity in the deed. The deed identifies the HOA as the foreclosing beneficiary. The deed also states:

> This conveyance is made pursuant to the powers conferred upon the Trustee by NRS 116 et seq... All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with.

This ambiguity cannot be resolved in favor of Marchai on a motion for summary judgment. Therefore, the Court denies Marchai's motion for summary judgment on this ground.

b. Commercial Reasonableness

Marchai argues the HOA foreclosure sale was commercially unreasonable. SFR argues that there is no requirement that the sale be reasonable or, in the alternative, there is not sufficient proof to demonstrate that the sale was unreasonable.

The decision in SFR did not address what commercial reasonableness was required in HOA foreclosure sales. SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 418 n.6 (Nev. 2014), reh'g denied (Oct. 16, 2014). NRS Chapter 116, however, states, "[e]very contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement." NRS 116.1113.

It used to be clear that "[m]ere inadequacy of price is not sufficient to justify setting aside a foreclosure sale, absent a showing of fraud, unfairness or oppression." Long v.

Towne, 639 P.2d 528, 530 (Nev. 1982). The Nevada Supreme Court recently created room for debate on this issue in its Shadow Wood decision. The Nevada Supreme Court states, "demonstrating that an association sold a property at its foreclosure sale for an inadequate price is not enough to set aside that sale; there must also be a showing of fraud, unfairness, or oppression. Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 at *6 (2016). In the next sentence, the Nevada Supreme Court appears to distinguish a merely inadequate price from a price that is "grossly inadequate as a matter of law" and indicates that gross inadequacy may be sufficient grounds to set aside a sale. Id.

The Court finds that some other evidence of fraud, unfairness or oppression is still required to set aside an HOA foreclosure sale, regardless of the price. Shadow Wood cites Golden v. Tomiyasu, 387 P.2d 989, 995 (Nev. 1963) which required some showing of fraud "in addition to gross inadequacy of price" for a court to set aside a transaction. Though a sales price may be extremely low, as in the instant case before the Court, the price alone is insufficient proof of commercial unreasonableness.

The Court finds Marchai has established that there are material issues of fact regarding whether the HOA foreclosure sale was commercially reasonable. Price is one factor the Court may consider. Marchai also argues the HOA sale was conducted after the homeowner tendered the superpriority amount to the HOA. Arguments regarding notice that the Court negated in this Order could also be relevant on the issue of commercial reasonableness with further factual development.

Marchai fails to establish as a matter of law that the HOA sale was commercially unreasonable. Therefore, the Court denies Marchai's motion for summary judgment on this ground.

c. Bona Fide Purchaser

SFR argues that any alleged deficiencies with the HOA foreclosure sale in this case do not impact SFR's quiet title claim because SFR is a bona fide purchaser for value. The Nevada Supreme Court recently held that potential harm to alleged bona fide purchasers must be evaluated, but it is possible to "demonstrate that the equities swayed so

far in [the homeowner's] favor as to support setting aside [the] foreclosure sale." Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 at *10 (2016).

Questions as to SFR's bona fide purchaser status and the balance of equities in this case are questions of fact. This is especially true in the instant case. The HOA's foreclosure proceedings lasted almost five years. Multiple notices of delinquency, default, and sale were recorded. The Court cannot rule on whether a reasonable purchaser would be put on notice by these circumstances at the summary judgment stage.

SFR fails to establish as a matter of law that it was a bona fide purchaser and that the equities in this case prevent setting aside the foreclosure sale. Therefore, the Court denies SFR's motion for summary judgment on this ground.

IV. Conclusion

The Court finds that genuine issues of material fact remain in this case. The Court denies SFR and Marchai's Motions for Summary Judgment and SFR's Motion to Strike.

DATED this 19th day of February, 2016.

LINDA MARIE BELL
DISTRICT COURT JUDGE

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
David J. Merrill, Esq. David J. Merrill, P.C.	Counsel for Marchai, B.T.
Diana Cline Ebron, Esq. Jacqueline A. Gilbert, Esq. Karen L. Hanks, Esq. Kim Gilbert Ebron	Counsel for SFR Investments Pool 1, LLC

SHELBY DAHL
LAW CLERK, DEPARTMENT VII

AFFIRMATION
Pursuant to NRS 239B.030
The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A689461 **DOES NOT** contain the social security number of any person.

/s/ Linda Marie Bell Date 3/21/2016
District Court Judge

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

Exhibit 5

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CLERK OF THE COURT

ODM
DAVID J. MERRILL
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DAVID J. MERRILL, P.C.
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Attorney for MARCHAI, B.T.

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust,

Plaintiff,

vs.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

AND ALL RELATED CLAIMS AND ACTIONS

Case No.: A-13-689461-C
Dept. No. VII

Consolidated with: A-16-742327-C

ORDER DENYING, IN PART, AND GRANTING, IN PART, DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S MOTION TO DISMISS

On January 3, 2017, Defendant Wyeth Ranch Community Association's Motion to Dismiss came before the Court. David J. Merrill of David J. Merrill, P.C. appeared on behalf of Marchai, B.T. Jacqueline A. Gilbert of Kim Gilbert Ebron appeared on behalf of SFR Investments Pool 1, LLC. Julie A. Funai of Lipson, Neilson, Cole, Seltzer & Garin, P.C. appeared on behalf of Wyeth Ranch Community Association. The Court having considered the motion, Wells Fargo's opposition, Wyeth Ranch's reply, the arguments of counsel, and good cause appearing therefor:

IT IS HEREBY ORDERED that Defendant Wyeth Ranch Community Association's Motion to Dismiss shall be and hereby is DENIED, in part, and GRANTED, in part;

IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's Third, Fourth, and Fifth Claims for Relief shall be and hereby is DENIED; and

IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's Sixth Claim for Relief for quiet title shall be and hereby is GRANTED.

DATED this 31 day of January 2017.

HONORABLE LINDA MARIE BELL

Submitted by:

DAVID J. MERRILL, P.C.

By: _____
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By: _____
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Attorneys for WYETH RANCH COMMUNITY ASSOCIATION

Approved as to form and content by:

KIM GILBERT EBRON

By: _____
JACQUELINE A. GILBERT
Nevada Bar No. 10593
7625 Dean Martin Drive, # 110
Las Vegas, Nevada 89139
(702) 485-3300
Attorneys for SFR INVESTMENTS POOL 1, LLC

IT IS HEREBY ORDERED that Defendant Wyeth Ranch Community Association's Motion to Dismiss shall be and hereby is DENIED, in part, and GRANTED, in part;

IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's Third, Fourth, and Fifth Claims for Relief shall be and hereby is DENIED; and

IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's Sixth Claim for Relief for quiet title shall be and hereby is GRANTED.

DATED this _____ day of January 2017.

HONORABLE LINDA MARIE BELL

Submitted by:

DAVID J. MERRILL, P.C.

By: _____
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Attorneys for SFR INVESTMENTS POOL 1, LLC

Exhibit 6

DAO

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI B.T.,

Plaintiff,

vs.

CRISTELA PEREZ; SFR INVESTMENTS POOL 1, LLC; U.S. BANK NATIONAL ASSOCIATION, N.D.; DOES I through X; and ROE CORPORATIONS 1 through 10, inclusive,

Defendants.

And all related actions.

Case No. A-13-689461-C

Dep't No. VII

DECISION AND ORDER

This case arises from a homeowners' association's non-judicial foreclosure sale of residential real property located at 7119 Wolf Rivers Avenue in Las Vegas, Nevada. The HOA sold the Wolf Rivers property to satisfy the two recorded Notices of Defaults which included a superpriority lien over the holder of the deed of trust. The HOA sold the Wolf Rivers property to SFR. Upon the homeowners' association's foreclosure sale of the property, Marchai B.T., the holder of the deed of trust and promissory note, filed suit alleging that the sale did not extinguish their deed of trust pursuant to NRS Chapter 116. SFR and the homeowners' association counter that Marchai's lien is extinguished. Now before the Court are Defendant SFR Investments Pool 1's and Defendant Wyeth Ranch Community Association's ("the HOA") Motions for Summary Judgment and Plaintiff Marchai's opposition. These matters came before the Court on August 22, 2017. The Court denies SFR and the HOA's Motions for Summary Judgment and after resolution of the legal matters presented, finds in favor of Plaintiff Marchai.

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

OCT 03 2017

☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☐ Motion to Dismiss by Deft(s)
☒ Summary Judgment
☐ Stipulated Judgment
☐ Default Judgment
☐ Judgment of Arbitration

I. Factual Background

In 2004, Cristela Perez entered into two loan agreements with Countrywide Home Loans in order to purchase the property. The loans were secured by two deeds of trust on the Wolf Rivers property at 2119 Wolf Rivers Avenue. The property was subject to the terms of the Wyeth Ranch Community Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs). After the initial purchase, Perez refinanced the two Countrywide loans through an agreement with CMG Mortgage. CMG Mortgage recorded a deed of trust against the property on November 9, 2005. Ultimately, there were three active Notices of Default. The October 8, 2008 notice was rescinded, leaving the unrescinded notices at issue in this matter.

A. First Notice of Delinquent Assessment Lien

The HOA recorded its first Notice of Delinquent Assessment Lien on October 8, 2008. At that time, the HOA charged $140.00 per month in association dues, collected quarterly. At the beginning of 2009, the HOA increased its monthly dues to $152.50. The HOA recorded a Notice of Default and Election to Sell on January 7, 2009. The HOA recorded a Notice of Trustee's Sale on January 14, 2010. In 2010, the HOA increased its monthly dues to $159.50.

On February 3, 2010, the HOA sent a demand letter to Perez. On February 12, 2010, Perez paid the HOA $900.00, which more than covered all outstanding HOA dues, but did not cover remaining fees and costs. On April 13, 2010, the HOA proposed a payment plan to Perez. On May 11, 2010, Perez paid the HOA $300.00. Perez failed, however to comply with the payment plan. The Trustee on behalf of the HOA applied payments as partial payments on the account for the duration of the resident transaction detail. See Exhibit 2-H of Appendix of Exhibits to Marchai, B.T.'s Motion for Summary Judgment.

On July 13, 2010, the HOA mailed a Pre-Notice of Trustee Sale and Notice of Default and Election to Sell to Perez. Perez paid the HOA $645.00 between August 2 and November 30, 2010. The HOA recorded a Rescission of Notice of Sale on March 9, 2011. Perez paid the HOA $160.00 on March 10, 2011.

On March 29, 2011, the HOA recorded a second Notice of Sale. On July 27, 2011, the HOA sent Perez a letter stating Perez was in breach of the payment plan. On August 4, 2011, Perez paid the HOA $165.00.

B. Second Notice of Delinquent Assessment Lien

On December 20, 2011, the HOA recorded a second Notice of Delinquent Assessment lien. The original Notice was not rescinded. The HOA recorded a Notice of Default and Election to Sell on February 28, 2012. Perez paid the HOA $760.00 between March 19 and July 26, 2012. CMG Mortgage assigned its deed of trust to CitiMortgage in May of 2012. CitiMortgage assigned the deed to U.S. Bank in July of 2012. The HOA recorded a Notice of Trustee's Sale on October 31, 2012. Perez paid the HOA $300.00 on November 13, 2012.

In March of 2013, U.S. Bank assigned its deed of trust to Marchai. Neither U.S. Bank nor Marchai recorded the transfer of interest for approximately five months. During this gap, U.S. Bank did not inform Marchai of the HOA's foreclosure proceedings. The HOA mailed a Notice of Trustee's sale to CMG Mortgage, CitiMortgage, and U.S. Bank on July 29, 2013. Marchai finally recorded its interest in the Wolf Rivers property on August 12, 2013. Marchai's loan servicer received notice of the trustee's sale on August 27, 2013, the day before the sale was scheduled to take place. The servicer contacted the HOA's trustee conducting the sale, Alessi & Koenig, to ask that the sale be postponed. The HOA declined.

Alessi & Koenig conducted a foreclosure sale of the Wolf Rivers property on August 28, 2013. SFR purchased the property for $21,000.00. SFR recorded a trustee's deed upon sale on September 9, 2013 identifying SFR as the grantee and the HOA as the foreclosing beneficiary. The trustee's deed states:

> Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien... does hereby grant, without warranty expressed or implied to: SFR... all its right, title and interest in the property...

> This conveyance is made pursuant to the powers conferred upon the Trustee by NRS 116 et seq... All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with.

At the time of sale, Perez owed the HOA $14,677.80. As of January 14, 2016, Perez owed Marchai $489,372.77 based the agreement secured by the deed of trust.

II. Procedural History

On September 30, 2013, Marchai filed a complaint against Perez, SFR, and U.S. Bank. Marchai sought to judicially foreclose on the Wolf Rivers property based on Perez's breach of the agreement secured by the deed of trust. The Court entered defaults against Perez and U.S. Bank in this case. On November 13, 2013, SFR filed an answer, counterclaim, and crossclaim. SFR brought counterclaims and crossclaims for declaratory relief/quiet title and injunctive relief. Specifically, SFR alleged Marchai's interest in the Wolf Rivers property was extinguished by the non-judicial foreclosure of the HOA's super-priority lien established pursuant to NRS Chapter 116.

On July 9, 2014, the Court ordered that the case be stayed pending a ruling from the Nevada Supreme Court on an HOA foreclosure's effect on a first deed of trust. The Nevada Supreme Court issued its ruling in SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408 (Nev. 2014) on September 18, 2014. The Nevada Supreme Court denied a rehearing on October 16, 2014. The Court lifted the stay in the instant case on January 28, 2015.

Both Marchai and SFR filed motions for summary judgment on January 14, 2016. The parties dispute whether NRS Chapter 116 is constitutional and whether the HOA foreclosure procedure in the instant case complied with NRS Chapter 116. The parties filed oppositions to each other's motions on February 3 and 4, 2016. The parties filed replies on February 8 and 9, 2016. SFR's reply contained a countermotion to strike portions of Marchai's motion for summary judgment and opposition. SFR asserts Marchai's motion exceeded the appropriate page limit. SFR also argues Marchai's opposition contains evidence not properly disclosed in the discovery process.

On March 22, 2016, this Court issued its Decision and Order denying both SFR and

Marchai their respective Motions for Summary Judgment as well as denying SFR's Motion to Strike. This Court found that the technical failings of Marchai's compliance with EDCR 2.20(a) did not rise to the level of sanctions and thus denied SFR's Motion to Strike. As discovery was ongoing, this Court also found in its March 22, 2016 Decision and Order that there remained genuine issues of fact for both Motions for Summary Judgment to be denied. The Court resolved constitutionality issues of NRS chapter 116 raised in Marchai's Motion for Summary Judgment involving due process. These sub issues include notice provisions, whether there is state action involved, violations of the Taking Clause, and vagueness.

Discovery concluded on August 15, 2017. Upon completion of discovery, the HOA and SFR renewed their Motions for Summary Judgment. The resolution of the issues in the summary judgment motion necessarily results in a decision in favor of Marchai.

III. Discussion

A. Motions for Summary Judgment

Summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law." Wood v. Safeway, Inc., 121 P.3d 1026, 1029 (Nev. 2005) (internal quotation marks and alterations omitted). "If the party moving for summary judgment will bear the burden of persuasion at trial, that party 'must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence.'" Francis v. Wynn Las Vegas, LLC, 262 P.3d 705, 714 (Nev. 2011) (citing Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 172 P.3d 131, 134 (Nev. 2007)). "When requesting summary judgment, the moving party bears the initial burden of production to demonstrate the absence of a genuine issue of material fact. If the moving party meets its burden, then the nonmoving party bears the burden of production to demonstrate that there is a genuine issue of material fact. Las Vegas Metro. Police Dep't v. Coregis Ins. Co., 256 P.3d 958, 961 (Nev. 2011) (internal citations omitted).

The HOA and SFR seek summary judgment on each of their claims against Marchai. As previously argued, SFR holds the HOA foreclosure sale extinguished Marchai's interest in the Wolf Rivers property. Marchai argues its interest survived the foreclosure sale and is superior to SFR's interest. In the current motions for summary judgment, parties reintroduce the same issues after the close of discovery along with a few new arguments. Upon the close of discovery, the Court finds no further evidence presented that lends itself to a genuine dispute over material facts. The only issues to be decided are legal issues.

These issues include whether the nonjudicial foreclosure sale constituted unfairness when Marchai requested the HOA to halt the sale the night before the sale and whether buyers are required to pay US currency the day of the sale. In addition, whether there is Perez's payments to the HOA satisfy the procedural tender requirements of NRS Chapter 116. To determine the answers to these questions, the Court must evaluate NRS Chapter 116 and the foreclosure process in this particular case.

1. Previously Addressed Issues

Issues including commercial reasonableness, SFR as a bona fide purchaser, constitutionality of Chapter 116, and whether the Trustee was the grantor in the HOA foreclosure sale were resolved this Court's Decision of Order of March 22, 2016. The Court found that Marchai failed to establish that the HOA sale was commercially unreasonable as a matter of law because absent fraud, unfairness, or oppression, an inadequate price is not dispositive of unreasonableness. Further, the Court found that SFR was not able to establish as a matter of law that it was a bona fide purchaser and that the HOA's years of foreclosure notice proceedings including delinquency notices, defaults, and sale documents would be a matter for a fact finder. Marchai raised constitutionality revolving around NRS Chapter 116 involving due process, takings, and void for vagueness. The Court found that Marchai could not show that requirements under Chapter 116 did not meet the notice requirements that would set off due process issues or the legislative enactment of Chapter 116 was a governmental taking or a meant to serve a public purpose. Nor could Marchai show that Chapter 116 meets the high standard for unconstitutionally vagueness. Lastly,

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

the Court found that an inartfully drafted foreclosure deed could not be resolved in favor of Marchai. This Court finds that there is no new law to decide in favor of granting summary judgment on these same arguments and the Court will not reconsider these issues already resolved.

2. A Nonjudicial Foreclosure Sale is Not Unfair if the HOA Proceeds with the Sale After the Lender Requests a Halt to the Sale.

Here, the HOA foreclosed upon the Wolf Rivers property, which they ultimately sold at a foreclosure sale after failure of the homeowner to pay dues. Marchai alleges that there are no material disputed issues of fact regarding the foreclosure as the parties agree to the circumstances. Parties agree that notice of the sale was given to U.S. Bank as the recorded holder of the deed of trust and that Marchai did not record their interest until after that notice of sale had been sent out to interested parties. Further, parties agree that there was no firm offer from Marchai to pay the superpriority amount of the loan prior to the sale when they made the request to halt the sale. Marchai now moves the Court to find that the HOA did not comply with NRS Chapter 116.

a. Procedural Requirements of NRS Chapter 116

Nevada Revised Statute Chapter 116 provides the procedural requirements for homeowners' associations seeking to secure a lien for unpaid assessments and fees. "NRS 116.3116(2)... splits an HOA lien into two pieces, a superpriority piece and a subpriority piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges, is 'prior to' a first deed of trust." SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 411 (Nev. 2014), reh'g denied (Oct. 16, 2014). That super-priority portion of the lien was held by the Nevada Supreme Court to be a true super-priority lien, which will extinguish a first deed of trust if foreclosed upon pursuant to Chapter 116's requirements. Id. at 419. Specifically, "[t]he sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption." NRS 116.31166(3); see also SFR v. U.S. Bank, 334 P.3d at 412.

To initiate foreclosure under Chapter 116, a Nevada homeowner association must first notify the owner of the delinquent assessments. See NRS 116.31162(1)(a). If the owner does not pay within thirty days, the homeowner association must then provide the owner a notice of default and election to sell. See NRS 116.31162(1)(b). Then, if the lien has not been paid off within 90 days, the homeowner association may continue with the foreclosure process. See NRS 116.31162(1)(c). The homeowner association must next mail a notice of sale to all those who were entitled to receive the prior notice of default and election to sell, as well as the holder of a recorded security interest if the security interest holder "has notified the association, before the mailing of the notice of sale of the existence of the security interest." See NRS 116.311635(1)(a)(1), (b)(2). As this Court interprets the "notified-the-association" provision, this additional notice requirement simply means the homeowner association must mail the notice of sale to any holder of a security interest who has recorded its interest prior to the mailing of the notice of sale.

Marchai asserts they became aware of the sale late but had made overtures to paying the superpriority lien. Marchai further asserts that after requesting that the HOA halt the sale, the HOA and the Trustee's refusal to halt the sale constituted unfairness to Marchai. The HOA and SFR argues Marchai had constructive notice through the notice served to US Bank and as a result is precluded from asking to halt the sale the night before for lack of notice.

Generally, absent a showing of fraud, unfairness, or oppression, a foreclosure sale will stand. The Nevada Supreme Court states, "demonstrating that an association sold a property at its foreclosure sale for an inadequate price is not enough to set aside that sale; there must also be a showing of fraud, unfairness, or oppression. Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 at *6 (2016). In the next sentence, the Nevada Supreme Court appears to distinguish a merely inadequate price from a price that is "grossly inadequate as a matter of law" and indicates that gross inadequacy may be sufficient grounds to set aside a sale. Id. The Court finds that some other evidence of fraud, unfairness or oppression is still required to set aside an HOA foreclosure sale,

regardless of the price. Shadow Wood cites Golden v. Tomiyasu, 387 P.2d 989, 995 (Nev. 1963) which required some showing of fraud "in addition to gross inadequacy of price" for a court to set aside a transaction.

Marchai alleges that it did not have notice of the sale. Neither side disputes that Marchai was not served with a notice of the foreclosure sale, but rather its predecessor, U.S. Bank. It is also undisputed that after the transfer from US Bank to Marchai, both U.S. Bank and Marchai waited months before recording their interest. Marchai recorded its interest after the HOA's statutory requirement of thirty days for notice to interested parties under NRS 16.31164. The HOA properly noticed U.S. Bank, the recorded holder of the deed of trust at the time of the notice. Upon learning of the sale, Marchai contacted Alessi to halt the sale. SFR and the HOA argue that there is no ongoing affirmative duty by the movant of a sale to check for new interest parties once the statutory deadline has passed, but Marchai argues that there was a continuing duty.

The HOA had no continuing legal duty to notify Marchai under the statute. Nor is there any obligation of the HOA to halt a properly noticed sale when Marchai notified them that they were the current holder in interest. It was Marchai's responsibility to record its interest to protect itself. Failing to record rests solely on Marchai and the repercussions cannot be held against the foreclosing party. Further, there was no firm offer to pay off the superpriority lien.

Therefore, this Court finds that although Marchai was not directly notified, its predecessor, U.S. Bank, had actual notice of both existing Notices of Default. The HOA properly noticed the entity on record as the holder of the first deed of trust. Had Marchai promptly recorded its interest in the property, the notice would have been sent to Marchai. This leaves the issues of whether a purchaser at a foreclosure sale was required to present cash at a nonjudicial foreclosure sale, whether Perez's payments intended to and satisfied the HOA's superpriority lien and whether having more than one Notice of Default was consequential.

3. A Purchaser is Not Required to Present Cash at a Nonjudicial Foreclosure Sale.

Marchai presents that NRS 116.31164 requires that "on the day of the sale. . . the person conducting the sale may sell the unit at public auction to the highest cash bidder." It is undisputed that SFR provided proof of funds on the day of the sale, then tendered a cashier's check to Alessi on August 29, 2013, one day after the sale. Marchai argues that this procedurally does not comply with the statute, interpreting the statute to require a payment in U.S. currency at the time of the sale. The Court is not swayed by this argument. The statute specifically requires a cash purchase rather than a credit purchase, but the statute is silent as to timing of payment. A cashier's check in this context constitutes a cash payment. It is simply infeasible in practice to expect bidders to carry large amounts of U.S. currency, often in the many tens of thousands of dollars to an auction. SFR submitted proof of funds to Alessi at the time of the sale and then tendered a cashier's check to Alessi for the full price of purchase of the property. Consequently, the sale complied with NRS 116.31164. Notwithstanding procedural issues raised under NRS 116.31164, the Court finds that a first notice of default is the operative notice when multiple notices are filed and prior notices are unwithdrawn.

4. A Second Notice of Default Results in a Supplement of the First Notice of Default when a First Notice of Default has not been Rescinded.

A superpriority lien consists of the nine months of unpaid homeowner assessments prior to a notice of default. Without satisfaction or withdrawal of the first notice of default a second notice of default serves only as a supplement to the first notice. A homeowner's association is entitled to one superpriority lien on a single property without the rescission of the prior notice of default. Pursuant to the Nevada Supreme Court's holding in Property Plus Investments, LLC v. Mortgage Electronic Registration Systems, Inc., et. al., 133 Nev. Adv. Opinion 62 (Sept. 14, 2017), this Court adopts the Nevada federal court's holding in JPMorgan Chase Bank, N.A. v. SFR Investments Pool 1, LLC. JPMorgan held that a second noticed super priority lien must have separate set of unpaid months of homeowner

association assessments to be considered a separate superpriority lien. PropertyPlus, citing JPMorgan, also holds that "when a HOA rescinds a superpriority lien on a property, the HOA may subsequently assert a separate superpriority lien on the same property . . . accruing after the rescission of the previous superpriority lien." Without the satisfaction or withdrawal of the first superpriority lien, the second notice of superpriority lien then acts as a supplement or update of the first notice.

Here, there are two unrescinded Notices of Default filed against Perez, one on March 29, 2011 and one on February 28, 2012. The 2011 Notice of Default was never withdrawn. Based on the holding in PropertyPlus, the operative notice of default is the 2011 Notice. Therefore, the Court finds that the HOA's would only be entitled to one superpriority amount on both Notices of Defaults. This leaves only the question as to Perez's intent as to the application of payments to the HOA.

5. Perez's Intent Regarding Application of Payments to the HOA

Perez maintained sporadic payments over the period starting from the first Notice of Default to the foreclosure totaling $2,390.24 Perez would receive a notice of a deficiency and make a payment toward her obligations to the HOA. Despite these payments, she was thousands of dollars behind in her HOA obligations.

The super-priority lien brands certain homeowner association liens as "prior to all other liens and encumbrances," excluding those recorded before the applicable CC&Rs. See NRS 116.3116(2)(a)-(b). Nevada Revised Statutes 116.3116 is silent on who must satisfy the lien and if they must make their intent regarding those payments known before an HOA's superpriority lien is extinguished. The public policy principle behind NRS Chapter 116 is to ensure that homeowner association dues are paid first.

Here, the HOA had two recorded and unrescinded Notices of Default on the Wolf Rivers property and ultimately sold the property at a foreclosure sale. Perez made post Notice of Default payments prior to the sale totaling $2,390.24. There are no material disputed issues of fact: the parties agree regarding the timing and amounts of payments by the homeowner and to the circumstances surrounding the Notices of Default. The question

remaining is the effect of the homeowner paying towards the lien as opposed to the holder of the deed of trust. The HOA and SFR argue that these payments by Perez had no intention of satisfying the superpriority lien, thus the first deed of trust was extinguished upon the foreclosure sale. Marchai asserts the homeowner's payments were intended to satisfy the HOA lien's superpriority amount prior to the HOA foreclosure sale. Marchai argues this tender causes Marchai's deed of trust to survive the HOA foreclosure sale.

a. Tender

The foreclosure process, from the first unrescinded notice of delinquent assessment in 2009 to the actual foreclosure sale spanned a few years. During this period, Perez, paid the HOA $2,390.24. This is more than the value of nine months of assessment fees. For the nine months preceding the operative 2009 Notice of Default, Perez's assessments totaled $1,280.00. This would have satisfied the superpriority and left a balance of $1,110.24. Perez still owed the HOA $14,677.80 and nothing precluded the HOA from seeking the full amount from the borrower. The question is whether the HOA superpriority lien was satisfied. If satisfied, it allows Marchai's lien to survive the nonjudicial foreclosure sale to SFR. If not, then Marchai's first deed is extinguished by the sale to SFR.

As suggested by SFR, the beneficiary of a deed of trust need only "determin[e] the precise superpriority amount in advance of the sale," and then "pay the [nine] months' assessments demanded by the association." SFR, 334 P.3d at 413, 418. Satisfying the superpriority amount of the lien, not the amounts incurred by any particular months, preserves the deed of trust. See Stone Hollow Ave. Trust v. Bank of America, *N.A.*, 382 P.3d 911 (Nev. Aug. 11, 2016) (unpublished disposition) (finding tender of $198 effective to discharge the lien when "$198 was adequate to pay off the superpriority portion of" the HOA's lien.)

Different from SFR, here the Court must determine whether the homeowner's payments to an HOA in this case constitutes tender of the superpriority amount or whether the payments were meant to keep up with current assessment obligations. The Court finds

that absent contrary evidence, it is a distinction without a difference. The public policy and stated legislative intent behind Chapter 116 is to ensure payment of homeowner liens, hence the superpriority. Nevada Revised Statutes 116.3116(2) states the HOA lien is prior to first deeds of trust, but does not limit who can satisfy the superpriority portion of the lien. Nor does the statute or case law dictate that payments from a homeowner must first be applied to obligations other than the superpriority.

Marchai alleges that it was Perez's intention to apply her payments to the HOA lien's superpriority amounts that were recorded in its two Notices of Default. The HOA and SFR allege that Perez's payments only represent her intention to keep up with her monthly dues and not intended to satisfy the amounts noticed. This Court held in its March 22, 2016 Decision and Order that there were genuine issues of material fact regarding what Perez's intention was in the application of her payments. Absent evidence showing that Perez only meant to maintain her monthly assessments, she tendered payment in an amount that would satisfy more than eighteen months' worth of payments.

Upon the close of discovery, SFR and the HOA have not presented any evidence that shows Perez did not pay off the superpriority liens. Regardless of whether Perez meant to pay off the superpriority lien or apply to the balance with the payment of oldest balances first, the superpriority lien is satisfied. So whether she had the intention to pay off obligations other than the superpriority first or whether the HOA applied them to obligations other than the superpriority, the amount making up the superpriority was paid off. Thus, regardless of which months a payor may request a payment be applied to, any payment which is at least equal to the amount incurred in the nine months preceding the notice of delinquent assessment lien is sufficient to satisfy the superpriority lien. As there are no undisputed facts at the close of discovery as to the intention of payment or the effect of multiple Notice of Defaults, this Court must deny the HOA and SFR's Motions for Summary Judgment. As a result, this Court finds in favor of Marchai.

///

IV. Conclusion

The Court finds that no genuine issues of material fact remain in this case. The Court denies SFR and the HOA's Motions for Summary Judgment. As the parties agree on all the material fact in this case, the resolution of the legal issues presented on the motions for summary judgment necessarily result in a finding in favor of Marchai.

DATED this 2nd day of ~~September~~ October, 2017.

LINDA MARIE BELL
DISTRICT COURT JUDGE

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
David J. Merrill, Esq. David J. Merrill, P.C.	Counsel for Marchai, B.T.
Diana Cline Ebron, Esq. Jacqueline A. Gilbert, Esq. Karen L. Hanks, Esq. Kim Gilbert Ebron	Counsel for SFR Investments Pool 1, LLC
Kaleb D. Anderson, Esq. Megan Hummel, Esq.	Counsel for Wyeth Ranch Community Association

TINA HURD
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

AFFIRMATION
Pursuant to NRS 239B.030
The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A689461 **DOES NOT** contain the social security number of any person.

/s/ Linda Marie Bell
District Court Judge

Date 10/2/2017

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

Exhibit 7

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CLERK OF THE COURT

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust, Plaintiff, v. CRISTELA PEREZ, an individual; *et al.* Defendants. AND ALL RELATED CLAIMS AND ACTIONS	Case No.: A-13-689461-C Dept. No. XI Consolidated with: A-16-742327-C

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on for non-jury trial before the Honorable Elizabeth Gonzalez on February 22, 2021; Plaintiff Marchai, B.T. ("Marchai") being represented by its counsel David J. Merrill, Esq. of the law firm David J. Merrill, P.C.; Defendant SFR Investments Pool 1, LLC ("SFR") being represented by Karen Hanks, Esq. of the law firm Kim Gilbert Ebron; and Defendant Wyeth Ranch Community Association ("Wyeth Ranch") being represented by David T. Ochoa, Esq. of the law firm of Lipson Neilson P.C.; and Defendant Cristela Perez ("Perez") having been defaulted; the Court having read and considered the pleadings filed by the parties; having reviewed the evidence admitted during the trial; having heard and carefully considered the testimony of the witnesses called to testify and weighing their credibility; having considered the oral and written arguments of counsel, and with the intent of rendering a decision on all

remaining issues before the Court,[1] pursuant to NRCP 52(a) and 58; the Court makes the following findings of fact and conclusions of law:

PROCEDURAL HISTORY

1. In A689461 the Complaint alleges Judicial Foreclosure of Deed of Trust. SFR alleges as Counterclaims & Cross Claims, Declaratory Relief/Quiet Title and Injunctive Relief.

2. In A742327 the Complaint alleges Declaratory Relief Under Amendment V of the United States Constitution-Takings Clause; Declaratory Relief Under the Due Process Clause of the United States and Nevada Constitutions; Wrongful Foreclosure; Violation for NRS § 116.1113 et seq.; Intentional Interference with Contractual Relations; and Quiet Title.

3. Default was entered against Perez in A689461 on April 22, 2014.

4. In the Order entered March 22, 2016, Judge Bell found that Marchai failed to establish the sale was commercially unreasonable, violated the takings or due process clauses, or that the statute was unconstitutionally vague.

5. To the extent Marchai's third through sixth cause of action related to taking, due process, or commercial reasonableness, those portions of those causes of action were resolved by the 2016 Order.

6. In Judge Bell's Order entered January 24, 2017, Marchai's Quiet Title Claim against Wyeth Ranch was dismissed.

7. The October 3, 2017 Order found notice was proper, but found for Marchai based on a determination that Perez's partial payments paid off the superpriority portion of the lien.

[1] On March 18, 2019, the Nevada Supreme Court remanded this matter to the Court, after vacating this Court's prior Judgment in favor of Marchai B.T. The Nevada Supreme Court found that while Judge Bell correctly determined a homeowner's payments can cure the default of the super-priority portion of an Association's lien, an analysis of the intent of the homeowner and the Association as to whether the payments made by the homeowner in this case did in fact cure the super-priority default. Further, the Court directed an analysis of the factors outlined in *9352 Cranesbill v. Wells Fargo*, 136 NAO 8 (2020).

8. On November 6, 2017, SFR filed its Case Appeal Statement and Notice of Appeal, appealing the determination on the application of Perez's partial payments.

9. Marchai did not appeal the earlier orders or the determination on notice from the October 3, 2017.

10. On March 18, 2020, the Nevada Supreme Court entered its Order Vacating Judgment and Remanding.

11. The Nevada Supreme Court found and affirmed that the 2008 Notice of Delinquent Assessment was the operative notice to review superpriority.

12. The Nevada Supreme Court found that a borrower's payments could satisfy the superpriority portion of an HOA lien. However, the Court remanded on finding that under *9352 Cranesbill Trust v. Wells Fargo Bank, N.A.,* 136 Nev., Adv. Op. 8 (Mar. 5, 2020), the facts surrounding the payments needed to be analyzed to determine if the payments actually satisfied the superpriority portion of the lien.

FINDINGS OF FACT

13. On October 4, 2002, Wyeth Ranch recorded its Declaration of Covenants, Conditions, and Restrictions ("CC&Rs") in the Official Records of the Clark County Recorder as Instrument No. 2002100401353. Wyeth Ranch recorded various amendments.

14. On July 21, 2004, a Grant, Bargain, Sale Deed transferring the real property commonly known as 7119 Wolf Rivers Avenue, Las Vegas, Nevada 89131, Parcel No. 125-15-811-013 ("Property") to Perez was recorded in the Official Records of the Clark County Recorder as Instrument No. 20040721-0003728 (Exhibit 16).

15. The Property is in the Wyeth Ranch community.

16. On October 19, 2005, Perez refinanced her two prior loans by entering into an Interest First Adjustable Rate Note ("Note") with CMG Mortgage, Inc. for $442,000.00.

17. On November 9, 2005, CMG Mortgage secured the Note by recording a Deed of Trust against the Property as Instrument No. 20051109-0001385 ("DOT").

18. Eventually, the DOT was assigned to Marchai on March 12, 2013, and the assignment was recorded with the Clark County Recorder as Instrument No. 201308120002562.

19. For all relevant time periods to this action, Wyeth Ranch collected association dues on the first day of each quarter.

20. In 2008, Wyeth Ranch collected $420.00 per quarter in association dues.

21. Complete Association Management Company ("CAMCO") acted as the community management company for Wyeth Ranch.

22. Wyeth Ranch retained Alessi & Koenig, LLC ("A&K") as its collection agent, who collected delinquent assessments from Perez.

23. Wyeth Ranch had no written documents outlining procedures for applying payments or partial payments to past due assessments.

24. When Perez submitted payments, there is no evidence she directed how she wanted the payments applied.

25. Wyeth Ranch maintained two accounts for the Property, an assessment account and a violation account.

26. Wyeth Ranch did not maintain separate superpriority and subpriority accounts for the Property.

27. On January 1, 2008, Wyeth Ranch assessed Perez a $420.00 quarterly assessment.

28. On January 30, 2008, Perez became delinquent in the payment of her quarterly assessments.

29. On April 1, 2008, Wyeth Ranch assessed Perez a $420.00 quarterly assessment.

30. Exhibit 138 evidences a "running account" statement for the assessments at the Property. On April 16, 2008, Wyeth Ranch applied a $507.60 payment to Perez's account.

Wyeth Ranch applied $420.00 of the $507.60 payment to the past due January 2008's association dues and the remainder ($87.60) to the current April 2008 association dues.

31. Based upon Exhibit 45,[2] Wyeth Ranch did *not* apply payments first to late fees or interest. Instead, it applied payments first to the oldest outstanding association dues and then any remainder to the next oldest outstanding association dues.[3]

32. On July 1, 2008, Wyeth Ranch assessed Perez a $420.00 quarterly assessment.

33. On October 1, 2008, Wyeth Ranch assessed Perez a $420.00 quarterly assessment.

34. On October 2, 2008, Wyeth Ranch instituted an action to enforce its lien by sending Perez a Notice of Delinquent Assessment (Lien) ("NODA").

35. According to the NODA, executed September 30, 2008, Perez owed Wyeth Ranch $1,425.17, including collection costs, attorney's fees, late fees, service charges, and interest. The NODA included the superpriority portion (statutorily permitted 6 months at the time) of the lien ($840), subpriority portion of the lien, late fees, A&K's attorney's fees ($370) and costs ($50).

36. The NODA was recorded on October 8, 2008.

37. In 2009, Wyeth Ranch increased its assessments from $420.00 per quarter to $457.50 per quarter.

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[2] Exhibit 45 bears a print date of 9/17/2008, a received stamp of 9/17/2008, and handwritten notations related to late fees and what appears to be the file number for this matter (11632) from A & K, *see* Exhibit 109. The Court infers that based upon Exhibit 45, A & K executed the Notice of Delinquent Assessment (Lien) on 9/30/08, in the total amount of $1425.17 after adding the handwritten late fee entry for 9/08 in the amount of $11.29. The Notice of Delinquent Assessment (Lien) recorded on 10/8/08, included the superpriority portion (statutorily permitted 6 months at the time) of the lien ($840), subpriority portion of the lien, late fees, A & K's attorney's fees ($370) and costs ($50) as reflected in Exhibit 47.

[3] The testimony of Yvette Saucedo of CAMCO is inconsistent with Exhibit 45 and outlines an audit process she and her staff follow on behalf of Wyeth Ranch. The Court finds the information contained in Exhibit 45 credible as it was prepared at the time of the NODA, rather than an after the fact readjustment as described by Ms. Saucedo. According to Ms. Saucedo, no more recent version of the report similar to Exhibit 45 was available. As a result, the Court's analysis is to apply the treatment of the April 16, 2008 payment for all later payments made by Perez.

38. On January 5, 2009, A&K recorded a Notice of Default and Election to Sell Under Homeowners Association Lien ("NOD") on behalf of Wyeth Ranch in the Official Records of the Clark County Recorder as Instrument No. 20090105-0002988. The NOD stated Perez owed Wyeth Ranch $3,096.46 as of December 17, 2008.

39. On November 5, 2009, Wyeth Ranch executed an Authorization to Conclude Non-Judicial Foreclosure and Conduct Trustee Sale. Wyeth Ranch authorized A&K to proceed with the non-judicial foreclosure of its assessment lien.

40. According to Wyeth Ranch, Perez owed $3,330.32 in assessments.

41. In 2010, Wyeth Ranch increased its assessments from $457.50 to $478.50 per quarter.

42. Under Wyeth Ranch's authorization, on January 14, 2010, A&K recorded a Notice of Trustee's Sale, which set a foreclosure sale for February 17, 2010.

43. The Notice of Trustee's Sale stated Wyeth Ranch's intention to foreclose the lien recorded on October 8, 2008.

44. According to the notice, Perez owed Wyeth Ranch $6,964.25 for unpaid assessments.

45. On February 3, 2010, A&K sent a demand to Perez and her husband, Robert Rose, in which A&K claimed that Perez owed Wyeth Ranch $6,977.61.

46. On February 12, 2010, Perez paid A&K $900.00. A&K deducted $309.60 in collection costs from the $900 payment and disbursed the remainder ($590.40) to Wyeth Ranch.

47. On March 2, 2010, Wyeth Ranch applied the $590.40 disbursement to Perez's account.

48. On March 22, 2010, Perez was provided a payment plan. The payment plan commenced on April 1, 2010, and required monthly payments of $669.87. Perez never made a payment under the payment plan.

49. On May 11, 2010, Perez paid A&K $300.00. A&K deducted $95.40 in collection costs from the $300 payment and disbursed the remainder ($204.60) to Wyeth Ranch.

50. On June 8, 2010, Wyeth Ranch applied the $204.60 disbursement to Perez's account.

51. On July 2, 2010, A&K sent Perez a letter notifying her that it terminated the payment plan.

52. On July 13, 2010, A&K sent Perez a Pre-Notice of Trustee Sale Notification based upon the NODA recorded on October 8, 2008, and the NOD recorded on January 5, 2009.

53. The Pre-Notice of Trustee's Sale demanded payment from Perez for $19,071.21.

54. On August 2, 2010, Perez paid A&K $250.00. A&K deducted $77.24 in collection costs from the $250 payment and disbursed the remainder ($172.76) to Wyeth Ranch.

55. On August 20, 2010, Wyeth Ranch applied the $172.76 disbursement to Perez's account; $172.76 for the October 2008 association dues, which left a balance for October 2008 of $204.64.

56. On September 29, 2010, Perez paid A&K $220.00. A&K deducted $67.98 in collection costs from the $220 payment and disbursed the remainder ($152.02) to Wyeth Ranch.

57. On October 15, 2010, Wyeth Ranch applied the $152.02 disbursement to Perez's account.

58. On November 30, 2010, Perez paid A&K $175.00. A&K deducted $48.82 in collection costs from the $175 payment and disbursed the remainder ($126.18) to Wyeth Ranch.

59. On December 16, 2010, Wyeth Ranch applied the $126.18 disbursement to Perez's account.

60. On March 9, 2011, A&K recorded a Rescission of Notice of Trustee's Sale, which rescinded the notice A&K recorded on January 14, 2010.[4]

61. On March 10, 2011, Perez paid A&K $160.00. A&K deducted $40.48 in collection costs from the $160 payment and disbursed the remainder ($119.52) to Wyeth Ranch.

62. On March 22, 2011, Wyeth Ranch applied the $119.52 disbursement to Perez's account.

63. On March 29, 2011, A&K recorded another Notice of Trustee's Sale based upon the January 5, 2009 NOD.

64. On June 2, 2011, Wyeth Ranch executed another authorization to allow A&K to complete the non-judicial foreclosure and conduct the trustee sale.

65. The authorization stated that Perez owed Wyeth Ranch $4,730.03 in delinquent assessments.

66. On May 23, 2011, Perez paid A&K $160.00. A&K deducted $35.68 in collection costs from the $160 payment and disbursed the remainder ($124.32) to Wyeth Ranch.

67. On June 16, 2011, Wyeth Ranch applied the $124.32 disbursement to Perez's account.

68. On August 4, 2011, Perez paid A&K $165.00.

69. A&K deducted $37.29 in collection costs from the $165 payment and disbursed the remainder ($127.71) to Wyeth Ranch.

70. On August 18, 2011, Wyeth Ranch applied the $127.71 disbursement to Perez's account.

[4] Although the notice claims to rescind the Notice of Trustee's Sale recorded on January 11, 2010, A&K did not record a Notice of Trustee's Sale on January 11, 2010. It appears that A&K meant it rescinded the notice recorded on January 14, 2010, as it does refer to Instrument Number 2589, which is the January 14, 2010 Notice of Trustee's Sale.

71. On September 30, 2011, A&K notified Perez that it terminated the payment plan of April 30, 2011.

72. On October 1, 2011, Perez defaulted under her loan from CMG Mortgage.

73. In 2011, Wyeth Ranch assessed $448.50 each quarter for assessments.

74. On November 29, 2011, A&K sent Perez a lien letter to which A&K attached another Notice of Delinquent Assessment (Lien).

75. According to the notice, Perez owed Wyeth Ranch $9,296.56.

76. On December 20, 2011, A&K recorded the second Notice of Delinquent Assessment Lien, but did not release or rescind the NODA it recorded in 2008.

77. On January 25, 2012, A&K followed up the second Notice of Delinquent Assessment (Lien) by mailing Perez a Pre-Notice of Default Letter demanding that Perez pay Wyeth Ranch $9,865.06 in past-due assessments.

78. On February 28, 2012, A&K recorded another Notice of Default and Election to Sell Under Homeowners Association Lien, but did not release or rescind the NOD it recorded on January 5, 2009.

79. According to the notice, as of February 14, 2012, Perez owed Wyeth Ranch $10,625.06 in unpaid assessments.

80. The February 28, 2012 notice states that Perez first defaulted on her obligations to Wyeth Ranch in January 2008.

81. On March 19, 2012, Perez paid A&K $300.00. A&K deducted $87.30 in collection costs from the $300 payment and disbursed the remainder ($212.70) to Wyeth Ranch.

82. On April 3, 2012, Wyeth Ranch applied the $212.70 disbursement to Perez's account.

83. On May 7, 2012, Perez paid A&K $295.00. A&K deducted $85.84 in collection costs from the $295 payment and disbursed the remainder ($209.16) to Wyeth Ranch.

84. On May 23, 2012, Wyeth Ranch applied the $209.16 disbursement to Perez's account.

85. On May 25, 2012, Mortgage Electronic Registration Systems, Inc., as the nominee for CMG Mortgage, assigned CMG Mortgage's deed of trust to CitiMortgage, Inc. CMG Mortgage endorsed the note payable to the order of CitiMortgage. On June 5, 2012, CitiMortgage recorded a Corporate Assignment of Deed of Trust.

86. On July 18, 2012, A&K sent Perez a Pre-Notice of Trustee Sale Notification, in which A&K demanded that Perez pay Wyeth Ranch $11,371.07.

87. Ostensibly, A&K sent the Pre-Notice of Trustee's Sale Notification according to the Notice of Delinquent Assessment Lien recorded on December 20, 2011, and the Notice of Default and Election to Sell recorded nearly three years earlier on January 5, 2009.

88. On July 26, 2012, Perez paid A&K $165.00. A&K deducted $43.72 in collection costs from the $165 payment and disbursed the remainder ($121.28) to Wyeth Ranch.

89. On July 26, 2012, CitiMortgage assigned the deed of trust to U.S. Bank, N.A., as trustee for Stanwich Mortgage Loan Trust, Series 2012-6. CitiMortgage also signed an allonge, endorsing the note payable to U.S. Bank. On July 26, 2012, U.S. Bank recorded the Assignment of Mortgage with the Clark County Recorder.

90. On August 27, 2012, Wyeth Ranch applied the $121.28 disbursement to Perez's account.

91. On October 3, 2012, Carrington Mortgage Services, LLC, the servicer for the loan assigned to U.S. Bank, sent Perez a Notice of Intent to Foreclose.

92. According to the notice, Perez defaulted on the loan on October 1, 2011, and owed U.S. Bank $36,281.60.

93. On October 10, 2012, A&K prepared another Notice of Trustee's Sale.

94. According to the notice, A&K stated its intention to sell the Property at a foreclosure sale on November 28, 2012. The notice claims that A&K will conduct the sale according to the lien recorded on December 20, 2012. According to the notice, Perez owed $11,656.07.

95. On October 31, 2012, A&K recorded the Notice of Trustee's Sale, but did not rescind the Notice of Trustee's Sale it recorded on March 29, 2011.

96. On November 13, 2012, Perez made a $300.00 payment to A&K. A&K deducted $78.90 in collection costs from the $300 payment and disbursed the remainder ($221.10) to Wyeth Ranch.

97. On December 14, 2012, Wyeth Ranch applied the $221.10 disbursement to Perez's account.

98. On March 12, 2013, U.S. Bank assigned its interest in the deed of trust to Marchai, which it recorded with the Clark County Recorder on August 12, 2013. U.S. Bank executed an allonge endorsing the note to Marchai.

99. On July 11, 2013, A&K executed another Notice of Trustee's Sale.

100. The notice claimed that Perez owed $14,090.80 in unpaid assessments.

101. According to the notice, A&K intended to sell the Property at a foreclosure sale on August 28, 2013.

102. On July 31, 2013, A&K recorded the notice with the Clark County Recorder, but again failed to rescind the Notice of Trustee's Sale recorded on October 31, 2012.

103. On August 27, 2013, less than 24 hours before the foreclosure sale, Peak Loan Servicing, Marchai's servicer, learned about the sale. Peak immediately contacted A&K and asked it to postpone the sale so it could pay the lien.

104. On the morning of the day of the sale (August 28, 2013), Naomi Eden at A&K emailed Brittney O'Connor, the accounting clerk at CAMCO, in which she notes that "[t]he

mortgage company is asking for an extension so they can get it paid off." Eden asked O'Connor if A&K could postpone the sale.

105. O'Connor responded to the email asking Eden how many oral postponements Wyeth Ranch had remaining.

106. Eden advised O'Connor that Wyeth Ranch still had three postponements left.

107. O'Connor then emailed Michele Weaver, a CAMCO manager. O'Connor told Weaver that Wyeth Ranch had a foreclosure sale set for that morning, that it could postpone the sale three times, and that "[t]he mortgage company would like an extension so they can pay off the account."

108. In her email to Weaver, O'Connor said she "will use all postponements then go to sale on the 3rd sale date set," "[u]nless otherwise directed by the board." Unless the association directed otherwise, postponing foreclosure sales until the third sale date was CAMCO's standard practice.

109. According to the last email in the chain, Weaver "received confirmation" that Wyeth Ranch did "NOT want to postpone."

110. Wyeth Ranch refused to postpone the sale so Marchai could pay off the account and proceeded with the foreclosure.

111. On August 28, 2013, A&K conducted a foreclosure sale.

112. The Wyeth Ranch foreclosure sale occurred on August 28, 2013. At the foreclosure sale, SFR Investments Pool 1, LLC, submitted the winning bid of $21,000.00.

113. On September 9, 2013, a Trustee's Deed Upon Sale ("Trustee's Deed") was recorded in the Official Records of the Clark County Recorder, conveying the Property to SFR.

114. At the time of the foreclosure, Wyeth Ranch's assessment ledger reflected a $10,679.12 balance. There is no differentiation between superpriority and subpriority portions of the lien.

115. Based upon the disbursements remitted to Wyeth Ranch by A&K after the NODA, the Court finds that the following amounts were applied to the running account:

Date	Disbursement	Superpriority Balance
9/30/08		840.00
3/2/10	590.40	249.60
6/8/10	204.60	45.00
8/20/10	172.76	(-127.76)

116. The disbursements from A&K extinguished the superpriority portion of the lien in August 2010, well before the foreclosure sale.

117. Even if the Court did not find that Wyeth Ranch applied the disbursements to the oldest outstanding delinquent assessment, the principles of justice and equity in this case weigh in favor of the application of those disbursements to the oldest delinquent assessment and the extinguishment of the superpriority portion of the lien.

118. SFR as a purchaser of over 600 properties at HOA foreclosure sales was aware of the issues related to superpriority HOA liens and the risks associated with purchasing a property at this type of auction.

119. Wyeth Ranch received payment in full ($10,679.12) of its assessment lien.

120. The Declaration of Value asserts that the Property has a "Transfer Tax Value" of $307,403.00.

121. The Property's fair market value on August 28, 2013, was $360,000.00.

122. If any of the preceding findings of fact are more appropriately deemed conclusions of law, then they shall be considered conclusions of law.

CONCLUSIONS OF LAW

123. The analysis made in this bench trial is limited to the matters on remand to the Court which includes:

a. Whether Perez's payments actually cured the superpriority default, based upon the actions and intent of the homeowner and the HOA and, if those cannot be determined, upon the District Court's assessment of justice and equity.

b. SFR's purported status as a bona fide purchaser.

124. Additionally, the Court evaluates the dispute between Wyeth Ranch and Marchai related to the conduct of the foreclosure sale and issues related to application and remittance of the proceeds of the sale.

125. NRS 40.010 provides that "an action may be brought by any person against another who claims an estate or interest in real property adverse to the person bringing the action, for the purpose of determining such adverse claim." NRS § 40.010.

126. "In a quiet title action, the burden of proof rests with the plaintiff to prove good title in himself." *See Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996).

127. NRS 116.3116 grants an association "a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.31035, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due." NRS § 116.3116(1) (2011).[5]

128. An association's lien "is prior to all other liens and encumbrances on a unit except:"

[5] The Legislature has amended NRS 116 several times in the time between when Wyeth Ranch initiated the foreclosure process and ultimately completed the foreclosure.

> (a) Liens and encumbrances recorded before the recordation of the declaration . . .;
>
> (b) A first security interest on the unit recorded 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 . . . .

NRS § 116.3116(2) (2011).

129. NRS 116.3116(2) also provided:

> The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 6 months *immediately preceding institution of an action to enforce the lien* . . . .

NRS § 116.3116 (2003) (emphasis added).[6]

130. Although the association's lien includes all "assessments," the lien has two parts: a superpriority piece, "consisting of the last nine months of HOA dues," and a subpriority piece consisting of all other "assessments." *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 745, 334 P.3d 408, 411 (2014).

131. The "superpriority" piece of the association's lien has priority over the first deed of trust, but the "subpriority" part is subordinate. *SFR*, 130 Nev. at 745, 334 P.3d at 411.

132. In 2008, NRS 116 limited the superpriority portion of an association's lien to the "6 months immediately preceding institution of an action to enforce the lien." NRS § 116.3116(2).

133. An association institutes an action to enforce the lien through the service of a notice of delinquent assessment. *See Saticoy Bay LLC Series 2021 Gray Eagle Way v. JP Morgan Chase Bank, N.A.*, 133 Nev. 21, 26, 388 P.3d 226, 231 (2017).

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[6] When Wyeth Ranch sent Perez the NODA in October 2008, the statute granted association's superpriority of only six, not nine, months of dues. *See* NRS § 116.3116(2) (2003). The Legislature amended the section to grant a superpriority lien of nine months in October 2009. *See* NRS § 116.3116(2) (2009).

134. The lien's superpriority portion does not include collection fees, late fees, interest, or foreclosure costs. *Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 132 Nev. 362, 371, 373 P.3d 66, 70 (2016).

135. Wyeth Ranch instituted an action to enforce its lien on October 8, 2008, when it served and recorded the NODA.

136. Only those association dues that came due between April 1, 2008, and September 30, 2008 - the six months before Wyeth Ranch instituted an action to enforce its lien - had superpriority status.[7] *See* NRS § 116.3116(2); *Saticoy Bay LLC Series 2021 Gray Eagle Way*, 133 Nev. at 26, 388 P.3d at 231; *Horizons at Seven Hills Homeowners Ass'n*, 132 Nev. at 371, 373 P.3d at 70.

137. Wyeth Ranch assessed two quarterly charges of $420.00 in dues during the six months preceding its institution of an action to enforce its lien: April 1, 2008 and July 1, 2008.

138. Wyeth Ranch had a superpriority lien for $840.00.

139. After Wyeth Ranch instituted an action to enforce its lien, Perez made payments totaling $3,390.00.

140. Perez did not direct the application of those payments to any particular expenses.

141. A&K applied the first fruits of those payments, totaling $1,008.25, to collection costs.

142. A&K then disbursed to Wyeth Ranch the remainder, totaling $2,381.75. The Court finds that Wyeth Ranch applied those disbursements to the oldest delinquent association dues.

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[7] Before Judge Bell and the Nevada Supreme Court, SFR argued that the November 29, 2011 notice of delinquent assessment was the operative notice for the institution of an action to enforce the lien. But Judge Bell previously rejected that argument and the Nevada Supreme Court affirmed that the September 2008 notice of delinquent assessment was the operative notice for the institution of an action to enforce the lien. *See SFR Invs. Pool 1, LLC v. Marchai, B.T.*, No. 74416, Order Vacating J. & Remanding at 1–2 (Mar. 18, 2020).

143. The payments by Perez more than satisfied the superpriority portion of Wyeth Ranch's lien prior to foreclosure.

144. If the Court were to conduct an analysis of the basic principles of justice and equity so that a fair result can be achieved," *9352 Cranesbill Tr.*, 136 Nev. at 80, 459 P.3d at 231, that analysis would militate in favor of the satisfaction of the superpriority portion of the lien through the payments made by Perez.

145. Although Wyeth Ranch had one lien, it maintained two accounts: a violation account and an assessment account.

146. A&K also maintained an account for collection costs.

147. When Perez made a payment to A&K after Wyeth Ranch instituted an action to enforce the lien, it first applied a portion of those payments (totaling $1,008.25) to its collection account before remitting the balance to Wyeth Ranch. None of the $2,381.75 A&K disbursed to Wyeth Ranch went to collection costs.

148. When Wyeth Ranch received the $2,381.75 disbursements from A&K, it applied all payments to its assessment account. Wyeth Ranch applied none of those payments to the violation account.

149. Wyeth Ranch applied the $2,381.75 to one running account: the assessment account. Because payments to one running account are applied to the oldest amounts due, Perez's payments satisfied the superpriority portion of Wyeth Ranch's lien.

150. This conclusion is also in the interests of justice and equity. Under this analysis, Perez, who did not abandon the Property but for five years made payments to Wyeth Ranch totaling $3,390.00, receives the benefit of having any deficiency reduced by the fair market value of the Property at the time Marchai forecloses. SFR, who paid a mere $21,000.00 for its interest in the Property, takes the Property subject to the DOT and has rented the property for the last seven years and may be entitled to excess proceeds of sale.

151. As SFR is in the business of purchasing properties at HOA foreclosures it is not a bona fide purchaser but is well aware of the risks associated with superpriority issues.

152. When Wyeth Ranch foreclosed, it foreclosed upon a subpriority lien, and Marchai's DOT survived Wyeth Ranch's foreclosure.

153. The Court rules for Marchai on its claim for quiet title and against SFR on its claim for declaratory relief/quiet title.

154. As SFR's declaratory relief/quiet title claim fails, the Court must also dismiss SFR's request for injunctive relief seeking to enjoin Marchai from foreclosing on its deed of trust.

155. A wrongful foreclosure occurs when "no breach of condition or failure of performance existed . . . which would have authorized the foreclosure." *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 304, 662 P.2d 610, 623 (1983).

156. "[T]he material issue of fact in a wrongful foreclosure claim is whether the trustor was in default when the power of sale was exercised." *Id.*

157. It is indisputable that Perez defaulted on subpriority amounts of Wyeth Ranch's lien.

158. As Wyeth Ranch foreclosed upon a subpriority lien, Marchai has no claim for wrongful foreclosure.

159. The only "duties" owed to Marchai are outlined in Sections 116.3116 through 116.31168. Wyeth Ranch satisfied these duties by complying with all notice and recording requirements.

160. NRS 116.1113 does not impose extra-statutory duties on an HOA; it only governs existing contracts and duties.

161. Here, the notice requirements of Sections 116.3116 through 116.31168 have already been reviewed on appeal, and the HOA has complied with the notice requirements.

Similarly, it has already been determined on appeal that the HOA was not required to postpone the sale to provide Marchai additional time pay.

162. Plaintiff never mentions in its Complaint a misapplication of proceeds, excess proceeds, or NRS 116.31164(3)(c)'s payment breakdown.

163. An interpleader action was filed by A&K (A-13-690586-C) regarding excess proceeds. It would be unduly prejudicial to direct a misapplication of proceeds claim against the HOA after A&K has filed bankruptcy and preventing the HOA from seeking any redress it may have against A&K, if A&K misapplied the proceeds from the sale.

164. Plaintiff did not file an unjust enrichment claim or establish at trial that Wyeth Ranch was unjustly enriched.

165. NRS § 116.1113 imposes an obligation of good faith in the performance or enforcement of every contract or duty governed by NRS Chapter 116.

166. Wyeth Ranch has not violated NRS 116.1113.\

167. Marchai's claim for bad faith against Wyeth Ranch is dismissed.

168. Perez defaulted on subpriority amounts of Wyeth Ranch's lien.

169. Because Wyeth Ranch foreclosed upon a subpriority lien, Marchai has no claim against Wyeth Ranch for breach of its obligations under NRS § 116.1113.

170. Marchai's claim under NRS § 116.1113 is dismissed.

171. To establish a claim for intentional interference with a contract, a plaintiff must prove it entered into a valid and existing contract, the defendant knew of the contract, the defendant engaged in intentional acts intended or designed to disrupt the contractual relationship, the contract was disrupted, and the plaintiff suffered damages. *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71 P.3d 1264, 1267 (2003).

172. The Note and DOT evidenced a valid and existing contract between Marchai and Perez.

173. Wyeth Ranch and SFR knew of Marchai's contract with Perez, because the recorded DOT and assignments are matters of public record.

174. The foreclosure was not intended to disrupt, nor did it disrupt, the contract that contemplates the foreclosure.

175. As Perez's payments satisfied the superpriority portion of Wyeth Ranch's lien, Marchai's contract with Perez was not disrupted, and Marchai suffered no damages.

176. Marchai's claim for intentional interference with contractual relations is dismissed.

177. It is not disputed that a portion of the assessment lien remained after Perez's payments were applied, and Perez was in default at the time of the sale.

178. It is irrelevant to the wrongful foreclosure claim whether the remaining portion was superpriority or subpriority, because the HOA never made an affirmative representation at the time of the sale that it was foreclosing on a superpriority portion of lien.

179. Wyeth Ranch was not required to make an announcement regarding superpriority at the time of the foreclosure sale.

180. NRS 40.430 *et seq.* provides the statutory framework for judicial actions for foreclosure of real mortgages in Nevada and "must be construed to permit a secured creditor to realize upon the collateral for a debt or other obligation agreed upon by the debtor and creditor when the debt or other obligation was incurred." NRS § 40.230 (2).

181. In an action for judicial foreclosure, "the judgment must be rendered for the amount found due the plaintiff, and the court, by its decree or judgment, may direct a sale of the encumbered property, or such part thereof as is necessary, and apply the proceeds of the sale as provided in NRS 40.462." NRS § 40.430(1).

182. "[A] creditor of a note secured by real property must first pursue judicial foreclosure before recovering from the debtor directly." *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 816, 123 P.3d 748, 750 (2005).

183. To enforce a deed of trust through foreclosure, the same party must hold the deed of trust and underlying promissory note. *Edelstein v. Bank of New York Mellon*, 128 Nev. 505, 512, 286 P.3d 249, 254 (2012) (citing *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1039 (9th Cir. 2011)).

184. Separation of the note and deed of trust does not preclude enforcement when the documents are ultimately unified in the same holder. *Edelstein*, 128 Nev. at 520, 286 P.3d at 259 (citing *In re Tucker*, 441 B.R. 638, 644 (Bankr. W.D. Mo. 2010)).

185. "To prove that a previous beneficiary properly assigned its beneficial interest in the deed of trust, the new beneficiary can demonstrate the assignment by means of a signed writing." *Edelstein*, 128 Nev. at 522, 286 P.3d at 260 (citing *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 255 P.3d 1275, 1279 (2011)).

186. This requirement parallels the requirements for assignment of an interest in lands generally, which "must be in writing, subscribed by the party creating, granting, assigning, or declaring the same, or by the party's lawful agent thereunto authorized in writing." NRS §111.205(1).

187. An assignment of a beneficial interest in a deed of trust must further be recorded in the recorder's office of the county where the property is located. NRS § 106.210 (2015).

188. Through MERS, CMG Mortgage assigned the Deed of Trust to CitiMortgage, who assigned it to U.S. Bank, who ultimately assigned it to Marchai.

189. The assignments satisfy the above requirements: they are in writing, subscribed to by the agent of the prior beneficiary, and recorded in Clark County where the Property is located.

190. Marchai, as the beneficiary of the DOT, may enforce it.

191. For a subsequent lender to establish it may enforce a note, it must "present evidence showing endorsement of the note either in its favor or in favor of [its servicer]." *Edelstein*, 128 Nev. at 522, 286 P.3d at 261 (citing *In re Veal*, 250 B.R. 897, 921 (9th Cir. BAP 2011)); *see also Leyva*, 255 P.3d at 1279.

192. When a promissory note is endorsed to another party, the UCC permits a note to "be made payable to bearer or payable to order," depending on the endorsement. *Leyva*, 255 P.3d at 1280 (citing NRS § 104.3109).

193. The Note is payable to the order of Marchai. CMG Mortgage endorsed the Note payable to the order of CitiMortgage. CitiMortgage then executed an allonge making the Note payable to U.S. Bank, who then executed another allonge making the Note payable to Marchai.

194. Marchai may enforce the Note.

195. Perez must pay the principal and interest on the debt evidenced by the Note, and failure to make such payments constitutes default and breach of the Note and DOT.

196. Upon default, the DOT's beneficiary must notify Perez of the breach and provide 30 days to cure.

197. If Perez fails to cure, the beneficiary may accelerate the Note's full payment and invoke the power of sale and any other remedies permitted by law.

198. Perez failed to make the October 1, 2011 payment on the Note and all payments due after that, resulting in default under the Note and DOT.

199. On October 3, 2012, the loan servicer gave notice of the breach to Perez.

200. Perez failed to cure the breach within 30 days, and Marchai elected to accelerate the amounts owed.

201. Marchai is entitled to a judgment of this Court ordering the Property sold at foreclosure to satisfy the amounts due under the Note.

202. Based upon the Court's conclusion related to the satisfaction of the superpriority portion of the lien, prior to the sale SFR took subject to the Note and DOT. SFR as a successor in interest to Perez, is entitled to all notices related to any sale of the Property by Marchai.

203. If any of the above conclusions of law are more appropriately characterized as findings of fact, then they shall be deemed findings of fact.

Based upon the foregoing Findings of Fact and Conclusions of Law, and other good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that as to Plaintiff's Claim for Declaratory Relief/Quiet Title, the Court finds in favor of Marchai that the Deed of Trust was not extinguished by the HOA foreclosure as the superpriority portion of the HOA lien was extinguished by Perez's payments;

IT IS FURTHER ORDERED that SFR's interest in the Property is subordinate and subject to the interest of Marchai.

IT IS FURTHER ORDERED that Marchai's claim for judicial foreclosure of the Property is granted.

Dated this 5th day of March, 2021

Elizabeth Gonzalez, District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

/s/ Dan Kutinac
Dan Kutinac, JEA

Exhibit 8

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI B.T.,

Plaintiff,

vs.

CRISTELA PEREZ; SFR INVESTMENTS POOL 1, LLC; U.S. BANK NATIONAL ASSOCIATION, N.D.; DOES I through X; and ROE CORPORATIONS 1 through 10, inclusive,

Defendants.

And all related actions.

Case No. A-13-689461-C

Dept. No. VII

NOTICE OF ENTRY OF DECISION AND ORDER

PLEASE TAKE NOTICE that on March 22, 2016 this Court entered a **Decision and Order.** A copy of said Order is attached hereto.

DATED this 23rd day of March, 2016.

KIM GILBERT EBRON

/s/ Diana Cline Ebron
DIANA CLINE EBRON, ESQ.
Nevada Bar No. 10580
7625 Dean Martin Drive, Suite 110
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Attorney for SFR Investments Pool 1, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of March, 2016, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic filing system, the foregoing **NOTICE OF ENTRY OF DECISION AND ORDER** to the following parties:

David J. Merrill P.C.	
Contact	**Email**
David J. Merrill	david@djmerrillpc.com

/s/ Tomas Valerio
An Employee of Kim Gilbert Ebron

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CLERK OF THE COURT

DAO

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI B.T.,

Plaintiff,

vs.

CRISTELA PEREZ; SFR INVESTMENTS POOL 1, LLC; U.S. BANK NATIONAL ASSOCIATION, N.D.; DOES I through X; and ROE CORPORATIONS 1 through 10, inclusive,

Defendants.

Case No. A-13-689461-C

Dep't No. VII

And all related actions.

DECISION AND ORDER

This case arises from a homeowners' association's (HOA) non-judicial foreclosure sale of residential real property located at 7119 Wolf Rivers Avenue in Las Vegas, Nevada. Now before the Court are Defendant SFR Investments Pool 1 ("SFR") and Plaintiff Marchai's Motions for Summary Judgment and SFR's Motion to Strike. These matters came before the Court on February 16, 2015. The Court denies SFR and Marchai's Motions for Summary Judgment and SFR's Motion to Strike.

I. Factual Background

The residential property in this case, the Wolf Rivers property, is subject to the terms of the Wyeth Ranch Community Association's ("the HOA") Declaration of Covenants, Conditions and Restrictions (CC&Rs). In 2004, Cristela Perez entered into two loan agreements with Countrywide Home Loans in order to purchase the property. The loans were secured by two deeds of trust on the Wolf Rivers property. Perez refinanced these two

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

loans through an agreement with CMG Mortgage. CMG Mortgage recorded a deed of trust against the property on November 9, 2005.

A. First Notice of Delinquent Assessment Lien

The HOA recorded its first Notice of Delinquent Assessment Lien on October 8, 2008. At that time, the HOA collected $140.00 per month in association dues. At the beginning of 2009, the HOA increased its monthly dues to $152.50. The HOA recorded a Notice of Default and Election to Sell on January 7, 2009. The HOA recorded a Notice of Trustee's Sale on January 14, 2010. In 2010, the HOA increased its monthly dues to $159.50.

On February 3, 2010, the HOA sent a demand letter to Perez. On February 12, 2010, Perez paid the HOA $900.00. On April 13, 2010, the HOA proposed a payment plan to Perez. On May 11, 2010, Perez paid the HOA $300.00. Perez failed, however to comply with the payment plan.

On July 13, 2010, the HOA mailed a Pre-Notice of Trustee Sale and Notice of Default and Election to Sell to Perez. Perez paid the HOA $645.00 between August 2 and November 30, 2010. The HOA recorded a Rescission of Notice of Sale on March 9, 2011. Perez paid the HOA $160.00 on March 10, 2011.

On March 29, 2011, the HOA recorded a second Notice of Sale. On July 27, 2011, the HOA sent Perez a letter stating Perez was in breach of the payment plan. On August 4, 2011, Perez paid the HOA $165.00.

B. Second Notice of Delinquent Assessment Lien

On December 20, 2011, the HOA recorded a second Notice of Delinquent Assessment lien. The HOA recorded a Notice of Default and Election to Sell on February 28, 2012. Perez paid the HOA $760.00 between March 19 and July 26, 2012. CMG Mortgage assigned its deed of trust to CitiMortgage in May of 2012. CitiMortgage assigned the deed to U.S. Bank in July of 2012. The HOA recorded a Notice of Trustee's Sale on October 31, 2012. Perez paid the HOA $300.00 on November 13, 2012.

In March of 2013, U.S. Bank assigned its deed of trust to Marchai. Neither U.S. Bank nor Marchai recorded the transfer of interest for approximately five months. During this gap, U.S. Bank did not inform Marchai of the HOA's foreclosure proceedings. The HOA mailed a Notice of Trustee's sale to CMG Mortgage, CitiMortgage, and U.S. Bank on July 29, 2013. Marchai recorded its interest in the Wolf Rivers property on August 12, 2013. Marchai's loan servicer received notice of the trustee's sale on August 27, 2013, the day before the sale was scheduled to take place. The servicer contacted the HOA's trustee conducting the sale, Alessi & Koenig, to ask that the sale be postponed. The HOA declined.

Alessi & Koenig as trustee for the HOA conducted a foreclosure sale of the Wolf Rivers property on August 28, 2013. SFR purchased the property for $21,000.00. SFR recorded a trustee's deed upon sale on September 9, 2013 identifying SFR as the grantee and the HOA as the foreclosing beneficiary. The trustee's deed states:

> Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien... does hereby grant, without warranty expressed or implied to: SFR... all its right, title and interest in the property...
>
> This conveyance is made pursuant to the powers conferred upon the Trustee by NRS 116 et seq... All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with.

At the time of sale, Perez owed the HOA $14,677.80. As of January 14, 2016, Perez owes Marchai $489,372.77 based the agreement secured by the deed of trust. Marchai asserts Perez is now in default on the agreement between Perez and Marchai.

II. Procedural History

On September 30, 2013, Marchai filed a complaint against Perez, SFR, and U.S. Bank. Marchai seeks to judicially foreclose on the Wolf Rivers property based on Perez's breach of the agreement secured by the deed of trust. On November 13, 2013, SFR filed an answer, counterclaim, and crossclaim. SFR brought counterclaims and crossclaims for declaratory relief/quiet title and injunctive relief. Specifically, SFR alleges Marchai's

interest in the Wolf Rivers property was extinguished by the non-judicial foreclosure of the HOA's super-priority lien established pursuant to NRS Chapter 116. The super-priority lien brands certain HOA liens as "prior to all other liens and encumbrances," excluding those recorded before the applicable CC&Rs. See NRS 116.3116(2)(a)-(b). The Court has entered defaults against Perez and U.S. Bank in this case.

On July 9, 2014, the Court ordered that the case be stayed pending a ruling from the Nevada Supreme Court on an HOA foreclosure's effect on a first deed of trust. The Nevada Supreme Court issued its ruling in SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408 (Nev. 2014) on September 18, 2014. The Nevada Supreme Court denied a rehearing on October 16, 2014. The Court lifted the stay in the instant case on January 28, 2015.

Both Marchai and SFR filed motions for summary judgment on January 14, 2016. The parties dispute whether NRS Chapter 116 is constitutional and whether the HOA foreclosure procedure in the instant case complied with NRS Chapter 116. The parties filed oppositions to each other's motions on February 3 and 4, 2016. The parties filed replies on February 8 and 9, 2016. SFR's reply contained a countermotion to strike portions of Marchai's motion for summary judgment and opposition. SFR asserts Marchai's motion exceeded the appropriate page limit. SFR also argues Marchai's opposition contains evidence not properly disclosed in the discovery process.

III. Discussion

A. Motion to Strike

The parties do not dispute that Marchai violated EDCR 2.20(a) by failing to obtain leave of Court before filing a brief in support of its motion for summary judgment that exceeded thirty pages. The parties also agree that Marchai's person most knowledgeable failed to appear at a properly noticed deposition on December 2, 2015. Marchai asserts that its failure to request leave of the Court to file an over-length brief was inadvertent. Marchai argues its failure to provide a person most knowledgeable for deposition was the result of miscommunication between substituted counsel. The parties have communicated regarding rescheduling the deposition. SFR argues these irregularities necessitate the

Court striking the excess pages in Marchai's motion for summary judgment and certain declarations submitted in support of Marchai's opposition to SFR's motion for summary judgment.

The Court finds the interests of deciding this motion on its merits outweigh the need to sanction Marchai for technical violations of Court rules. The Court also finds that SFR will not be prejudiced by the Court's decision to deny its motion. The table of contents in Marchai's motion for summary judgment uses extremely descriptive headings containing the factual and legal assertions Marchai makes throughout its motion. Using just these headings and Marchai's exhibits, the Court would be able to evaluate Marchai's arguments. In addition, though Marchai's person most knowledgeable failed to attend the scheduled December 2, 2015 deposition, Marchai has presented an explanation to the Court. The substitution of counsel created confusion regarding the deposition. This does not excuse Marchai from presenting its person most knowledgeable at a subsequent deposition, which the parties are working towards.

Failure to ask for leave, which would have been granted, and to attend one deposition does not justify the level of sanctions contemplated by SFR's motion to strike. The Court and the parties are benefitted by the Court considering all relevant, appropriate material in rendering a decision. Therefore, the Court denies SFR's motion to strike.

B. Motions for Summary Judgment

Summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law." Wood v. Safeway, Inc., 121 P.3d 1026, 1029 (Nev. 2005) (internal quotation marks and alterations omitted). "If the party moving for summary judgment will bear the burden of persuasion at trial, that party 'must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence.'" Francis v. Wynn Las Vegas, LLC, 262 P.3d 705, 714 (Nev. 2011) (citing Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 172 P.3d 131, 134 (Nev. 2007)). "When requesting summary judgment, the moving party bears the initial burden of production to

demonstrate the absence of a genuine issue of material fact. If the moving party meets its burden, then the nonmoving party bears the burden of production to demonstrate that there is a genuine issue of material fact. Las Vegas Metro. Police Dep't v. Coregis Ins. Co., 256 P.3d 958, 961 (Nev. 2011) (internal citations omitted).

Marchai and SFR seek summary judgment on each of their claims. SFR argues the HOA foreclosure sale extinguished Marchai's interest in the Wolf Rivers property. Marchai argues its interest survived the foreclosure sale and is superior to SFR's interest. To determine what interests remain on the Wolf Rivers property and the interests' priority, the Court must evaluate NRS Chapter 116 and the foreclosure process in this particular case.

1. Retroactive Application of the SFR Decision

Marchai argues the decision in SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408 (Nev. 2014), reh'g denied (Oct. 16, 2014) should only be applied prospectively. SFR was decided on September 18, 2014. In the instant case, the foreclosure sale took place on August 28, 2013.

The Nevada Supreme Court has ruled that:

> In determining whether a new rule of law should be limited to prospective application, courts have considered three factors: (1) "the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed;" (2) the court must "weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation;" and (3) courts consider whether retroactive application "could produce substantial inequitable results."

Breithaupt v. USAA Prop. & Cas. Ins. Co., 867 P.2d 402, 405 (Nev. 1994) (quoting Chevron Oil Co. v. Huson, 404 U.S. 97, 106–07 (1971)).

In the SFR decision, the Nevada Supreme Court noted, "Nevada's state and federal district courts are divided on whether NRS 116.3116 establishes a true priority lien." SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 412 (Nev. 2014), reh'g denied (Oct. 16, 2014). There was no clear past precedent on the issue. The superpriority of HOA liens was

a matter of first impression for the Nevada Supreme Court, but the resolution was foreshadowed. The Nevada Supreme Court relied on the language of NRS Chapter 116 and official comments to the Uniform Common Interest Ownership Act of 1982. Id. The language establishing the nature of the superpriority lien was amended in 2009, several years before the foreclosure sale in this case. The SFR decision also relied on a December 2012 Nevada Real Estate Division advisory opinion holding an HOA could enforce its superpriority lien through a non-judicial foreclosure. 334 P.3d at 416-417.

In addition, the Court finds that applying the SFR decision to the facts of this case does not interfere with the prior history of the rule in question and will not produce substantial inequitable results. NRS 116.3116 was adopted in 1991. The original 1991 language states that an HOA lien is prior to a first security interest on the property "to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to section 99 of this act which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien." At this point, holders of first deeds of trust were on notice of a potential priority conflict.

The Court finds that applying SFR to the facts in this case does not implicate any concerns about retroactive application of a new principle of law. Therefore, in evaluating the constitutionality and application of NRS Chapter 116, the Court will refer to the decision in SFR.

2. Constitutionality of NRS Chapter 116

Marchai argues the HOA foreclosure provisions of NRS Chapter 116 are unconstitutional, which would prevent the HOA sale from extinguishing Marchai's interest in the Wolf Rivers property. Specifically, Marchai cites the due process clause, takings clause, and void for vagueness doctrine.

a. Procedural Requirements of NRS Chapter 116

Nevada Revised Statute Chapter 116 provides the procedural requirements for homeowners' associations seeking to secure a lien for unpaid assessments

and fees. "NRS 116.3116(2)... splits an HOA lien into two pieces, a superpriority piece and a subpriority piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges, is 'prior to' a first deed of trust." SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 411 (Nev. 2014), reh'g denied (Oct. 16, 2014). That super-priority portion of the lien was held by the Nevada Supreme Court to be a true super-priority lien, which will extinguish a first deed of trust if foreclosed upon pursuant to Chapter 116's requirements. Id. at 419. Specifically, "[t]he sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption." NRS 116.31166(3); see also SFR v. U.S. Bank, 334 P.3d at 412.

For an HOA foreclosure sale to be valid, Chapter 116 requires the foreclosing HOA and its agent comply with several requirements related to notifying interested parties, including junior lienholders, of the impending foreclosure sale. To initiate foreclosure under Chapter 116, a Nevada HOA must first notify the owner of the delinquent assessments. See NRS 116.31162(1)(a). If the owner does not pay within thirty days, the HOA must then provide the owner a notice of default and election to sell. See NRS 116.31162(1)(b).

After recording the notice of default and election to sell, Chapter 116 requires the HOA to mail a copy of the notice of default and election to sell to "[e]ach person who has requested notice pursuant to NRS 107.090 or 116.31168." NRS 116.31163(1). At closer look, this provision of Chapter 116 requires the HOA to mail the notice of default to "[e]ach person who has recorded a request for a copy of the notice" and "[e]ach other person with an interest whose interest or claimed interest is subordinate to the [association's lien]." NRS 107.090(2)-(4) (reading NRS 107.090 and 116.31168 together, "deed of trust" has been replaced with "association's lien"); see NRS 116.31168(1) ("NRS 107.090 appl[ies] to the foreclosure of an association's lien as if a deed of trust were being foreclosed"). In addition to noticing those interested persons, Chapter 116 requires the HOA to mail notice to "[a]ny holder of a recorded security interest encumbering the unit's owner's interest who has

notified the association, 30 days before the recordation of the notice of default, of the existence of the security interest." NRS 116.31163(2); see NRS 111.320 ("record[ing]... must from the time of filing... impart notice to all persons of the contents thereof"); see also First Nat. Bank v. Meyers, 161 P. 929, 931 (Nev. 1916) ("One need but revert to the fact that recordation is for the purpose of giving notice to the world"). In sum, a foreclosing HOA must mail the notice of default and election to sell to (1) persons who have recorded a request for notice, (2) persons holding or claiming a subordinate interest, and (3) holders of security interests recorded at least 30 days before notice of default.

Then, if the lien has not been paid off within 90 days, the HOA may continue with the foreclosure process. See NRS 116.31162(1)(c). The HOA must next mail a notice of sale to all those who were entitled to receive the prior notice of default and election to sell, as well as the holder of a recorded security interest if the security interest holder "has notified the association, before the mailing of the notice of sale of the existence of the security interest." See NRS 116.311635(1)(a)(1), (b)(2). As this Court interprets the "notified-the-association" provision, this additional notice requirement simply means the HOA must mail the notice of sale to any holder of a security interest who has recorded its interest prior to the mailing of the notice of sale.

b. Due Process Clause

Marchai alleges NRS 116.3116 is unconstitutional because Chapter 116's express notice provisions do not require HOAs to provide mandatory notice to lenders of an impending non-judicial foreclosure; rather, Chapter 116 requires lenders to request notice in advance of foreclosure in order to receive notice of foreclosure. Marchai argues Chapter 116's notice provisions, on their face, fail to meet the notice requirements of the due process clause and therefore render Chapter 116's non-judicial foreclosure scheme unconstitutional on its face.

i. Constitutional Notice Requirement

"[P]rior to an action which will affect an interest in life, liberty, or property protected by the Due Process Clause of the Fourteenth Amendment, a State

must provide 'notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 795 (1983) (holding statutory notice requirements posting and publishing announcement of pending tax sale did not meet requirements of the Due Process Clause of the Fourteenth Amendment) (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)). "In Mennonite, the Supreme Court applied this principle and found that mere constructive notice afforded inadequate due process to a readily ascertainable mortgage holder." Cont'l Ins. Co. v. Moseley, 683 P.2d 20, 21 (Nev. 1984). The Court held that personal service or mailed notice is required: "Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable." Mennonite, 462 U.S. at 800 (emphasis in original).

Under NRS 116.31162, HOAs are required to give actual notice of their impending lien foreclosures to record owners of the property at issue. Although Chapter 116 requires actual notice be given to the property owner, the United States Supreme Court has long held, "[n]otice to the property owner, who is not in privity with his creditor and who has failed to take steps necessary to preserve his own property interest, also cannot be expected to lead to actual notice to the mortgagee." Mennonite, 462 U.S. at 799. The question here becomes, does Chapter 116 provide mortgage holders actual notice – "notice mailed to the mortgagee's last known available address, or by personal service." See Mennonite, 462 U.S. at 798.

Marchai argues Nevada law shifts the burden of giving notice to the mortgagee because associations need only give actual notice to a lienholder "who has notified the association, 30 days before the recordation of the notice of default, of the existence of [its] security interest." NRS 116.31163(2). Statutory provisions that require a party to give notice in order to get notice are often referred to as "opt-in" or "request-notice" provisions.

In Small Engine Shop, Inc. v. Cascio, the Fifth Circuit Court of Appeals held that Louisiana's "request-notice" statute "prospectively shift[ed] the entire burden of ensuring adequate notice to an interested property owner regardless of the circumstances." 878 F.2d 883, 884 (5th Cir. 1989). Such a shift in the burden of ensuring adequate notice, the Small Engine Court held, does not afford a defaulting property owner facing foreclosure adequate notice under Mennonite and therefore violates the Due Process Clause. Id. at 890; see also USX Corp. v. Champlin, 992 F.2d 1380, 1385 (5th Cir. 1993) ("[second mortgagee]'s interest, even though terminable by foreclosure of the superior loan was sufficient to trigger due process"). For that reason, the court held the "request-notice" statute only serves to supplement the preexisting notice scheme, to allow creditors who are not otherwise reasonably ascertainable to become ascertainable. Small Engine, 878 F.2d at 892-3.

Chapter 116, if read in a vacuum, could lead to the erroneous interpretation that a mortgage holder is only entitled to receive notice of a homeowners' association's impending foreclosure if that mortgage holder requests such notice from the association; however, this reading would ignore the well-established cannon of statutory interpretation—constitutional avoidance. "It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity." U S ex rel Attorney Gen. v. Delaware & Hudson Co, 213 U.S. 366 (1909); see also State v. Curler, 67 P. 1075, 1076 (Nev. 1902) ("it is a well–established rule of this and other courts that constitutional questions will never be passed upon, except when absolutely necessary to properly dispose of the particular case").

The reading of Chapter 116's notice requirements in a way to be constitutionally valid requires that a foreclosing homeowners' association must provide notice to the following parties:

(1) Any interested person who has recorded a request for notice with the proper county recorder must be mailed copies of the notice of default and election to sell and the

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notice of sale. See NRS 116.31163(1) (notice of default must be given to "[e]ach person who has requested notice pursuant to NRS 107.090 or 116.31168"), NRS 107.090(2) (a "request for a copy of the notice of default or of sale" must be "record[ed] in the office of the county recorder of the county in which any part of the real property is situated"), and NRS 116.31168(1) ('The request must identify the lien by stating the names of the unit's owner and the common-interest community."); see also NRS 116.311635(1)(b)(1) (notice of sale must be mailed to all persons entitled to receive a copy of the notice of default). This request-notice provision exists to allow interested parties who are not otherwise ascertainable an opportunity to receive notice and protect their interest.

(2) Any other person holding or claiming an interest subordinate to the association's lien must be mailed copies of the notice of default and election to sell and the notice of sale. See NRS 116.31163(1) and .311635(1)(b)(1), supra; see also NRS 116.31168(1) (incorporating requirements of NRS 107.090 to HOA foreclosures) and NRS 107.090(3)(b) (notice must be mailed to "[e]ach other person with an interest whose interest or claimed interest is subordinate to the [association's lien]."). This catch-all provision exists to provide notice to any other interested party whose identity is reasonably ascertainable.

(3) Any holders of a recorded security interest that encumbers the homeowner's interest must be mailed copies of (a) the notice of default and election to sell, if the security interest was recorded at least 30 days before notice of default was recorded, and (b) the notice of sale, if the security interest was recorded prior to the mailing of the notice of sale. See NRS 116.31163(2), supra, and NRS 116.311635(1)(b)(2) (HOA must mail notice of sale to security interest holder that "has notified the association, before the mailing of the notice of sale of the existence of the security interest."); see also NRS 111.320, supra, and First Nat. Bank v. Meyers, 161 P. at 931 (recording of the security interest gives notice to the world of that interest).

This actual notice provision explicitly requires the foreclosing homeowners' association to provide notice to mortgage holders that have timely recorded interest in the subject property. Therefore, Marchai's facial challenge of Chapter 116's notice

requirements fails because the provisions of Chapter 116 read as a whole and in conjunction with well-established related law ensures mortgage holders and other interested parties receive actual notice of a homeowners' association's impending non-judicial foreclosure sale.

b. State Action Requirement

Although Chapter 116, on its face, provides for notice firmly grounded within the boundaries of the Due Process Clause of the Fourteenth Amendment, the Court questions whether the mandates of the Due Process Clause are in fact triggered. Marchai must identify some "state action" that runs afoul of the Fourteenth Amendment. See Lugar v. Edmondson Oil Co., 457 U.S. 922, 930 (1982) ("the Due Process Clause protects individuals only from governmental and not from private action, plaintiffs had to demonstrate that the sale of their goods was accomplished by state action"); see also S.O.C., Inc. v. Mirage Casino-Hotel, 23 P.3d 243, 247 (Nev. 2001) ("The general rule is that the Constitution does not apply to private conduct."). "Embedded in our Fourteenth Amendment jurisprudence is a dichotomy between state action, which is subject to scrutiny under the Amendment's Due Process Clause, and private conduct, against which the Amendment affords no shield, no matter how unfair that conduct may be." Nat'l Collegiate Athletic Ass'n v. Tarkanian, 488 U.S. 179, 191 (1988) (holding state university's imposition of sanctions against legendary basketball coach Jerry Tarkanian in furtherance of the NCAA's rules and recommendations did not transform NCAA's private conduct into state action).

In analyzing the state-action issue where a private party's decisive conduct has caused harm to another private party, the question becomes "whether the State was sufficiently involved to treat that decisive conduct as state action." Tarkanian, 488 U.S. at 192. In general, the State's involvement may transform private conduct into state action when the State delegates its authority to the private actor; the State knowingly accepts benefits derived from unconstitutional behavior; or when the State creates the legal framework governing the private conduct. Id. (citing for each proposition, respectively,

West v. Atkins, 487 U.S. 42 (1988); Burton v. Wilmington Parking Authority, 365 U.S. 715, 722 (1961); and North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975) (holding state's garnishment statute, which permitted writ of garnishment to be issued in pending actions by court clerk, denied due process of law)).

The conduct at issue in this case, a non-judicial foreclosure authorized by Nevada law, centers the state-action analysis on the Nevada's creation of the legal framework governing HOA non-judicial foreclosure actions. The inquiry here turns on whether the Nevada Legislature's enactment of the legal framework governing non-judicial foreclosure of homeowners' association liens constitutes sufficient state action to trigger the due process protections of the Fourteenth Amendment for mortgage holders. This Court finds it is not.

The "State is responsible for the... act of a private party when the State, by its law, has compelled the act." Adickes v. S. H. Kress & Co., 398 U.S. 144, 170 (1970). However, a State's mere acquiescence in a private action does not convert that action into that of the State. See Flagg Bros. v. Brooks, 436 U.S. 149, 164 (1978).

In Flagg Bros. v. Brooks, Ms. Brooks had fallen on hard times, faced eviction, and was forced by circumstance to place her belongings in storage. Ms. Books filed a lawsuit against the storage company, Flagg Brothers, alleging a violation of her Fourteenth Amendment rights. Specifically, the issue centered on Flagg Brothers's threat to sell Ms. Brooks's belongings pursuant to New York Uniform Commercial Code unless she paid her storage fee. Id., 436 U.S. at 153. Ms. Brooks argued that "Flagg Brothers' proposed action [wa]s properly attributable to the State because the State ha[d] authorized and encouraged it in enacting [the statutory framework authorizing the sale of her property to satisfy the storage lien]." Id., 436 U.S. at 164. The Court held that the state statute, together with private action conforming to the statute, was insufficient to establish state action, reasoning:

> Here, the State of New York has not compelled the sale of a bailor's goods, but has merely announced the circumstances under which its courts will not interfere with a private sale.

> Indeed, the crux of respondents' complaint is not that the State has acted, but that it has refused to act. This statutory refusal to act is no different in principle from an ordinary statute of limitations whereby the State declines to provide a remedy for private deprivations of property after the passage of a given period of time.

Flagg Bros., 436 U.S. at 166 (emphasis in original).

Here, the State of Nevada, by enacting the provisions of Chapter 116, has merely announced the requirements a homeowners' association must fulfill to legally foreclose on a lien; the State of Nevada has not compelled homeowners' associations to act. Like the State of New York in Flagg Bros., here the State of Nevada has announced circumstances in which it will not interfere with the foreclosure of homeowners' association liens. Therefore, because the State of Nevada has merely acquiesced to, and not compelled, the non-judicial foreclosure of homeowners' association liens, this Court finds state action does not exist in this situation sufficient to implicate the protections of the due process clause.

Marchai cannot show that legislative enactment of Chapter 116 is a due process violation. Therefore, the Court denies Marchai's motion for summary judgment on this ground.

b. Taking Clause

Marchai argues that NRS Chapter 116 effects a regulatory taking. The Fifth Amendment to the United States Constitution prohibits "private property be[ing] taken for public use without just compensation." U.S. Const. amend. V. Article One of the Nevada Constitution correspondingly provides that "[p]rivate property shall not be taken for public use without just compensation having been first made, or secured." Nev. Const. art. I, § 8(6). The Nevada Supreme Court clarified regulatory taking jurisprudence as follows: "a per se regulatory taking occurs when a public agency seeking to acquire property for a public use... fails to follow the [statutory eminent domain] procedures... and appropriates or permanently invades private property for public use without first paying just compensation." See McCarran Int'l Airport v. Sisolak, 137 P.3d 1110, 1127 (Nev. 2006). "In deciding whether a particular governmental action has effected a taking, this Court

focuses... both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole." Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 327 (2002) (quoting San Diego Gas & Elec. Co. v. San Diego, 450 U.S. 621, 636 (1981)).

The Nevada Legislature's enactment of the statutory framework encompassing HOA liens and non-judicial foreclosures does not rise to the level of a government taking for a public purpose. The enactment of the statutory framework alone is insufficient government action to establish such a taking. The character of the legislative action is simply to create a legal framework for private conduct to operate within, and because the foreclosure action is non-judicial, the nature of the government interference in private property is minimal, possibly even non-existent. In fact, one of the many complaints about Chapter 116's framework, is the prescription that HOA liens may be foreclosed upon without government intervention or judicial approval. That being so, the foreclosure of an HOA lien is not an action of the government, but instead is that of a private party — the HOA and its foreclosure agent.

In SFR v. U.S. Bank, the Court found the private interest at stake here was "essential for common-interest communities," stating, "Otherwise, when a homeowner walks away from the property and the first deed of trust holder delays foreclosure, the HOA has to 'either increase the assessment burden on the remaining unit/parcel owners or reduce the services the association provides (e.g., by deferring maintenance on common amenities).'" SFR v. U.S. Bank, 334 P.3d 408, 414 (Nev. 2014), reh'g denied (Oct. 16, 2014) (quoting Uniform Law Commission's Joint Editorial Board for Uniform Real Property Acts, The Six–Month "Limited Priority Lien" for Association Fees Under the Uniform Common Interest Ownership Act, at 5-6). The Court noted that the true super-priority lien was created "[t]o avoid having the community subsidize first security holders who delay foreclosure, whether strategically or for some other reason." Id. A homeowners' association is a private entity that serves an exclusively private interest; therefore, any taking that occurs as a result of a foreclosure of an HOA lien is a private action to benefit a private interest.

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Marchai cannot show that legislative enactment of Chapter 116 is a government taking by regulation or that a private foreclosure of an HOA lien serves to further a public purpose. Therefore, the Court denies Marchai's motion for summary judgment on this ground.

c. Void for Vagueness Doctrine

Marchai argues NRS Chapter 116 is unconstitutionally vague. Nevada's two-factor test for vagueness examines whether the statute, "(1) fails to provide notice sufficient to enable persons of ordinary intelligence to understand what conduct is prohibited and (2) lacks specific standards, thereby encouraging, authorizing, or even failing to prevent arbitrary and discriminatory enforcement." Flamingo Paradise Gaming, LLC v. Chanos, 217 P.3d 546, 553-54 (Nev. 2009) (quoting Silvar v. Eighth Judicial Dist. Court ex rel. County of Clark, 129 P.3d 682, 684-85 (Nev. 2006). "A statute which does not impinge on First Amendment freedoms... may be stricken as unconstitutionally vague only if it is found to be so in all its applications. Additionally, the standard of review is less strict under a challenge for vagueness where the review is directed at economic regulations." State v. Rosenthal, 819 P.2d 1296, 1300 (Nev. 1991). "Enough clarity to defeat a vagueness challenge may be supplied by judicial gloss on an otherwise uncertain statute, by giving a statute's words their well settled and ordinarily understood meaning, and by looking to the common law definitions of the related term or offense." Busefink v. State, 286 P.3d 599, 605 (Nev. 2012) (quoting Holder v. Humanitarian Law Project, 130 S.Ct. 2705, 2718 (2010)).

For the purposes of this Order, the Court will not dispute Marchai's assertion that NRS Chapter 116 is inartfully drafted; however, this is not enough for the Court to refuse to apply NRS Chapter 116. See Fairbanks v. Pavlikowski, 423 P.2d 401, 404 (Nev. 1967). The Court finds that NRS Chapter 116 is not unconstitutionally vague. As previously discussed in the Court's decision to apply the decision of SFR in this case, Chapter 116's original 1991 language put holders of first deeds of trust on notice of a potential priority conflict. Though there were conflicting interpretations of Chapter 116 prior to the SFR decision, judicial

enforcement was not arbitrary or discriminatory. The decision in SFR has clarified some ambiguities in the statutes. Because this statute does not infringe on constitutionally protected rights, as previously discussed, the standard for the Court to find unconstitutional vagueness is high. The language of Chapter 116 and the SFR decision is sufficient for this Court to find NRS Chapter 116 is not unconstitutionally vague.

Marchai cannot show that NRS Chapter 116 is unconstitutionally vague. Therefore, the Court denies Marchai's motion for summary judgment on this ground.

3. Alleged Issues Prior to Sale

Marchai asserts there are issues with the HOA's foreclosure process prior to the foreclosure sale. Marchai argues issues regarding notice and tender prevent the HOA foreclosure sale from extinguishing Marchai's deed of trust.

a. Notice

Marchai argues that the HOA failed to comply with several notice provisions of NRS Chapter 116, including requirements that notices be mailed via first class mail and notices be mailed to all parties with an interest in the property. SFR argues the foreclosure deed conclusively establishes that the notice provisions of NRS Chapter 116 were met.

The foreclosure deed's recitals are conclusive evidence of compliance with the notice provisions of NRS 116.31162 through 116.31168. NRS 116.31166(2). The deed in this case states all statutory notices were given. SFR can rely on the deed's recitals as proof that the HOA fulfilled the notice provisions of NRS Chapter 116.

The foreclosure deed's recitals are not unassailable, however. The Nevada Supreme Court recently held:

> The long-standing and broad inherent power of a court to sit in equity and quiet title, including setting aside a foreclosure sale if the circumstances support such action, the fact that the recitals made conclusive by operation of NRS 116.31166 implicate compliance only with the statutory prerequisites to foreclosure, and the foreign precedent cited under which equitable relief may still be available in

> the face of conclusive recitals, at least in cases involving fraud, lead us to the conclusion that the Legislature, through NRS 116.31166's enactment, did not eliminate the equitable authority of the courts to consider quiet title actions when an HOA's foreclosure deed contains conclusive recitals.

Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 at *6 (2016).

Based on the language in Shadow Wood and the Court's equitable powers, the Court is not persuaded that sending notices via certified mail as opposed to first class mail would justify setting aside a foreclosure sale or its effect if the parties actually received notice in a timely manner. Absent some further showing that notice was not actually received, recitals in the foreclosure deed are sufficient to establish that the HOA complied with NRS Chapter 116.

Marchai only provides evidence that notice was not received by an interested party in one case. Marchai asserts it did not receive the notice of trustee's sale mailed on July 29, 2013. At the time, Marchai had an interest in the Wolf Rivers property; however, Marchai did not have a recorded interest in the property. Though U.S. Bank transferred its deed of trust to Marchai in March of 2013, neither party recorded the transfer until August 12, 2013. U.S. Bank did receive the notice of trustee's sale mailed on July 29, 2013. Marchai's failure to receive notice can be attributed to its own actions and the actions of U.S. Bank. The HOA mailed notices to all parties that it could have known had an interest in the property.

Marchai failed to show the HOA violated the notice provisions of NRA Chapter 116. Therefore, the Court denies Marchai's motion for summary judgment on this ground.

b. Tender

Marchai asserts the homeowner tendered the HOA lien's superpriority amount prior to the HOA foreclosure sale. Marchai argues this tender causes Marchai's deed of trust to survive the HOA foreclosure sale.

The Court is faced with a novel set of facts in this case. The foreclosure process, from the first notice of delinquent assessment to the actual foreclosure sale, spanned

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almost five years. During this period, Perez, the homeowner, paid the HOA $3,230.00. This is definitely more than the value of nine months of assessment fees, regardless of which year's rate is applied. At the end of the period, however, Perez still owed the HOA $14,677.80.

The Court must determine whether the homeowner's payments to an HOA in this case constitute tender of the superpriority amount. NRS 116.3116(2) states the HOA lien is prior to first deeds of trust "to the extent of the assessments for common expenses based on the periodic budget adopted by the association... which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien..." The statute does not state who can satisfy the superpriority portion of the lien.

The Court finds the answer relies on the definition of "tender" rather than distinguishing between homeowners and first deed of trust holders. A party's tender of the super-priority amount is sufficient to extinguish the super-priority character of the lien, leaving only a junior lien. See SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 414 (2014), reh'g denied (Oct. 16, 2014) and Sears v. Classen Garage & Serv. Co., 612 P.2d 293, 295 (Okla. Civ. App. 1980) ("a proper and sufficient tender of payment operates to discharge a lien"). The common law definition of tender is "an offer of payment that is coupled either with no conditions or only with conditions upon which the tendering party has a right to insist." Fresk v. Kraemer, 99 P.3d 282, 286-7 (Or. 2004); see also 74 Am. Jur. 2d Tender § 22. Tender is satisfied where there is "an offer to perform a condition or obligation, coupled with the present ability of immediate performance, so that if it were not for the refusal of cooperation by the party to whom tender is made, the condition or obligation would be immediately satisfied." 15 Williston, A Treatise on the Law of Contracts, § 1808 (3d. ed. 1972).

In the case of a first deed of trust holder offering to pay the HOA nine months of assessments, a tender is undoubtedly taking place in order to satisfy the superpriority amount. The deed of trust holder offers to perform a specific condition that the HOA is

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clearly aware of. In the case of a homeowner paying an HOA, the case is not so clear. The homeowner has a responsibility to pay the HOA fees every month. Payments to the HOA could be directed towards old or new monthly fees. The homeowner paying the HOA is not a clear offer to satisfy the HOA's superpriority lien amount. It could be an offer to satisfy the homeowner's newer debts to the HOA.

The Court finds that further factual development is needed to determine whether Perez's payments to the HOA constituted a valid tender. Marchai is careful in its motion for summary judgment to phrase Perez's payments to the HOA during the foreclosure process as continually being in response to the HOA's notices of delinquent liens and sales. If this was the intent of Perez, Marchai can make the case that Perez's payments to the HOA were designed to satisfy the HOA lien's superpriority amount. This would potentially protect Perez, as Marchai would be able to sell the Wolf Rivers property to collect Perez's debt rather than directly pursue Perez under the agreement secured by the deed of trust. On the other hand, SFR could prove Perez was attempting to keep up with her monthly dues and had no intent of directing her payments towards the HOA's superpriority amount. The foreclosure process's length of time in this case further complicates the issue for both sides.

The Court finds genuine issues of material fact exist on the issue of tender. Therefore, the Court denies both Marchai and SFR's motion for summary judgment on this ground.

4. Alleged Issues With Foreclosure Sale

Marchai asserts there are also issues with the HOA's foreclosure sale. Marchai argues issues regarding the wording in the foreclosure deed and commercial reasonableness prevent the foreclosure sale from extinguishing Marchai's interest in the property. SFR argues any issues in the foreclosure process cannot impact SFR's interest in the property as a bona fide purchaser.

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a. Alessi & Koenig's Interest in the Property

Marchai argues SFR actually purchased Alessi & Koenig's interest in the Wolf Rivers property rather than the HOA's interest. Marchai bases its argument on a sentence in the foreclosure deed:

> Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien... does hereby grant, without warranty expressed or implied to: SFR... all its right, title and interest in the property...

While the Court agrees this sentence is inartfully drafted, the Court does not agree that it conclusively establishes that Alessi & Koenig were the grantors at the HOA foreclosure sale. At most, this sentence creates an ambiguity in the deed. The deed identifies the HOA as the foreclosing beneficiary. The deed also states:

> This conveyance is made pursuant to the powers conferred upon the Trustee by NRS 116 et seq... All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with.

This ambiguity cannot be resolved in favor of Marchai on a motion for summary judgment. Therefore, the Court denies Marchai's motion for summary judgment on this ground.

b. Commercial Reasonableness

Marchai argues the HOA foreclosure sale was commercially unreasonable. SFR argues that there is no requirement that the sale be reasonable or, in the alternative, there is not sufficient proof to demonstrate that the sale was unreasonable.

The decision in SFR did not address what commercial reasonableness was required in HOA foreclosure sales. SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 418 n.6 (Nev. 2014), reh'g denied (Oct. 16, 2014). NRS Chapter 116, however, states, "[e]very contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement." NRS 116.1113.

It used to be clear that "[m]ere inadequacy of price is not sufficient to justify setting aside a foreclosure sale, absent a showing of fraud, unfairness or oppression." Long v.

Towne, 639 P.2d 528, 530 (Nev. 1982). The Nevada Supreme Court recently created room for debate on this issue in its Shadow Wood decision. The Nevada Supreme Court states, "demonstrating that an association sold a property at its foreclosure sale for an inadequate price is not enough to set aside that sale; there must also be a showing of fraud, unfairness, or oppression. Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 at *6 (2016). In the next sentence, the Nevada Supreme Court appears to distinguish a merely inadequate price from a price that is "grossly inadequate as a matter of law" and indicates that gross inadequacy may be sufficient grounds to set aside a sale. Id.

The Court finds that some other evidence of fraud, unfairness or oppression is still required to set aside an HOA foreclosure sale, regardless of the price. Shadow Wood cites Golden v. Tomiyasu, 387 P.2d 989, 995 (Nev. 1963) which required some showing of fraud "in addition to gross inadequacy of price" for a court to set aside a transaction. Though a sales price may be extremely low, as in the instant case before the Court, the price alone is insufficient proof of commercial unreasonableness.

The Court finds Marchai has established that there are material issues of fact regarding whether the HOA foreclosure sale was commercially reasonable. Price is one factor the Court may consider. Marchai also argues the HOA sale was conducted after the homeowner tendered the superpriority amount to the HOA. Arguments regarding notice that the Court negated in this Order could also be relevant on the issue of commercial reasonableness with further factual development.

Marchai fails to establish as a matter of law that the HOA sale was commercially unreasonable. Therefore, the Court denies Marchai's motion for summary judgment on this ground.

c. Bona Fide Purchaser

SFR argues that any alleged deficiencies with the HOA foreclosure sale in this case do not impact SFR's quiet title claim because SFR is a bona fide purchaser for value. The Nevada Supreme Court recently held that potential harm to alleged bona fide purchasers must be evaluated, but it is possible to "demonstrate that the equities swayed so

far in [the homeowner's] favor as to support setting aside [the] foreclosure sale." Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 at *10 (2016).

Questions as to SFR's bona fide purchaser status and the balance of equities in this case are questions of fact. This is especially true in the instant case. The HOA's foreclosure proceedings lasted almost five years. Multiple notices of delinquency, default, and sale were recorded. The Court cannot rule on whether a reasonable purchaser would be put on notice by these circumstances at the summary judgment stage.

SFR fails to establish as a matter of law that it was a bona fide purchaser and that the equities in this case prevent setting aside the foreclosure sale. Therefore, the Court denies SFR's motion for summary judgment on this ground.

IV. Conclusion

The Court finds that genuine issues of material fact remain in this case. The Court denies SFR and Marchai's Motions for Summary Judgment and SFR's Motion to Strike.

DATED this 19th day of February, 2016.

LINDA MARIE BELL
DISTRICT COURT JUDGE

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
David J. Merrill, Esq. David J. Merrill, P.C.	Counsel for Marchai, B.T.
Diana Cline Ebron, Esq. Jacqueline A. Gilbert, Esq. Karen L. Hanks, Esq. Kim Gilbert Ebron	Counsel for SFR Investments Pool 1, LLC

SHELBY DAHL
LAW CLERK, DEPARTMENT VII

AFFIRMATION
Pursuant to NRS 239B.030
The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A689461 **DOES NOT** contain the social security number of any person.

/s/ Linda Marie Bell Date 3/21/2016
District Court Judge

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

Exhibit 9

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CLERK OF THE COURT

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DAVID J. MERRILL
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Las Vegas, Nevada 89145
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E-mail: david@djmerrillpc.com
Attorney for Marchai, B.T.

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust,

Plaintiff,

vs.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

AND ALL RELATED CLAIMS

Case No.: A-13-689461-C
Dept. No. VII

Consolidated with: A-16-742327-C

NOTICE OF ENTRY OF ORDER

TAKE NOTICE that on the 24th day of January 2017, the Court entered an Order Denying, in Part, and Granting, in Part, Defendant Wyeth Ranch Community Association's Motion to Dismiss, a copy of which is attached hereto.

DATED this 25th day of January 2017.

DAVID J. MERRILL, P.C.

By: _____
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Attorneys for MARCHAI, B.T.

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January 2017, a copy of the foregoing Notice of Entry of Order was served electronically to the following through the Court's electronic service system:

Kim Gilbert Ebron

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust,

Plaintiff,

vs.

CRISTELA PEREZ, an individual; *et al.*

Defendants.

AND ALL RELATED CLAIMS AND ACTIONS

Case No.: A-13-689461-C
Dept. No. VII

Consolidated with: A-16-742327-C

ORDER DENYING, IN PART, AND GRANTING, IN PART, DEFENDANT WYETH RANCH COMMUNITY ASSOCIATION'S MOTION TO DISMISS

On January 3, 2017, Defendant Wyeth Ranch Community Association's Motion to Dismiss came before the Court. David J. Merrill of David J. Merrill, P.C. appeared on behalf of Marchai, B.T. Jacqueline A. Gilbert of Kim Gilbert Ebron appeared on behalf of SFR Investments Pool 1, LLC. Julie A. Funai of Lipson, Neilson, Cole, Seltzer & Garin, P.C. appeared on behalf of Wyeth Ranch Community Association. The Court having considered the motion, Wells Fargo's opposition, Wyeth Ranch's reply, the arguments of counsel, and good cause appearing therefor:

JAN 10 2017

IT IS HEREBY ORDERED that Defendant Wyeth Ranch Community Association's Motion to Dismiss shall be and hereby is DENIED, in part, and GRANTED, in part;

IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's Third, Fourth, and Fifth Claims for Relief shall be and hereby is DENIED; and

IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's Sixth Claim for Relief for quiet title shall be and hereby is GRANTED.

DATED this 21 day of January 2017.

HONORABLE LINDA MARIE BELL

Submitted by:

DAVID J. MERRILL, P.C.

By: _____
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(702) 566-1935
Attorneys for MARCHAI, B.T.

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By: _____
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Attorneys for WYETH RANCH COMMUNITY ASSOCIATION

Approved as to form and content by:

KIM GILBERT EBRON

By: _____
JACQUELINE A. GILBERT
Nevada Bar No. 10593
7625 Dean Martin Drive, # 110
Las Vegas, Nevada 89139
(702) 485-3300
Attorneys for SFR INVESTMENTS POOL 1, LLC

IT IS HEREBY ORDERED that Defendant Wyeth Ranch Community Association's Motion to Dismiss shall be and hereby is DENIED, in part, and GRANTED, in part;

IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's Third, Fourth, and Fifth Claims for Relief shall be and hereby is DENIED; and

IT IS FURTHER ORDERED that Wyeth Ranch's motion to dismiss Marchai's Sixth Claim for Relief for quiet title shall be and hereby is GRANTED.

DATED this _____ day of January 2017.

HONORABLE LINDA MARIE BELL

Submitted by:

DAVID J. MERRILL, P.C.

By: _____
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By: _____
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Exhibit 10

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DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust, Plaintiff, v. CRISTELA PEREZ, an individual; *et al.* Defendants. AND ALL RELATED CLAIMS AND ACTIONS	Case No.: A-13-689461-C Dept. No. VII Consolidated with: A-16-742327-C

Notice of Entry of Decision and Order

Take Notice that on the 3rd day of October 2017, the Court entered a Decision and Order, a true and correct copy of which is attached.

Dated this 4th day of October 2017.

David J. Merrill, P.C.

By: _____
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Nevada Bar No. 6060
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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October 2017, a copy of the foregoing Notice of Entry of Decision and Order was served electronically to the following through the Court's electronic service system:

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DAO

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI B.T.,

Plaintiff,

vs.

CRISTELA PEREZ; SFR INVESTMENTS POOL 1, LLC; U.S. BANK NATIONAL ASSOCIATION, N.D.; DOES I through X; and ROE CORPORATIONS 1 through 10, inclusive,

Defendants.

Case No. A-13-689461-C

Dep't No. VII

And all related actions.

DECISION AND ORDER

This case arises from a homeowners' association's non-judicial foreclosure sale of residential real property located at 7119 Wolf Rivers Avenue in Las Vegas, Nevada. The HOA sold the Wolf Rivers property to satisfy the two recorded Notices of Defaults which included a superpriority lien over the holder of the deed of trust. The HOA sold the Wolf Rivers property to SFR. Upon the homeowners' association's foreclosure sale of the property, Marchai B.T., the holder of the deed of trust and promissory note, filed suit alleging that the sale did not extinguish their deed of trust pursuant to NRS Chapter 116. SFR and the homeowners' association counter that Marchai's lien is extinguished. Now before the Court are Defendant SFR Investments Pool 1's and Defendant Wyeth Ranch Community Association's ("the HOA") Motions for Summary Judgment and Plaintiff Marchai's opposition. These matters came before the Court on August 22, 2017. The Court denies SFR and the HOA's Motions for Summary Judgment and after resolution of the legal matters presented, finds in favor of Plaintiff Marchai.

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

OCT 03 2017

☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☐ Motion to Dismiss by Deft(s)
☒ Summary Judgment
☐ Stipulated Judgment
☐ Default Judgment
☐ Judgment of Arbitration

I. Factual Background

In 2004, Cristela Perez entered into two loan agreements with Countrywide Home Loans in order to purchase the property. The loans were secured by two deeds of trust on the Wolf Rivers property at 2119 Wolf Rivers Avenue. The property was subject to the terms of the Wyeth Ranch Community Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs). After the initial purchase, Perez refinanced the two Countrywide loans through an agreement with CMG Mortgage. CMG Mortgage recorded a deed of trust against the property on November 9, 2005. Ultimately, there were three active Notices of Default. The October 8, 2008 notice was rescinded, leaving the unrescinded notices at issue in this matter.

A. First Notice of Delinquent Assessment Lien

The HOA recorded its first Notice of Delinquent Assessment Lien on October 8, 2008. At that time, the HOA charged $140.00 per month in association dues, collected quarterly. At the beginning of 2009, the HOA increased its monthly dues to $152.50. The HOA recorded a Notice of Default and Election to Sell on January 7, 2009. The HOA recorded a Notice of Trustee's Sale on January 14, 2010. In 2010, the HOA increased its monthly dues to $159.50.

On February 3, 2010, the HOA sent a demand letter to Perez. On February 12, 2010, Perez paid the HOA $900.00, which more than covered all outstanding HOA dues, but did not cover remaining fees and costs. On April 13, 2010, the HOA proposed a payment plan to Perez. On May 11, 2010, Perez paid the HOA $300.00. Perez failed, however to comply with the payment plan. The Trustee on behalf of the HOA applied payments as partial payments on the account for the duration of the resident transaction detail. See Exhibit 2-H of Appendix of Exhibits to Marchai, B.T.'s Motion for Summary Judgment.

On July 13, 2010, the HOA mailed a Pre-Notice of Trustee Sale and Notice of Default and Election to Sell to Perez. Perez paid the HOA $645.00 between August 2 and November 30, 2010. The HOA recorded a Rescission of Notice of Sale on March 9, 2011. Perez paid the HOA $160.00 on March 10, 2011.

On March 29, 2011, the HOA recorded a second Notice of Sale. On July 27, 2011, the HOA sent Perez a letter stating Perez was in breach of the payment plan. On August 4, 2011, Perez paid the HOA $165.00.

B. Second Notice of Delinquent Assessment Lien

On December 20, 2011, the HOA recorded a second Notice of Delinquent Assessment lien. The original Notice was not rescinded. The HOA recorded a Notice of Default and Election to Sell on February 28, 2012. Perez paid the HOA $760.00 between March 19 and July 26, 2012. CMG Mortgage assigned its deed of trust to CitiMortgage in May of 2012. CitiMortgage assigned the deed to U.S. Bank in July of 2012. The HOA recorded a Notice of Trustee's Sale on October 31, 2012. Perez paid the HOA $300.00 on November 13, 2012.

In March of 2013, U.S. Bank assigned its deed of trust to Marchai. Neither U.S. Bank nor Marchai recorded the transfer of interest for approximately five months. During this gap, U.S. Bank did not inform Marchai of the HOA's foreclosure proceedings. The HOA mailed a Notice of Trustee's sale to CMG Mortgage, CitiMortgage, and U.S. Bank on July 29, 2013. Marchai finally recorded its interest in the Wolf Rivers property on August 12, 2013. Marchai's loan servicer received notice of the trustee's sale on August 27, 2013, the day before the sale was scheduled to take place. The servicer contacted the HOA's trustee conducting the sale, Alessi & Koenig, to ask that the sale be postponed. The HOA declined.

Alessi & Koenig conducted a foreclosure sale of the Wolf Rivers property on August 28, 2013. SFR purchased the property for $21,000.00. SFR recorded a trustee's deed upon sale on September 9, 2013 identifying SFR as the grantee and the HOA as the foreclosing beneficiary. The trustee's deed states:

> Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien... does hereby grant, without warranty expressed or implied to: SFR... all its right, title and interest in the property...

> This conveyance is made pursuant to the powers conferred upon the Trustee by NRS 116 et seq... All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with.

At the time of sale, Perez owed the HOA $14,677.80. As of January 14, 2016, Perez owed Marchai $489,372.77 based the agreement secured by the deed of trust.

II. Procedural History

On September 30, 2013, Marchai filed a complaint against Perez, SFR, and U.S. Bank. Marchai sought to judicially foreclose on the Wolf Rivers property based on Perez's breach of the agreement secured by the deed of trust. The Court entered defaults against Perez and U.S. Bank in this case. On November 13, 2013, SFR filed an answer, counterclaim, and crossclaim. SFR brought counterclaims and crossclaims for declaratory relief/quiet title and injunctive relief. Specifically, SFR alleged Marchai's interest in the Wolf Rivers property was extinguished by the non-judicial foreclosure of the HOA's super-priority lien established pursuant to NRS Chapter 116.

On July 9, 2014, the Court ordered that the case be stayed pending a ruling from the Nevada Supreme Court on an HOA foreclosure's effect on a first deed of trust. The Nevada Supreme Court issued its ruling in SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408 (Nev. 2014) on September 18, 2014. The Nevada Supreme Court denied a rehearing on October 16, 2014. The Court lifted the stay in the instant case on January 28, 2015.

Both Marchai and SFR filed motions for summary judgment on January 14, 2016. The parties dispute whether NRS Chapter 116 is constitutional and whether the HOA foreclosure procedure in the instant case complied with NRS Chapter 116. The parties filed oppositions to each other's motions on February 3 and 4, 2016. The parties filed replies on February 8 and 9, 2016. SFR's reply contained a countermotion to strike portions of Marchai's motion for summary judgment and opposition. SFR asserts Marchai's motion exceeded the appropriate page limit. SFR also argues Marchai's opposition contains evidence not properly disclosed in the discovery process.

On March 22, 2016, this Court issued its Decision and Order denying both SFR and

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

Marchai their respective Motions for Summary Judgment as well as denying SFR's Motion to Strike. This Court found that the technical failings of Marchai's compliance with EDCR 2.20(a) did not rise to the level of sanctions and thus denied SFR's Motion to Strike. As discovery was ongoing, this Court also found in its March 22, 2016 Decision and Order that there remained genuine issues of fact for both Motions for Summary Judgment to be denied. The Court resolved constitutionality issues of NRS chapter 116 raised in Marchai's Motion for Summary Judgment involving due process. These sub issues include notice provisions, whether there is state action involved, violations of the Taking Clause, and vagueness.

Discovery concluded on August 15, 2017. Upon completion of discovery, the HOA and SFR renewed their Motions for Summary Judgment. The resolution of the issues in the summary judgment motion necessarily results in a decision in favor of Marchai.

III. Discussion

A. Motions for Summary Judgment

Summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law." Wood v. Safeway, Inc., 121 P.3d 1026, 1029 (Nev. 2005) (internal quotation marks and alterations omitted). "If the party moving for summary judgment will bear the burden of persuasion at trial, that party 'must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence.'" Francis v. Wynn Las Vegas, LLC, 262 P.3d 705, 714 (Nev. 2011) (citing Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 172 P.3d 131, 134 (Nev. 2007)). "When requesting summary judgment, the moving party bears the initial burden of production to demonstrate the absence of a genuine issue of material fact. If the moving party meets its burden, then the nonmoving party bears the burden of production to demonstrate that there is a genuine issue of material fact. Las Vegas Metro. Police Dep't v. Coregis Ins. Co., 256 P.3d 958, 961 (Nev. 2011) (internal citations omitted).

The HOA and SFR seek summary judgment on each of their claims against Marchai. As previously argued, SFR holds the HOA foreclosure sale extinguished Marchai's interest in the Wolf Rivers property. Marchai argues its interest survived the foreclosure sale and is superior to SFR's interest. In the current motions for summary judgment, parties reintroduce the same issues after the close of discovery along with a few new arguments. Upon the close of discovery, the Court finds no further evidence presented that lends itself to a genuine dispute over material facts. The only issues to be decided are legal issues.

These issues include whether the nonjudicial foreclosure sale constituted unfairness when Marchai requested the HOA to halt the sale the night before the sale and whether buyers are required to pay US currency the day of the sale. In addition, whether there is Perez's payments to the HOA satisfy the procedural tender requirements of NRS Chapter 116. To determine the answers to these questions, the Court must evaluate NRS Chapter 116 and the foreclosure process in this particular case.

1. Previously Addressed Issues

Issues including commercial reasonableness, SFR as a bona fide purchaser, constitutionality of Chapter 116, and whether the Trustee was the grantor in the HOA foreclosure sale were resolved this Court's Decision of Order of March 22, 2016. The Court found that Marchai failed to establish that the HOA sale was commercially unreasonable as a matter of law because absent fraud, unfairness, or oppression, an inadequate price is not dispositive of unreasonableness. Further, the Court found that SFR was not able to establish as a matter of law that it was a bona fide purchaser and that the HOA's years of foreclosure notice proceedings including delinquency notices, defaults, and sale documents would be a matter for a fact finder. Marchai raised constitutionality revolving around NRS Chapter 116 involving due process, takings, and void for vagueness. The Court found that Marchai could not show that requirements under Chapter 116 did not meet the notice requirements that would set off due process issues or the legislative enactment of Chapter 116 was a governmental taking or a meant to serve a public purpose. Nor could Marchai show that Chapter 116 meets the high standard for unconstitutionally vagueness. Lastly,

the Court found that an inartfully drafted foreclosure deed could not be resolved in favor of Marchai. This Court finds that there is no new law to decide in favor of granting summary judgment on these same arguments and the Court will not reconsider these issues already resolved.

2. A Nonjudicial Foreclosure Sale is Not Unfair if the HOA Proceeds with the Sale After the Lender Requests a Halt to the Sale.

Here, the HOA foreclosed upon the Wolf Rivers property, which they ultimately sold at a foreclosure sale after failure of the homeowner to pay dues. Marchai alleges that there are no material disputed issues of fact regarding the foreclosure as the parties agree to the circumstances. Parties agree that notice of the sale was given to U.S. Bank as the recorded holder of the deed of trust and that Marchai did not record their interest until after that notice of sale had been sent out to interested parties. Further, parties agree that there was no firm offer from Marchai to pay the superpriority amount of the loan prior to the sale when they made the request to halt the sale. Marchai now moves the Court to find that the HOA did not comply with NRS Chapter 116.

a. Procedural Requirements of NRS Chapter 116

Nevada Revised Statute Chapter 116 provides the procedural requirements for homeowners' associations seeking to secure a lien for unpaid assessments and fees. "NRS 116.3116(2)... splits an HOA lien into two pieces, a superpriority piece and a subpriority piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges, is 'prior to' a first deed of trust." SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 411 (Nev. 2014), reh'g denied (Oct. 16, 2014). That super-priority portion of the lien was held by the Nevada Supreme Court to be a true super-priority lien, which will extinguish a first deed of trust if foreclosed upon pursuant to Chapter 116's requirements. Id. at 419. Specifically, "[t]he sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption." NRS 116.31166(3); see also SFR v. U.S. Bank, 334 P.3d at 412.

To initiate foreclosure under Chapter 116, a Nevada homeowner association must first notify the owner of the delinquent assessments. See NRS 116.31162(1)(a). If the owner does not pay within thirty days, the homeowner association must then provide the owner a notice of default and election to sell. See NRS 116.31162(1)(b). Then, if the lien has not been paid off within 90 days, the homeowner association may continue with the foreclosure process. See NRS 116.31162(1)(c). The homeowner association must next mail a notice of sale to all those who were entitled to receive the prior notice of default and election to sell, as well as the holder of a recorded security interest if the security interest holder "has notified the association, before the mailing of the notice of sale of the existence of the security interest." See NRS 116.311635(1)(a)(1), (b)(2). As this Court interprets the "notified-the-association" provision, this additional notice requirement simply means the homeowner association must mail the notice of sale to any holder of a security interest who has recorded its interest prior to the mailing of the notice of sale.

Marchai asserts they became aware of the sale late but had made overtures to paying the superpriority lien. Marchai further asserts that after requesting that the HOA halt the sale, the HOA and the Trustee's refusal to halt the sale constituted unfairness to Marchai. The HOA and SFR argues Marchai had constructive notice through the notice served to US Bank and as a result is precluded from asking to halt the sale the night before for lack of notice.

Generally, absent a showing of fraud, unfairness, or oppression, a foreclosure sale will stand. The Nevada Supreme Court states, "demonstrating that an association sold a property at its foreclosure sale for an inadequate price is not enough to set aside that sale; there must also be a showing of fraud, unfairness, or oppression. Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5 at *6 (2016). In the next sentence, the Nevada Supreme Court appears to distinguish a merely inadequate price from a price that is "grossly inadequate as a matter of law" and indicates that gross inadequacy may be sufficient grounds to set aside a sale. Id. The Court finds that some other evidence of fraud, unfairness or oppression is still required to set aside an HOA foreclosure sale,

regardless of the price. Shadow Wood cites Golden v. Tomiyasu, 387 P.2d 989, 995 (Nev. 1963) which required some showing of fraud "in addition to gross inadequacy of price" for a court to set aside a transaction.

Marchai alleges that it did not have notice of the sale. Neither side disputes that Marchai was not served with a notice of the foreclosure sale, but rather its predecessor, U.S. Bank. It is also undisputed that after the transfer from US Bank to Marchai, both U.S. Bank and Marchai waited months before recording their interest. Marchai recorded its interest after the HOA's statutory requirement of thirty days for notice to interested parties under NRS 16.31164. The HOA properly noticed U.S. Bank, the recorded holder of the deed of trust at the time of the notice. Upon learning of the sale, Marchai contacted Alessi to halt the sale. SFR and the HOA argue that there is no ongoing affirmative duty by the movant of a sale to check for new interest parties once the statutory deadline has passed, but Marchai argues that there was a continuing duty.

The HOA had no continuing legal duty to notify Marchai under the statute. Nor is there any obligation of the HOA to halt a properly noticed sale when Marchai notified them that they were the current holder in interest. It was Marchai's responsibility to record its interest to protect itself. Failing to record rests solely on Marchai and the repercussions cannot be held against the foreclosing party. Further, there was no firm offer to pay off the superpriority lien.

Therefore, this Court finds that although Marchai was not directly notified, its predecessor, U.S. Bank, had actual notice of both existing Notices of Default. The HOA properly noticed the entity on record as the holder of the first deed of trust. Had Marchai promptly recorded its interest in the property, the notice would have been sent to Marchai. This leaves the issues of whether a purchaser at a foreclosure sale was required to present cash at a nonjudicial foreclosure sale, whether Perez's payments intended to and satisfied the HOA's superpriority lien and whether having more than one Notice of Default was consequential.

3. A Purchaser is Not Required to Present Cash at a Nonjudicial Foreclosure Sale.

Marchai presents that NRS 116.31164 requires that "on the day of the sale. . . the person conducting the sale may sell the unit at public auction to the highest cash bidder." It is undisputed that SFR provided proof of funds on the day of the sale, then tendered a cashier's check to Alessi on August 29, 2013, one day after the sale. Marchai argues that this procedurally does not comply with the statute, interpreting the statute to require a payment in U.S. currency at the time of the sale. The Court is not swayed by this argument. The statute specifically requires a cash purchase rather than a credit purchase, but the statute is silent as to timing of payment. A cashier's check in this context constitutes a cash payment. It is simply infeasible in practice to expect bidders to carry large amounts of U.S. currency, often in the many tens of thousands of dollars to an auction. SFR submitted proof of funds to Alessi at the time of the sale and then tendered a cashier's check to Alessi for the full price of purchase of the property. Consequently, the sale complied with NRS 116.31164. Notwithstanding procedural issues raised under NRS 116.31164, the Court finds that a first notice of default is the operative notice when multiple notices are filed and prior notices are unwithdrawn.

4. A Second Notice of Default Results in a Supplement of the First Notice of Default when a First Notice of Default has not been Rescinded.

A superpriority lien consists of the nine months of unpaid homeowner assessments prior to a notice of default. Without satisfaction or withdrawal of the first notice of default a second notice of default serves only as a supplement to the first notice. A homeowner's association is entitled to one superpriority lien on a single property without the rescission of the prior notice of default. Pursuant to the Nevada Supreme Court's holding in Property Plus Investments, LLC v. Mortgage Electronic Registration Systems, Inc., et. al., 133 Nev. Adv. Opinion 62 (Sept. 14, 2017), this Court adopts the Nevada federal court's holding in JPMorgan Chase Bank, N.A. v. SFR Investments Pool 1, LLC. JPMorgan held that a second noticed super priority lien must have separate set of unpaid months of homeowner

association assessments to be considered a separate superpriority lien. PropertyPlus, citing JPMorgan, also holds that "when a HOA rescinds a superpriority lien on a property, the HOA may subsequently assert a separate superpriority lien on the same property . . . accruing after the rescission of the previous superpriority lien." Without the satisfaction or withdrawal of the first superpriority lien, the second notice of superpriority lien then acts as a supplement or update of the first notice.

Here, there are two unrescinded Notices of Default filed against Perez, one on March 29, 2011 and one on February 28, 2012. The 2011 Notice of Default was never withdrawn. Based on the holding in PropertyPlus, the operative notice of default is the 2011 Notice. Therefore, the Court finds that the HOA's would only be entitled to one superpriority amount on both Notices of Defaults. This leaves only the question as to Perez's intent as to the application of payments to the HOA.

5. Perez's Intent Regarding Application of Payments to the HOA

Perez maintained sporadic payments over the period starting from the first Notice of Default to the foreclosure totaling $2,390.24 Perez would receive a notice of a deficiency and make a payment toward her obligations to the HOA. Despite these payments, she was thousands of dollars behind in her HOA obligations.

The super-priority lien brands certain homeowner association liens as "prior to all other liens and encumbrances," excluding those recorded before the applicable CC&Rs. See NRS 116.3116(2)(a)-(b). Nevada Revised Statutes 116.3116 is silent on who must satisfy the lien and if they must make their intent regarding those payments known before an HOA's superpriority lien is extinguished. The public policy principle behind NRS Chapter 116 is to ensure that homeowner association dues are paid first.

Here, the HOA had two recorded and unrescinded Notices of Default on the Wolf Rivers property and ultimately sold the property at a foreclosure sale. Perez made post Notice of Default payments prior to the sale totaling $2,390.24. There are no material disputed issues of fact: the parties agree regarding the timing and amounts of payments by the homeowner and to the circumstances surrounding the Notices of Default. The question

remaining is the effect of the homeowner paying towards the lien as opposed to the holder of the deed of trust. The HOA and SFR argue that these payments by Perez had no intention of satisfying the superpriority lien, thus the first deed of trust was extinguished upon the foreclosure sale. Marchai asserts the homeowner's payments were intended to satisfy the HOA lien's superpriority amount prior to the HOA foreclosure sale. Marchai argues this tender causes Marchai's deed of trust to survive the HOA foreclosure sale.

a. Tender

The foreclosure process, from the first unrescinded notice of delinquent assessment in 2009 to the actual foreclosure sale spanned a few years. During this period, Perez, paid the HOA $2,390.24. This is more than the value of nine months of assessment fees. For the nine months preceding the operative 2009 Notice of Default, Perez's assessments totaled $1,280.00. This would have satisfied the superpriority and left a balance of $1,110.24. Perez still owed the HOA $14,677.80 and nothing precluded the HOA from seeking the full amount from the borrower. The question is whether the HOA superpriority lien was satisfied. If satisfied, it allows Marchai's lien to survive the nonjudicial foreclosure sale to SFR. If not, then Marchai's first deed is extinguished by the sale to SFR.

As suggested by SFR, the beneficiary of a deed of trust need only "determin[e] the precise superpriority amount in advance of the sale," and then "pay the [nine] months' assessments demanded by the association." SFR, 334 P.3d at 413, 418. Satisfying the superpriority amount of the lien, not the amounts incurred by any particular months, preserves the deed of trust. See Stone Hollow Ave. Trust v. Bank of America, *N.A.*, 382 P.3d 911 (Nev. Aug. 11, 2016) (unpublished disposition) (finding tender of $198 effective to discharge the lien when "$198 was adequate to pay off the superpriority portion of" the HOA's lien.)

Different from SFR, here the Court must determine whether the homeowner's payments to an HOA in this case constitutes tender of the superpriority amount or whether the payments were meant to keep up with current assessment obligations. The Court finds

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

that absent contrary evidence, it is a distinction without a difference. The public policy and stated legislative intent behind Chapter 116 is to ensure payment of homeowner liens, hence the superpriority. Nevada Revised Statutes 116.3116(2) states the HOA lien is prior to first deeds of trust, but does not limit who can satisfy the superpriority portion of the lien. Nor does the statute or case law dictate that payments from a homeowner must first be applied to obligations other than the superpriority.

Marchai alleges that it was Perez's intention to apply her payments to the HOA lien's superpriority amounts that were recorded in its two Notices of Default. The HOA and SFR allege that Perez's payments only represent her intention to keep up with her monthly dues and not intended to satisfy the amounts noticed. This Court held in its March 22, 2016 Decision and Order that there were genuine issues of material fact regarding what Perez's intention was in the application of her payments. Absent evidence showing that Perez only meant to maintain her monthly assessments, she tendered payment in an amount that would satisfy more than eighteen months' worth of payments.

Upon the close of discovery, SFR and the HOA have not presented any evidence that shows Perez did not pay off the superpriority liens. Regardless of whether Perez meant to pay off the superpriority lien or apply to the balance with the payment of oldest balances first, the superpriority lien is satisfied. So whether she had the intention to pay off obligations other than the superpriority first or whether the HOA applied them to obligations other than the superpriority, the amount making up the superpriority was paid off. Thus, regardless of which months a payor may request a payment be applied to, any payment which is at least equal to the amount incurred in the nine months preceding the notice of delinquent assessment lien is sufficient to satisfy the superpriority lien. As there are no undisputed facts at the close of discovery as to the intention of payment or the effect of multiple Notice of Defaults, this Court must deny the HOA and SFR's Motions for Summary Judgment. As a result, this Court finds in favor of Marchai.

///

IV. Conclusion

The Court finds that no genuine issues of material fact remain in this case. The Court denies SFR and the HOA's Motions for Summary Judgment. As the parties agree on all the material fact in this case, the resolution of the legal issues presented on the motions for summary judgment necessarily result in a finding in favor of Marchai.

DATED this 2nd day of ~~September~~ October, 2017.

LINDA MARIE BELL
DISTRICT COURT JUDGE

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
David J. Merrill, Esq. David J. Merrill, P.C.	Counsel for Marchai, B.T.
Diana Cline Ebron, Esq. Jacqueline A. Gilbert, Esq. Karen L. Hanks, Esq. Kim Gilbert Ebron	Counsel for SFR Investments Pool 1, LLC
Kaleb D. Anderson, Esq. Megan Hummel, Esq.	Counsel for Wyeth Ranch Community Association

TINA HURD
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

AFFIRMATION
Pursuant to NRS 239B.030
The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A689461 **DOES NOT** contain the social security number of any person.

/s/ Linda Marie Bell
District Court Judge

Date 10/2/2017

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

Exhibit 11

NEFF
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Nevada Bar No. 6060
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DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust, Plaintiff, v. CRISTELA PEREZ, an individual; *et al.* Defendants. AND ALL RELATED CLAIMS AND ACTIONS	Case No.: A-13-689461-C Dept. No. XI Consolidated with: A-16-742327-C

Notice of Entry of Findings of Fact, Conclusions of Law

Take notice that on the 8th day of March 2021, the Court entered its Findings of Fact and Conclusions of Law, a copy of which is attached.

Dated this 11th day of March 2021.

David J. Merrill, P.C.

By: _____
David J. Merrill
Nevada Bar No. 6060
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Las Vegas, Nevada 89145
(702) 566-1935
Attorney for Marchai, B.T.

DAVID J. MERRILL, P.C.
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(702) 566-1935

Certificate of Service

I hereby certify that on the 11th day of March 2021, a copy of the Notice of Entry of Findings of Fact, Conclusions of Law was served electronically to the following through the Court's electronic service system:

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Steven D. Grierson
CLERK OF THE COURT

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

MARCHAI, B.T., a Nevada business trust, Plaintiff, v. CRISTELA PEREZ, an individual; *et al.* Defendants. AND ALL RELATED CLAIMS AND ACTIONS	Case No.: A-13-689461-C Dept. No. XI Consolidated with: A-16-742327-C

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on for non-jury trial before the Honorable Elizabeth Gonzalez on February 22, 2021; Plaintiff Marchai, B.T. ("Marchai") being represented by its counsel David J. Merrill, Esq. of the law firm David J. Merrill, P.C.; Defendant SFR Investments Pool 1, LLC ("SFR") being represented by Karen Hanks, Esq. of the law firm Kim Gilbert Ebron; and Defendant Wyeth Ranch Community Association ("Wyeth Ranch") being represented by David T. Ochoa, Esq. of the law firm of Lipson Neilson P.C.; and Defendant Cristela Perez ("Perez") having been defaulted; the Court having read and considered the pleadings filed by the parties; having reviewed the evidence admitted during the trial; having heard and carefully considered the testimony of the witnesses called to testify and weighing their credibility; having considered the oral and written arguments of counsel, and with the intent of rendering a decision on all

remaining issues before the Court,[1] pursuant to NRCP 52(a) and 58; the Court makes the following findings of fact and conclusions of law:

PROCEDURAL HISTORY

1. In A689461 the Complaint alleges Judicial Foreclosure of Deed of Trust. SFR alleges as Counterclaims & Cross Claims, Declaratory Relief/Quiet Title and Injunctive Relief.

2. In A742327 the Complaint alleges Declaratory Relief Under Amendment V of the United States Constitution-Takings Clause; Declaratory Relief Under the Due Process Clause of the United States and Nevada Constitutions; Wrongful Foreclosure; Violation for NRS § 116.1113 et seq.; Intentional Interference with Contractual Relations; and Quiet Title.

3. Default was entered against Perez in A689461 on April 22, 2014.

4. In the Order entered March 22, 2016, Judge Bell found that Marchai failed to establish the sale was commercially unreasonable, violated the takings or due process clauses, or that the statute was unconstitutionally vague.

5. To the extent Marchai's third through sixth cause of action related to taking, due process, or commercial reasonableness, those portions of those causes of action were resolved by the 2016 Order.

6. In Judge Bell's Order entered January 24, 2017, Marchai's Quiet Title Claim against Wyeth Ranch was dismissed.

7. The October 3, 2017 Order found notice was proper, but found for Marchai based on a determination that Perez's partial payments paid off the superpriority portion of the lien.

[1] On March 18, 2019, the Nevada Supreme Court remanded this matter to the Court, after vacating this Court's prior Judgment in favor of Marchai B.T. The Nevada Supreme Court found that while Judge Bell correctly determined a homeowner's payments can cure the default of the super-priority portion of an Association's lien, an analysis of the intent of the homeowner and the Association as to whether the payments made by the homeowner in this case did in fact cure the super-priority default. Further, the Court directed an analysis of the factors outlined in *9352 Cranesbill v. Wells Fargo*, 136 NAO 8 (2020).

8. On November 6, 2017, SFR filed its Case Appeal Statement and Notice of Appeal, appealing the determination on the application of Perez's partial payments.

9. Marchai did not appeal the earlier orders or the determination on notice from the October 3, 2017.

10. On March 18, 2020, the Nevada Supreme Court entered its Order Vacating Judgment and Remanding.

11. The Nevada Supreme Court found and affirmed that the 2008 Notice of Delinquent Assessment was the operative notice to review superpriority.

12. The Nevada Supreme Court found that a borrower's payments could satisfy the superpriority portion of an HOA lien. However, the Court remanded on finding that under *9352 Cranesbill Trust v. Wells Fargo Bank, N.A.,* 136 Nev., Adv. Op. 8 (Mar. 5, 2020), the facts surrounding the payments needed to be analyzed to determine if the payments actually satisfied the superpriority portion of the lien.

FINDINGS OF FACT

13. On October 4, 2002, Wyeth Ranch recorded its Declaration of Covenants, Conditions, and Restrictions ("CC&Rs") in the Official Records of the Clark County Recorder as Instrument No. 2002100401353. Wyeth Ranch recorded various amendments.

14. On July 21, 2004, a Grant, Bargain, Sale Deed transferring the real property commonly known as 7119 Wolf Rivers Avenue, Las Vegas, Nevada 89131, Parcel No. 125-15-811-013 ("Property") to Perez was recorded in the Official Records of the Clark County Recorder as Instrument No. 20040721-0003728 (Exhibit 16).

15. The Property is in the Wyeth Ranch community.

16. On October 19, 2005, Perez refinanced her two prior loans by entering into an Interest First Adjustable Rate Note ("Note") with CMG Mortgage, Inc. for $442,000.00.

17. On November 9, 2005, CMG Mortgage secured the Note by recording a Deed of Trust against the Property as Instrument No. 20051109-0001385 ("DOT").

18. Eventually, the DOT was assigned to Marchai on March 12, 2013, and the assignment was recorded with the Clark County Recorder as Instrument No. 201308120002562.

19. For all relevant time periods to this action, Wyeth Ranch collected association dues on the first day of each quarter.

20. In 2008, Wyeth Ranch collected $420.00 per quarter in association dues.

21. Complete Association Management Company ("CAMCO") acted as the community management company for Wyeth Ranch.

22. Wyeth Ranch retained Alessi & Koenig, LLC ("A&K") as its collection agent, who collected delinquent assessments from Perez.

23. Wyeth Ranch had no written documents outlining procedures for applying payments or partial payments to past due assessments.

24. When Perez submitted payments, there is no evidence she directed how she wanted the payments applied.

25. Wyeth Ranch maintained two accounts for the Property, an assessment account and a violation account.

26. Wyeth Ranch did not maintain separate superpriority and subpriority accounts for the Property.

27. On January 1, 2008, Wyeth Ranch assessed Perez a $420.00 quarterly assessment.

28. On January 30, 2008, Perez became delinquent in the payment of her quarterly assessments.

29. On April 1, 2008, Wyeth Ranch assessed Perez a $420.00 quarterly assessment.

30. Exhibit 138 evidences a "running account" statement for the assessments at the Property. On April 16, 2008, Wyeth Ranch applied a $507.60 payment to Perez's account.

Wyeth Ranch applied $420.00 of the $507.60 payment to the past due January 2008's association dues and the remainder ($87.60) to the current April 2008 association dues.

31. Based upon Exhibit 45,[2] Wyeth Ranch did *not* apply payments first to late fees or interest. Instead, it applied payments first to the oldest outstanding association dues and then any remainder to the next oldest outstanding association dues.[3]

32. On July 1, 2008, Wyeth Ranch assessed Perez a $420.00 quarterly assessment.

33. On October 1, 2008, Wyeth Ranch assessed Perez a $420.00 quarterly assessment.

34. On October 2, 2008, Wyeth Ranch instituted an action to enforce its lien by sending Perez a Notice of Delinquent Assessment (Lien) ("NODA").

35. According to the NODA, executed September 30, 2008, Perez owed Wyeth Ranch $1,425.17, including collection costs, attorney's fees, late fees, service charges, and interest. The NODA included the superpriority portion (statutorily permitted 6 months at the time) of the lien ($840), subpriority portion of the lien, late fees, A&K's attorney's fees ($370) and costs ($50).

36. The NODA was recorded on October 8, 2008.

37. In 2009, Wyeth Ranch increased its assessments from $420.00 per quarter to $457.50 per quarter.

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[2] Exhibit 45 bears a print date of 9/17/2008, a received stamp of 9/17/2008, and handwritten notations related to late fees and what appears to be the file number for this matter (11632) from A & K, *see* Exhibit 109. The Court infers that based upon Exhibit 45, A & K executed the Notice of Delinquent Assessment (Lien) on 9/30/08, in the total amount of $1425.17 after adding the handwritten late fee entry for 9/08 in the amount of $11.29. The Notice of Delinquent Assessment (Lien) recorded on 10/8/08, included the superpriority portion (statutorily permitted 6 months at the time) of the lien ($840), subpriority portion of the lien, late fees, A & K's attorney's fees ($370) and costs ($50) as reflected in Exhibit 47.

[3] The testimony of Yvette Saucedo of CAMCO is inconsistent with Exhibit 45 and outlines an audit process she and her staff follow on behalf of Wyeth Ranch. The Court finds the information contained in Exhibit 45 credible as it was prepared at the time of the NODA, rather than an after the fact readjustment as described by Ms. Saucedo. According to Ms. Saucedo, no more recent version of the report similar to Exhibit 45 was available. As a result, the Court's analysis is to apply the treatment of the April 16, 2008 payment for all later payments made by Perez.

38. On January 5, 2009, A&K recorded a Notice of Default and Election to Sell Under Homeowners Association Lien ("NOD") on behalf of Wyeth Ranch in the Official Records of the Clark County Recorder as Instrument No. 20090105-0002988. The NOD stated Perez owed Wyeth Ranch $3,096.46 as of December 17, 2008.

39. On November 5, 2009, Wyeth Ranch executed an Authorization to Conclude Non-Judicial Foreclosure and Conduct Trustee Sale. Wyeth Ranch authorized A&K to proceed with the non-judicial foreclosure of its assessment lien.

40. According to Wyeth Ranch, Perez owed $3,330.32 in assessments.

41. In 2010, Wyeth Ranch increased its assessments from $457.50 to $478.50 per quarter.

42. Under Wyeth Ranch's authorization, on January 14, 2010, A&K recorded a Notice of Trustee's Sale, which set a foreclosure sale for February 17, 2010.

43. The Notice of Trustee's Sale stated Wyeth Ranch's intention to foreclose the lien recorded on October 8, 2008.

44. According to the notice, Perez owed Wyeth Ranch $6,964.25 for unpaid assessments.

45. On February 3, 2010, A&K sent a demand to Perez and her husband, Robert Rose, in which A&K claimed that Perez owed Wyeth Ranch $6,977.61.

46. On February 12, 2010, Perez paid A&K $900.00. A&K deducted $309.60 in collection costs from the $900 payment and disbursed the remainder ($590.40) to Wyeth Ranch.

47. On March 2, 2010, Wyeth Ranch applied the $590.40 disbursement to Perez's account.

48. On March 22, 2010, Perez was provided a payment plan. The payment plan commenced on April 1, 2010, and required monthly payments of $669.87. Perez never made a payment under the payment plan.

49. On May 11, 2010, Perez paid A&K $300.00. A&K deducted $95.40 in collection costs from the $300 payment and disbursed the remainder ($204.60) to Wyeth Ranch.

50. On June 8, 2010, Wyeth Ranch applied the $204.60 disbursement to Perez's account.

51. On July 2, 2010, A&K sent Perez a letter notifying her that it terminated the payment plan.

52. On July 13, 2010, A&K sent Perez a Pre-Notice of Trustee Sale Notification based upon the NODA recorded on October 8, 2008, and the NOD recorded on January 5, 2009.

53. The Pre-Notice of Trustee's Sale demanded payment from Perez for $19,071.21.

54. On August 2, 2010, Perez paid A&K $250.00. A&K deducted $77.24 in collection costs from the $250 payment and disbursed the remainder ($172.76) to Wyeth Ranch.

55. On August 20, 2010, Wyeth Ranch applied the $172.76 disbursement to Perez's account; $172.76 for the October 2008 association dues, which left a balance for October 2008 of $204.64.

56. On September 29, 2010, Perez paid A&K $220.00. A&K deducted $67.98 in collection costs from the $220 payment and disbursed the remainder ($152.02) to Wyeth Ranch.

57. On October 15, 2010, Wyeth Ranch applied the $152.02 disbursement to Perez's account.

58. On November 30, 2010, Perez paid A&K $175.00. A&K deducted $48.82 in collection costs from the $175 payment and disbursed the remainder ($126.18) to Wyeth Ranch.

59. On December 16, 2010, Wyeth Ranch applied the $126.18 disbursement to Perez's account.

60. On March 9, 2011, A&K recorded a Rescission of Notice of Trustee's Sale, which rescinded the notice A&K recorded on January 14, 2010.[4]

61. On March 10, 2011, Perez paid A&K $160.00. A&K deducted $40.48 in collection costs from the $160 payment and disbursed the remainder ($119.52) to Wyeth Ranch.

62. On March 22, 2011, Wyeth Ranch applied the $119.52 disbursement to Perez's account.

63. On March 29, 2011, A&K recorded another Notice of Trustee's Sale based upon the January 5, 2009 NOD.

64. On June 2, 2011, Wyeth Ranch executed another authorization to allow A&K to complete the non-judicial foreclosure and conduct the trustee sale.

65. The authorization stated that Perez owed Wyeth Ranch $4,730.03 in delinquent assessments.

66. On May 23, 2011, Perez paid A&K $160.00. A&K deducted $35.68 in collection costs from the $160 payment and disbursed the remainder ($124.32) to Wyeth Ranch.

67. On June 16, 2011, Wyeth Ranch applied the $124.32 disbursement to Perez's account.

68. On August 4, 2011, Perez paid A&K $165.00.

69. A&K deducted $37.29 in collection costs from the $165 payment and disbursed the remainder ($127.71) to Wyeth Ranch.

70. On August 18, 2011, Wyeth Ranch applied the $127.71 disbursement to Perez's account.

[4] Although the notice claims to rescind the Notice of Trustee's Sale recorded on January 11, 2010, A&K did not record a Notice of Trustee's Sale on January 11, 2010. It appears that A&K meant it rescinded the notice recorded on January 14, 2010, as it does refer to Instrument Number 2589, which is the January 14, 2010 Notice of Trustee's Sale.

71. On September 30, 2011, A&K notified Perez that it terminated the payment plan of April 30, 2011.

72. On October 1, 2011, Perez defaulted under her loan from CMG Mortgage.

73. In 2011, Wyeth Ranch assessed $448.50 each quarter for assessments.

74. On November 29, 2011, A&K sent Perez a lien letter to which A&K attached another Notice of Delinquent Assessment (Lien).

75. According to the notice, Perez owed Wyeth Ranch $9,296.56.

76. On December 20, 2011, A&K recorded the second Notice of Delinquent Assessment Lien, but did not release or rescind the NODA it recorded in 2008.

77. On January 25, 2012, A&K followed up the second Notice of Delinquent Assessment (Lien) by mailing Perez a Pre-Notice of Default Letter demanding that Perez pay Wyeth Ranch $9,865.06 in past-due assessments.

78. On February 28, 2012, A&K recorded another Notice of Default and Election to Sell Under Homeowners Association Lien, but did not release or rescind the NOD it recorded on January 5, 2009.

79. According to the notice, as of February 14, 2012, Perez owed Wyeth Ranch $10,625.06 in unpaid assessments.

80. The February 28, 2012 notice states that Perez first defaulted on her obligations to Wyeth Ranch in January 2008.

81. On March 19, 2012, Perez paid A&K $300.00. A&K deducted $87.30 in collection costs from the $300 payment and disbursed the remainder ($212.70) to Wyeth Ranch.

82. On April 3, 2012, Wyeth Ranch applied the $212.70 disbursement to Perez's account.

83. On May 7, 2012, Perez paid A&K $295.00. A&K deducted $85.84 in collection costs from the $295 payment and disbursed the remainder ($209.16) to Wyeth Ranch.

84. On May 23, 2012, Wyeth Ranch applied the $209.16 disbursement to Perez's account.

85. On May 25, 2012, Mortgage Electronic Registration Systems, Inc., as the nominee for CMG Mortgage, assigned CMG Mortgage's deed of trust to CitiMortgage, Inc. CMG Mortgage endorsed the note payable to the order of CitiMortgage. On June 5, 2012, CitiMortgage recorded a Corporate Assignment of Deed of Trust.

86. On July 18, 2012, A&K sent Perez a Pre-Notice of Trustee Sale Notification, in which A&K demanded that Perez pay Wyeth Ranch $11,371.07.

87. Ostensibly, A&K sent the Pre-Notice of Trustee's Sale Notification according to the Notice of Delinquent Assessment Lien recorded on December 20, 2011, and the Notice of Default and Election to Sell recorded nearly three years earlier on January 5, 2009.

88. On July 26, 2012, Perez paid A&K $165.00. A&K deducted $43.72 in collection costs from the $165 payment and disbursed the remainder ($121.28) to Wyeth Ranch.

89. On July 26, 2012, CitiMortgage assigned the deed of trust to U.S. Bank, N.A., as trustee for Stanwich Mortgage Loan Trust, Series 2012-6. CitiMortgage also signed an allonge, endorsing the note payable to U.S. Bank. On July 26, 2012, U.S. Bank recorded the Assignment of Mortgage with the Clark County Recorder.

90. On August 27, 2012, Wyeth Ranch applied the $121.28 disbursement to Perez's account.

91. On October 3, 2012, Carrington Mortgage Services, LLC, the servicer for the loan assigned to U.S. Bank, sent Perez a Notice of Intent to Foreclose.

92. According to the notice, Perez defaulted on the loan on October 1, 2011, and owed U.S. Bank $36,281.60.

93. On October 10, 2012, A&K prepared another Notice of Trustee's Sale.

94. According to the notice, A&K stated its intention to sell the Property at a foreclosure sale on November 28, 2012. The notice claims that A&K will conduct the sale according to the lien recorded on December 20, 2012. According to the notice, Perez owed $11,656.07.

95. On October 31, 2012, A&K recorded the Notice of Trustee's Sale, but did not rescind the Notice of Trustee's Sale it recorded on March 29, 2011.

96. On November 13, 2012, Perez made a $300.00 payment to A&K. A&K deducted $78.90 in collection costs from the $300 payment and disbursed the remainder ($221.10) to Wyeth Ranch.

97. On December 14, 2012, Wyeth Ranch applied the $221.10 disbursement to Perez's account.

98. On March 12, 2013, U.S. Bank assigned its interest in the deed of trust to Marchai, which it recorded with the Clark County Recorder on August 12, 2013. U.S. Bank executed an allonge endorsing the note to Marchai.

99. On July 11, 2013, A&K executed another Notice of Trustee's Sale.

100. The notice claimed that Perez owed $14,090.80 in unpaid assessments.

101. According to the notice, A&K intended to sell the Property at a foreclosure sale on August 28, 2013.

102. On July 31, 2013, A&K recorded the notice with the Clark County Recorder, but again failed to rescind the Notice of Trustee's Sale recorded on October 31, 2012.

103. On August 27, 2013, less than 24 hours before the foreclosure sale, Peak Loan Servicing, Marchai's servicer, learned about the sale. Peak immediately contacted A&K and asked it to postpone the sale so it could pay the lien.

104. On the morning of the day of the sale (August 28, 2013), Naomi Eden at A&K emailed Brittney O'Connor, the accounting clerk at CAMCO, in which she notes that "[t]he

mortgage company is asking for an extension so they can get it paid off." Eden asked O'Connor if A&K could postpone the sale.

105. O'Connor responded to the email asking Eden how many oral postponements Wyeth Ranch had remaining.

106. Eden advised O'Connor that Wyeth Ranch still had three postponements left.

107. O'Connor then emailed Michele Weaver, a CAMCO manager. O'Connor told Weaver that Wyeth Ranch had a foreclosure sale set for that morning, that it could postpone the sale three times, and that "[t]he mortgage company would like an extension so they can pay off the account."

108. In her email to Weaver, O'Connor said she "will use all postponements then go to sale on the 3rd sale date set," "[u]nless otherwise directed by the board." Unless the association directed otherwise, postponing foreclosure sales until the third sale date was CAMCO's standard practice.

109. According to the last email in the chain, Weaver "received confirmation" that Wyeth Ranch did "NOT want to postpone."

110. Wyeth Ranch refused to postpone the sale so Marchai could pay off the account and proceeded with the foreclosure.

111. On August 28, 2013, A&K conducted a foreclosure sale.

112. The Wyeth Ranch foreclosure sale occurred on August 28, 2013. At the foreclosure sale, SFR Investments Pool 1, LLC, submitted the winning bid of $21,000.00.

113. On September 9, 2013, a Trustee's Deed Upon Sale ("Trustee's Deed") was recorded in the Official Records of the Clark County Recorder, conveying the Property to SFR.

114. At the time of the foreclosure, Wyeth Ranch's assessment ledger reflected a $10,679.12 balance. There is no differentiation between superpriority and subpriority portions of the lien.

115. Based upon the disbursements remitted to Wyeth Ranch by A&K after the NODA, the Court finds that the following amounts were applied to the running account:

Date	Disbursement	Superpriority Balance
9/30/08		840.00
3/2/10	590.40	249.60
6/8/10	204.60	45.00
8/20/10	172.76	(-127.76)

116. The disbursements from A&K extinguished the superpriority portion of the lien in August 2010, well before the foreclosure sale.

117. Even if the Court did not find that Wyeth Ranch applied the disbursements to the oldest outstanding delinquent assessment, the principles of justice and equity in this case weigh in favor of the application of those disbursements to the oldest delinquent assessment and the extinguishment of the superpriority portion of the lien.

118. SFR as a purchaser of over 600 properties at HOA foreclosure sales was aware of the issues related to superpriority HOA liens and the risks associated with purchasing a property at this type of auction.

119. Wyeth Ranch received payment in full ($10,679.12) of its assessment lien.

120. The Declaration of Value asserts that the Property has a "Transfer Tax Value" of $307,403.00.

121. The Property's fair market value on August 28, 2013, was $360,000.00.

122. If any of the preceding findings of fact are more appropriately deemed conclusions of law, then they shall be considered conclusions of law.

CONCLUSIONS OF LAW

123. The analysis made in this bench trial is limited to the matters on remand to the Court which includes:

a. Whether Perez's payments actually cured the superpriority default, based upon the actions and intent of the homeowner and the HOA and, if those cannot be determined, upon the District Court's assessment of justice and equity.

b. SFR's purported status as a bona fide purchaser.

124. Additionally, the Court evaluates the dispute between Wyeth Ranch and Marchai related to the conduct of the foreclosure sale and issues related to application and remittance of the proceeds of the sale.

125. NRS 40.010 provides that "an action may be brought by any person against another who claims an estate or interest in real property adverse to the person bringing the action, for the purpose of determining such adverse claim." NRS § 40.010.

126. "In a quiet title action, the burden of proof rests with the plaintiff to prove good title in himself." *See Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996).

127. NRS 116.3116 grants an association "a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.31035, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due." NRS § 116.3116(1) (2011).[5]

128. An association's lien "is prior to all other liens and encumbrances on a unit except:"

[5] The Legislature has amended NRS 116 several times in the time between when Wyeth Ranch initiated the foreclosure process and ultimately completed the foreclosure.

> (a) Liens and encumbrances recorded before the recordation of the declaration . . .;
>
> (b) A first security interest on the unit recorded 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 . . . .

NRS § 116.3116(2) (2011).

129. NRS 116.3116(2) also provided:

> The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 6 months *immediately preceding institution of an action to enforce the lien* . . . .

NRS § 116.3116 (2003) (emphasis added).[6]

130. Although the association's lien includes all "assessments," the lien has two parts: a superpriority piece, "consisting of the last nine months of HOA dues," and a subpriority piece consisting of all other "assessments." *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev. 742, 745, 334 P.3d 408, 411 (2014).

131. The "superpriority" piece of the association's lien has priority over the first deed of trust, but the "subpriority" part is subordinate. *SFR*, 130 Nev. at 745, 334 P.3d at 411.

132. In 2008, NRS 116 limited the superpriority portion of an association's lien to the "6 months immediately preceding institution of an action to enforce the lien." NRS § 116.3116(2).

133. An association institutes an action to enforce the lien through the service of a notice of delinquent assessment. *See Saticoy Bay LLC Series 2021 Gray Eagle Way v. JP Morgan Chase Bank, N.A.*, 133 Nev. 21, 26, 388 P.3d 226, 231 (2017).

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[6] When Wyeth Ranch sent Perez the NODA in October 2008, the statute granted association's superpriority of only six, not nine, months of dues. *See* NRS § 116.3116(2) (2003). The Legislature amended the section to grant a superpriority lien of nine months in October 2009. *See* NRS § 116.3116(2) (2009).

134. The lien's superpriority portion does not include collection fees, late fees, interest, or foreclosure costs. *Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 132 Nev. 362, 371, 373 P.3d 66, 70 (2016).

135. Wyeth Ranch instituted an action to enforce its lien on October 8, 2008, when it served and recorded the NODA.

136. Only those association dues that came due between April 1, 2008, and September 30, 2008 - the six months before Wyeth Ranch instituted an action to enforce its lien - had superpriority status.[7] *See* NRS § 116.3116(2); *Saticoy Bay LLC Series 2021 Gray Eagle Way*, 133 Nev. at 26, 388 P.3d at 231; *Horizons at Seven Hills Homeowners Ass'n*, 132 Nev. at 371, 373 P.3d at 70.

137. Wyeth Ranch assessed two quarterly charges of $420.00 in dues during the six months preceding its institution of an action to enforce its lien: April 1, 2008 and July 1, 2008.

138. Wyeth Ranch had a superpriority lien for $840.00.

139. After Wyeth Ranch instituted an action to enforce its lien, Perez made payments totaling $3,390.00.

140. Perez did not direct the application of those payments to any particular expenses.

141. A&K applied the first fruits of those payments, totaling $1,008.25, to collection costs.

142. A&K then disbursed to Wyeth Ranch the remainder, totaling $2,381.75. The Court finds that Wyeth Ranch applied those disbursements to the oldest delinquent association dues.

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[7] Before Judge Bell and the Nevada Supreme Court, SFR argued that the November 29, 2011 notice of delinquent assessment was the operative notice for the institution of an action to enforce the lien. But Judge Bell previously rejected that argument and the Nevada Supreme Court affirmed that the September 2008 notice of delinquent assessment was the operative notice for the institution of an action to enforce the lien. *See SFR Invs. Pool 1, LLC v. Marchai, B.T.*, No. 74416, Order Vacating J. & Remanding at 1–2 (Mar. 18, 2020).

143. The payments by Perez more than satisfied the superpriority portion of Wyeth Ranch's lien prior to foreclosure.

144. If the Court were to conduct an analysis of the basic principles of justice and equity so that a fair result can be achieved," *9352 Cranesbill Tr.*, 136 Nev. at 80, 459 P.3d at 231, that analysis would militate in favor of the satisfaction of the superpriority portion of the lien through the payments made by Perez.

145. Although Wyeth Ranch had one lien, it maintained two accounts: a violation account and an assessment account.

146. A&K also maintained an account for collection costs.

147. When Perez made a payment to A&K after Wyeth Ranch instituted an action to enforce the lien, it first applied a portion of those payments (totaling $1,008.25) to its collection account before remitting the balance to Wyeth Ranch. None of the $2,381.75 A&K disbursed to Wyeth Ranch went to collection costs.

148. When Wyeth Ranch received the $2,381.75 disbursements from A&K, it applied all payments to its assessment account. Wyeth Ranch applied none of those payments to the violation account.

149. Wyeth Ranch applied the $2,381.75 to one running account: the assessment account. Because payments to one running account are applied to the oldest amounts due, Perez's payments satisfied the superpriority portion of Wyeth Ranch's lien.

150. This conclusion is also in the interests of justice and equity. Under this analysis, Perez, who did not abandon the Property but for five years made payments to Wyeth Ranch totaling $3,390.00, receives the benefit of having any deficiency reduced by the fair market value of the Property at the time Marchai forecloses. SFR, who paid a mere $21,000.00 for its interest in the Property, takes the Property subject to the DOT and has rented the property for the last seven years and may be entitled to excess proceeds of sale.

151. As SFR is in the business of purchasing properties at HOA foreclosures it is not a bona fide purchaser but is well aware of the risks associated with superpriority issues.

152. When Wyeth Ranch foreclosed, it foreclosed upon a subpriority lien, and Marchai's DOT survived Wyeth Ranch's foreclosure.

153. The Court rules for Marchai on its claim for quiet title and against SFR on its claim for declaratory relief/quiet title.

154. As SFR's declaratory relief/quiet title claim fails, the Court must also dismiss SFR's request for injunctive relief seeking to enjoin Marchai from foreclosing on its deed of trust.

155. A wrongful foreclosure occurs when "no breach of condition or failure of performance existed . . . which would have authorized the foreclosure." *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 304, 662 P.2d 610, 623 (1983).

156. "[T]he material issue of fact in a wrongful foreclosure claim is whether the trustor was in default when the power of sale was exercised." *Id.*

157. It is indisputable that Perez defaulted on subpriority amounts of Wyeth Ranch's lien.

158. As Wyeth Ranch foreclosed upon a subpriority lien, Marchai has no claim for wrongful foreclosure.

159. The only "duties" owed to Marchai are outlined in Sections 116.3116 through 116.31168. Wyeth Ranch satisfied these duties by complying with all notice and recording requirements.

160. NRS 116.1113 does not impose extra-statutory duties on an HOA; it only governs existing contracts and duties.

161. Here, the notice requirements of Sections 116.3116 through 116.31168 have already been reviewed on appeal, and the HOA has complied with the notice requirements.

Similarly, it has already been determined on appeal that the HOA was not required to postpone the sale to provide Marchai additional time pay.

162. Plaintiff never mentions in its Complaint a misapplication of proceeds, excess proceeds, or NRS 116.31164(3)(c)'s payment breakdown.

163. An interpleader action was filed by A&K (A-13-690586-C) regarding excess proceeds. It would be unduly prejudicial to direct a misapplication of proceeds claim against the HOA after A&K has filed bankruptcy and preventing the HOA from seeking any redress it may have against A&K, if A&K misapplied the proceeds from the sale.

164. Plaintiff did not file an unjust enrichment claim or establish at trial that Wyeth Ranch was unjustly enriched.

165. NRS § 116.1113 imposes an obligation of good faith in the performance or enforcement of every contract or duty governed by NRS Chapter 116.

166. Wyeth Ranch has not violated NRS 116.1113.\

167. Marchai's claim for bad faith against Wyeth Ranch is dismissed.

168. Perez defaulted on subpriority amounts of Wyeth Ranch's lien.

169. Because Wyeth Ranch foreclosed upon a subpriority lien, Marchai has no claim against Wyeth Ranch for breach of its obligations under NRS § 116.1113.

170. Marchai's claim under NRS § 116.1113 is dismissed.

171. To establish a claim for intentional interference with a contract, a plaintiff must prove it entered into a valid and existing contract, the defendant knew of the contract, the defendant engaged in intentional acts intended or designed to disrupt the contractual relationship, the contract was disrupted, and the plaintiff suffered damages. *J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274, 71 P.3d 1264, 1267 (2003).

172. The Note and DOT evidenced a valid and existing contract between Marchai and Perez.

173. Wyeth Ranch and SFR knew of Marchai's contract with Perez, because the recorded DOT and assignments are matters of public record.

174. The foreclosure was not intended to disrupt, nor did it disrupt, the contract that contemplates the foreclosure.

175. As Perez's payments satisfied the superpriority portion of Wyeth Ranch's lien, Marchai's contract with Perez was not disrupted, and Marchai suffered no damages.

176. Marchai's claim for intentional interference with contractual relations is dismissed.

177. It is not disputed that a portion of the assessment lien remained after Perez's payments were applied, and Perez was in default at the time of the sale.

178. It is irrelevant to the wrongful foreclosure claim whether the remaining portion was superpriority or subpriority, because the HOA never made an affirmative representation at the time of the sale that it was foreclosing on a superpriority portion of lien.

179. Wyeth Ranch was not required to make an announcement regarding superpriority at the time of the foreclosure sale.

180. NRS 40.430 *et seq.* provides the statutory framework for judicial actions for foreclosure of real mortgages in Nevada and "must be construed to permit a secured creditor to realize upon the collateral for a debt or other obligation agreed upon by the debtor and creditor when the debt or other obligation was incurred." NRS § 40.230 (2).

181. In an action for judicial foreclosure, "the judgment must be rendered for the amount found due the plaintiff, and the court, by its decree or judgment, may direct a sale of the encumbered property, or such part thereof as is necessary, and apply the proceeds of the sale as provided in NRS 40.462." NRS § 40.430(1).

182. "[A] creditor of a note secured by real property must first pursue judicial foreclosure before recovering from the debtor directly." *McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC*, 121 Nev. 812, 816, 123 P.3d 748, 750 (2005).

183. To enforce a deed of trust through foreclosure, the same party must hold the deed of trust and underlying promissory note. *Edelstein v. Bank of New York Mellon*, 128 Nev. 505, 512, 286 P.3d 249, 254 (2012) (citing *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1039 (9th Cir. 2011)).

184. Separation of the note and deed of trust does not preclude enforcement when the documents are ultimately unified in the same holder. *Edelstein*, 128 Nev. at 520, 286 P.3d at 259 (citing *In re Tucker*, 441 B.R. 638, 644 (Bankr. W.D. Mo. 2010)).

185. "To prove that a previous beneficiary properly assigned its beneficial interest in the deed of trust, the new beneficiary can demonstrate the assignment by means of a signed writing." *Edelstein*, 128 Nev. at 522, 286 P.3d at 260 (citing *Leyva v. Nat'l Default Servicing Corp.*, 127 Nev. 470, 255 P.3d 1275, 1279 (2011)).

186. This requirement parallels the requirements for assignment of an interest in lands generally, which "must be in writing, subscribed by the party creating, granting, assigning, or declaring the same, or by the party's lawful agent thereunto authorized in writing." NRS §111.205(1).

187. An assignment of a beneficial interest in a deed of trust must further be recorded in the recorder's office of the county where the property is located. NRS § 106.210 (2015).

188. Through MERS, CMG Mortgage assigned the Deed of Trust to CitiMortgage, who assigned it to U.S. Bank, who ultimately assigned it to Marchai.

189. The assignments satisfy the above requirements: they are in writing, subscribed to by the agent of the prior beneficiary, and recorded in Clark County where the Property is located.

190. Marchai, as the beneficiary of the DOT, may enforce it.

191. For a subsequent lender to establish it may enforce a note, it must "present evidence showing endorsement of the note either in its favor or in favor of [its servicer]." *Edelstein*, 128 Nev. at 522, 286 P.3d at 261 (citing *In re Veal*, 250 B.R. 897, 921 (9th Cir. BAP 2011)); *see also Leyva*, 255 P.3d at 1279.

192. When a promissory note is endorsed to another party, the UCC permits a note to "be made payable to bearer or payable to order," depending on the endorsement. *Leyva*, 255 P.3d at 1280 (citing NRS § 104.3109).

193. The Note is payable to the order of Marchai. CMG Mortgage endorsed the Note payable to the order of CitiMortgage. CitiMortgage then executed an allonge making the Note payable to U.S. Bank, who then executed another allonge making the Note payable to Marchai.

194. Marchai may enforce the Note.

195. Perez must pay the principal and interest on the debt evidenced by the Note, and failure to make such payments constitutes default and breach of the Note and DOT.

196. Upon default, the DOT's beneficiary must notify Perez of the breach and provide 30 days to cure.

197. If Perez fails to cure, the beneficiary may accelerate the Note's full payment and invoke the power of sale and any other remedies permitted by law.

198. Perez failed to make the October 1, 2011 payment on the Note and all payments due after that, resulting in default under the Note and DOT.

199. On October 3, 2012, the loan servicer gave notice of the breach to Perez.

200. Perez failed to cure the breach within 30 days, and Marchai elected to accelerate the amounts owed.

201. Marchai is entitled to a judgment of this Court ordering the Property sold at foreclosure to satisfy the amounts due under the Note.

202. Based upon the Court's conclusion related to the satisfaction of the superpriority portion of the lien, prior to the sale SFR took subject to the Note and DOT. SFR as a successor in interest to Perez, is entitled to all notices related to any sale of the Property by Marchai.

203. If any of the above conclusions of law are more appropriately characterized as findings of fact, then they shall be deemed findings of fact.

Based upon the foregoing Findings of Fact and Conclusions of Law, and other good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that as to Plaintiff's Claim for Declaratory Relief/Quiet Title, the Court finds in favor of Marchai that the Deed of Trust was not extinguished by the HOA foreclosure as the superpriority portion of the HOA lien was extinguished by Perez's payments;

IT IS FURTHER ORDERED that SFR's interest in the Property is subordinate and subject to the interest of Marchai.

IT IS FURTHER ORDERED that Marchai's claim for judicial foreclosure of the Property is granted.

Dated this 5th day of March, 2021

Elizabeth Gonzalez, District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

/s/ Dan Kutinac
Dan Kutinac, JEA